

**PUBLIC FACILITIES IMPACT FEE
CREDIT AGREEMENT**

THIS PUBLIC FACILITIES IMPACT FEE CREDIT/REIMBURSEMENT AGREEMENT ("Agreement"), made and entered into _____, 2023, between the City of Merced, a California Charter Municipal Corporation, hereinafter called "City," and Gateway Park Development Partners, LLC, a California Limited Liability Company, hereinafter called "Developer," relating to the dedication of 1/5 acres of land at the southwest corner of Gerard Avenue and Plum Drive (extended) for a future fire station.

RECITALS

- A. Developer is constructing a shopping center on approximately 77 acres of land generally located east of Coffee Street, between Gerard Avenue and Mission Avenue. The land is bisected by Campus Parkway.
- B. As a condition of approval for the annexation of this land and of the shopping center development, approximately 1.5 acres of land was required to be dedicated for a fire station. The land originally intended for dedication was generally located at the southeast corner of Gerard Avenue and Daffodil Drive (extended). After review of the site by the Fire Chief, it was determined that moving the site east to the corner of Gerard Avenue and Plum Drive (extended) would better serve the City's needs.
- C. Developer has agreed to dedicate 1.5 acres of land generally located at the southwest corner of Gerard Avenue and Plum Drive (extended), and as legally described on Exhibit "A" and shown on the map at Exhibit "B," attached hereto and incorporated herein by this reference (the "Property"); and
- D. Per Section 6. DEDICATIONS of the Pre-Annexation Development Agreement for Plum Family Partnership, Sutco Construction, Inc. and 1991 Vierra Family Trust, upon dedication of land for a fire station, the Developer shall be entitled to a fee credit for the value of the land against any public safety fee adopted by the City. This agreement, including the First Amendment to the Agreement is provided at Exhibit "C," attached hereto and incorporated herein by this reference. The Agreement is recorded as Document No. 1995-030288, Merced County Records, with the First Amendment to the Agreement being recorded as Document No. 1996-031876, Merced County Records.

- E. The City adopted a Public Facilities Financing Plan in 1998. This plan sets forth certain impact fees to be paid upon development of land within the City. A portion of the fee is dedicated to public safety (Police and Fire). Per the agreement referenced in Section E above, the Developer is only entitled to credit for the public safety portion of the fee. Developer acknowledges that he is responsible for payment of the remaining fees due as part of the Public Facilities Financing Plan Impact Fees.
- F. The City and Developer negotiated the price of the land and mutually agreed upon a price of \$154, 666 per acre for a total credit of \$232,000 (refer to Exhibit D attached hereto and incorporated herein by this reference).

Based on the foregoing recitals, and in consideration of the mutual covenants, promises, and agreements herein contained, the parties hereto mutually agree as follows:

1. INCORPORATION OF RECITALS

The RECITALS above are true and correct and constitute an enforceable provision of this Agreement.

2. POLICIES, ORDINANCES, AND RESOLUTIONS

Fee credit for the dedication shall be made only in accordance with policies, ordinances, and resolutions in effect at the time of execution of this Agreement. Such fee credit or reimbursement shall be limited to the amount agreed upon for the dedication of 1.5 acres of land.

3. RESERVED

4. REIMBURSEMENT

The Developer is entitled to a fee credit for the value of the land dedicated. No credit shall be given until and unless the dedication of the 1.5 acres of land has been completed and all necessary documents recorded.

5. CREDIT AMOUNT

The Developer is, therefore, entitled to credit of the Public Safety portion of the Public Facilities Impact Fees or reimbursement as described in Section 4

in the amount of Two Hundred Thirty-Two Thousand Dollars (\$232,000.00).

6. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the respective parties hereto.

7. WAIVER

In the event that either City or Developer shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

8. VENUE

This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Merced.

9. AMENDMENT

This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

10. INTEGRATION

This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

11. AUTHORITY TO EXECUTE

The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

12. COUNTERPARTS

This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

13. CONSTRUCTION

The provisions of this Agreement shall be liberally construed to effectuate its purpose. The language of this Agreement shall be construed simply according to its plain meaning and shall not be construed for or against any party, as each party has participated in the drafting of this Agreement. Whenever the context and construction so require, all words used in the singular shall be deemed to be used in the plural, and vice versa.

14. SECTION HEADINGS

The section headings contained in this Agreement are for convenience and identification only and shall not be deemed to limit or define the contents to which they relate.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal Corporation

BY: _____
City Manager

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

DEVELOPER:
GATEWAY PARK DEVELOPMENT
PARTNERS, LLC
A California Limited Liability Company

BY: 
Signature

Eric R. Pluim
Print Name

ITS: MANAGER

Taxpayer I.D. No. 27-0462071

ADDRESS: 133 Old Ward Ferry Rd.,
Suite G
Sonora, CA 95370

TELEPHONE: (916) 745-2175

FACSIMILE: _____

EMAIL: epluim@hotmail.com

EXHIBIT A
Legal Description

Parcel 1 as shown on that certain map entitled "Parcel Map for Merced Gateway Park," recorded in Book 122, Pages 3-4 of Merced County Records.

BASIS OF BEARINGS

The bearing N 89°54'26" E for the Centerline of Gerard Avenue, between two found monuments, as shown on that certain parcel map for Merced Gateway Park 30-01, recorded in Book 117 of Parcel Maps, Merced County, California, was used as the basis of bearing for this survey.

REFERENCES

- (1) Parcel Map of Merced Gateway Park, Book 117 of Parcel Maps at Page 30-01, M.C.R.
- (2) Certificate of Compliance No. 2020-11, Recorded as Doc. No. 2020-047844, M.C.R.
- (3) Record of Survey for City of Merced of GPS Survey Control Network, Book 58 of Surveys at Pages 38-41, M.C.R.

- Found 3/4" iron pipe with tag "I.S. 4052" per (1) unless otherwise as noted
- Found 3/4" iron pipe with tag "I.S. 4052" in monument well per (1), unless otherwise as noted
- Set 3/4" iron pipe, with tag "I.S. 4052"
- Record data, per that certain numbered reference. See references.
- Calculated from reference listed hereon
- Found
- Iron Pipe
- Merced County Records
- Official Plats
- P.M.
- Parcel Map
- Public Utility Easement
- Survey Boundary

LEGEND

- Found
- Set
- () Calculated
- C.R. Merced County Records
- FD. Official Plats
- I.P. Iron Pipe
- M.C.R. Merced County Records
- O.P. Official Plats
- P.M. Parcel Map
- P.U.E. Public Utility Easement
- Survey Boundary

LOT SPLIT APPLICATION No. 23-01
PARCEL MAP

FOR
MERCEZ GATEWAY PARK

BEING A SUBDIVISION OF ADJUSTED PARCEL B AS DESCRIBED IN CERTIFICATE OF COMPLIANCE No. 2020-12 RECORDED AS DOCUMENT No. 2020-047846, MERCED COUNTY RECORDS, LIVING IN SECTION 34, TOWNSHIP 7 SOUTH, RANGE 14 EAST, MOUNT Diablo EASE AND MERIDIAN IN THE CITY OF MERCED, STATE OF CALIFORNIA

SCALE: 1"=150'
SHEET 2 OF 2
AUGUST 2023

BOOK 122

PAGE 4

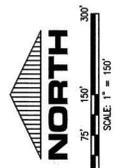
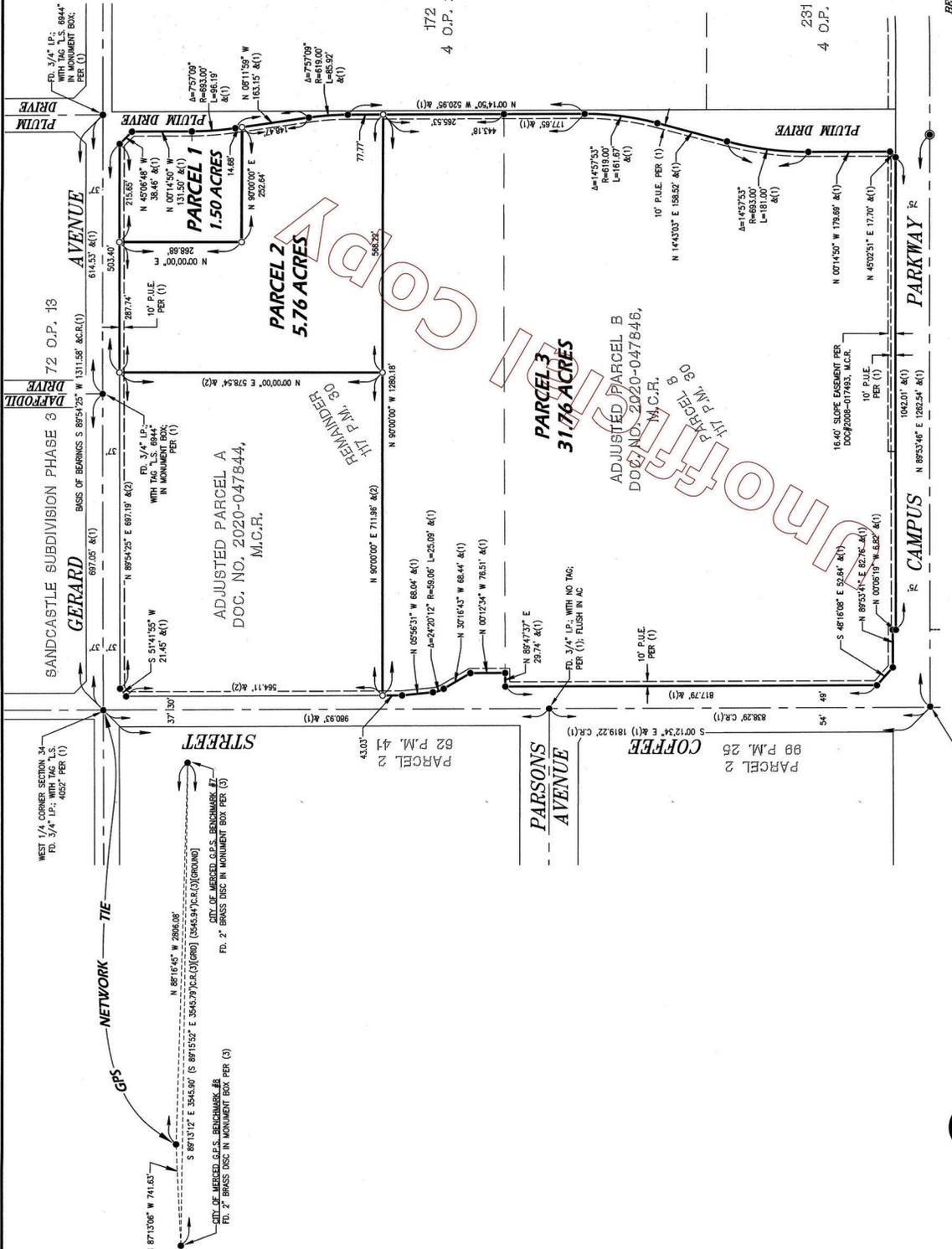


FIG. 2 1/8" DIA. BRASS DISK W/ SMALL PUNCH HOLE FOR REFERENCE POINT, CALIF. DEPT. OF TRANSPORTATION MONUMENT. THIS MONUMENT IS LOCATED AT THE INTERSECTION OF THE SECTION LINE & CAMPUS PARKWAY INTERSECTION. PER (1)

GOLDEN VALLEY
ENGINEERING & SURVEYING
405 W. 19th Street • P.O. Box 349 • Merced, CA 95340
Phone (209) 722-3200 • Fax (209) 722-3254

Job No. 18040 F.B. 233 Pg. 9-11, 16

30288

SEP 21

RECORDED BY
City of Merced
AT 3:00 pm

1995-7-10-1
804-95-346
eff 7-17-95

RECORDING REQUESTED BY:

VOL 3393 PAGE 789
OFF'L RECORDS OF
MERCED COUNTY
CALIFORNIA
JAMES L BALL
Recorder

AND WHEN RECORDED MAIL TO:

Merced City Clerk's Office
678 W. 18th St.
Merced, CA 95340

Space above this line for Recorder's use

DEVELOPMENT AGREEMENT
FOR
PLUIM FAMILY PARTNERSHIP,
SUTCO CONSTRUCTION, INC.
AND
1991 VIERRA FAMILY TRUST

THIS DEVELOPMENT AGREEMENT is made and entered into in the City of Merced on this 17th day of July, 1995, by and between the CITY OF MERCED, a municipal corporation (hereinafter referred to as "City"), and Pluim Family Partnership, a California Partnership, Sutco Construction, Inc. a California Corporation and 1991 Vierra Family Trust, (hereinafter referred to as "Developer").

RECITALS

This Agreement is predicated upon the following facts:

1. Government Code Sections 65864 - 65869.5 authorize the City of Merced to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property;
2. Under Section 65865 the City of Merced has adopted rules and regulations establishing procedures and requirements for consideration of development agreements;
3. Developer has requested the City of Merced to consider entering into a Development Agreement and proceedings have been taken in accordance with the City's rules and regulations;

4. The City Council has found that the Development Agreement is consistent with the General Plan;

5. Developer owns fee title to those certain parcels of land, consisting of 322 acres, located in the City of Merced or expected to be annexed to the City of Merced (the "Property") most particularly described in Exhibit A; and

6. On July 3, 1995 City approved Conditions of Development of the Property (the "Conditions"); and

7. Development of the Property in accordance with the Conditions and this Agreement will provide for orderly growth in accordance with the policies and goals set forth in the City's General Plan; and

8. For the reasons cited herein Developer and the City have determined that development of the property is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty in planning, provide for orderly development, insure the installation of the necessary improvements, provide for public services appropriate to the development of the property, and otherwise achieve the goals and purposes for which the Development Agreement statute was enacted; and

9. On July 17, 1995, the City Council of the City of Merced adopted Ordinance No. 1912, approving this Development Agreement and that Ordinance will take effect August 17, 1995.

NOW, THEREFORE, with reference to the foregoing recitals and

in consideration of the mutual promises, obligations and covenants herein contained, the City and Developer agree as follows:

SECTION 1. BINDING EFFECT OF AGREEMENT. The burdens of this Agreement shall bind, and its benefits inure to the benefit of all estates and interests in the Property described in Exhibit A hereto and all successors-in-interest to the parties hereto. This Agreement shall be recorded by the City at Developer's expense at the Office of the Recorder of Merced County not more than ten (10) days following execution of this Agreement by all parties.

The City, by electing to enter into contractual agreements such as this one, acknowledges that the obligations of the City shall survive beyond the term or terms of the present City Council members, and that such action will serve to bind the City and future councils to the obligations thereby undertaken, and this Agreement shall limit the future exercise of certain governmental and proprietary powers of the City. By approving this Agreement, the City Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date. The terms and conditions of this Agreement have undergone extensive review by the City and its Counsel and have been found to be fair, just and reasonable, and the City has concluded that the pursuit of the development will serve the best interest of its citizens and the public health, safety and welfare will be best served by entering into this obligation. The City acknowledges that Developer would

not engage in the development and infrastructure improvements without the assurance of development entitlement which this Agreement is designed to provide.

SECTION 2. EFFECTIVE DATE AND TERM OF AGREEMENT.

Section 2.01. Effective date. The Effective Date of this Agreement shall be the date this Agreement is recorded at the Office of the Recorder of Merced County pursuant to SECTION 1. of this Agreement.

Section 2.02. Term. This Agreement shall remain in effect for twenty (20) years. In the event that the Property is not developed within twenty (20) years, any portion of the Property which is not developed shall be rezoned to agricultural use, and all subdivided land for which a final map has not been obtained shall revert to acreage unless this Agreement is extended or amended by mutual consent.

SECTION 3. DEVELOPMENT OF PROPERTY.

Section 3.01. Right to Proceed with Development. Developer shall have the right to develop the property in accordance with the terms and conditions of this Agreement, the Conditions, and such amendments to the Conditions and this Agreement as shall from time to time be approved by the City and Developer as provided for in this Agreement.

Section 3.02. Permitted Uses. The permitted uses of the Property, the density and intensity of use, provisions for reservation or dedication of land for public purposes and location

of public improvements, location of public utilities, and other terms and conditions of development applicable to the Property shall be those set forth in this Agreement, the Conditions, Planned Development Zone Site Utilization Plans, tentative maps and use permits for the development and any amendments to any of these documents.

The parties shall comply with the conditions and terms of (1) this Agreement, (2) the Conditions, (3) the City's General Plan and any amendments thereto or revisions thereof, (4) the Program Environmental Impact Report for the Developer prepared by Community Concepts, Inc., Project Mitigation Measures for significant impacts, (5) the Merced Municipal Code, including without limitation the Planned Development Zone requirements of Chapter 20 of the Merced Municipal Code, (6) the Standard Designs of Common Engineering Structures, (7) Multi-family Design Guidelines, and all amendments to any of the above referenced documents.

All of the above documents are intended to cooperate so that any conditions contained in one and mentioned in the other, or vice versa, are to be followed as if mentioned in all such documents. In case of conflict between any of the documents, the order of documents first listed above shall be the order of precedence, with the first item listed having the highest precedence.

Section 3.03. Improvement Design and Construction Standards. The rules, regulations, specifications, and official

policies of the City governing all design and construction standards for all public and private improvements on the Property shall be those in effect at the time of tentative map approval, or as mutually agreed upon between the parties. Building requirements set forth in the Uniform Building Code, Uniform Fire Code, Uniform Mechanical Code, Uniform Plumbing Code, and other City adopted Uniform Codes as they exist on approval of a tentative map or as mutually agreed upon between the parties, shall apply to all development on the Property.

Section 3.04. Life of Subdivision Maps, Development Approvals, and Permits. Any planned development permit, final development plan, other permit, grant, agreement, or entitlement for the general development of all or any part of the Property shall be effective in accordance with the terms thereof. The term of all tentative maps shall be seven (7) years from date of original approval. There shall be no special extended life of permits or plans as a result of this Agreement, except as indicated above.

Section 3.05. Fees and Taxes. Developer shall pay to the City those fees, charges, and taxes in effect at the time of building permit approval unless such fee, charge, or tax is payable at an earlier date in which case Developer shall pay the fee, charge, or tax in effect at the date of payment. Payment of the following fees, charges and taxes shall be deferred until occupancy: capital fees (not including the traffic mitigation fee

identified in the Conditions) and any school fees if agreed to with the affected school districts.

Section 3.06. Developer's Right to Fee Offset for Public Facility Improvements. Developer will be required to construct certain public improvements which may benefit an area larger than the Property. These improvements are identified in the Conditions as Category 2 improvements. However, Developer shall receive no offset (or reimbursement) for said improvements against the City's park in lieu fees, water connection fees, sewer fees, fire service fees, drainage service fees and any other public facility fees, except to the extent that City may so provide by Ordinance, and then only to the extent that the City has collected fees or charges from third parties to pay Developer any such offset (or reimbursement). In no event shall any offset exceed the actual amount spent by Developer (without interest).

The City is in the process of developing various public facility fees and oversize reimbursement provisions. Although the implementation of these fees cannot be guaranteed, City intends to continue in its efforts with the intent of developing mechanisms for reimbursing Developer for Category 2 improvements. In any event, all adopted reimbursement provisions which benefit Developer shall remain in effect for ten (10) years beyond the end of the term of this Agreement, and in the event that City by ordinance or resolution implements a traffic mitigation fee, Developer shall receive credit against said fee for any traffic mitigation fee

(Category 3 improvement) required by the Conditions to the extent that the fee is collected for the same public improvements.

SECTION 4. DISTRICTS.

Section 4.01. District formation.

Developer may apply to the City for the commencement of proceedings to create assessment and/or maintenance districts under the Improvement Act of 1911, the Municipal Act of 1913, the Landscaping and Lighting Act of 1972, Mello-Roos Community Facilities Act of 1982, or other appropriate legislative authority for the purpose of paying for, and for financing some or all of the costs of maintenance and/or construction of public facilities hereunder. Nothing herein shall be deemed to require City to approve the formation of such districts, provided that City acknowledges that the formation of the district or districts for these purposes may be appropriate.

Section 4.02. Utilities.

Nothing herein shall be construed to limit the City's ability to impose reasonable conditions and future discretionary approvals which require developers to install water and sewer lines and appurtenances servicing the Property.

SECTION 5. Zoning.

Section 5.01 Prezoning.

The Property shown on the Conceptual Land Use Map shall be prezoned as shown on the map. All uses, except R-1-5 and R-1-6 shall require a conditional use permit which may consider, among

other things, the site planning and density of the proposed development. Developer shall comply with all terms and conditions of Title 20 of the Merced Municipal Code.

The City Engineer shall determine those Category 2 improvements required to be installed or security posted as a condition of approval of any Final Map or other discretionary approval and a performance schedule for the construction of any such improvements. Any determination made by the City Engineer may be appealed to the City Council. Upon such appeal, the City Council shall, in its sole discretion, determine any modifications to the improvement requirements. The City Council may also require as a condition that Developer post adequate security in the form of cash, bonds and/or letters of credit in an amount sufficient to guarantee the construction of the improvements, and establish a performance schedule for the construction of the improvements.

The traffic mitigation fee (Category 3 improvements) identified in the Conditions shall be reviewed annually and adjusted to reflect current cost estimates determined in a similar manner to AB1600 fees (Govt. Code Section 66018). Any fee collected shall only be used for the purpose for which it was collected and shall be refunded (without interest) to Developer should City determine that construction of the facility or improvement is not needed.

Section 5.02. Land Not Under Control of Developer or City.
In the event that Developer is required to construct Category 1 or

2 improvements which are not under the control of Developer or the City (for example, if said improvement is to be located on property that has not been annexed to the City), Developer may nonetheless proceed with development (if all other terms and conditions of this Agreement are met) if Developer provides security in the form of cash, a bond or letter of credit in an amount determined by the City Engineer to be sufficient to complete the improvements once the land comes under the control of Developer or the City, and agrees to promptly construct said improvements when control is obtained. Notwithstanding the above, the City Engineer, in his sole discretion, may determine that the required improvement needs to be completed prior to further development, provided that the off-site improvements will be located pursuant to Government Code Section 66462.5 or other applicable law on land in which the Developer or City has or is able to obtain sufficient title or interest.

Should Developer request that the City undertake proceedings by condemnation, negotiation, or otherwise to acquire control of the land, City will consider said request but shall be under no obligation to act upon Developer's request. Should City determine to proceed, Developer shall enter into a Reimbursement Agreement with City agreeing to pay for all costs associated with the undertaking, including without limitation all staff time, out-of-pocket expenses, etc. associated with City efforts to obtain control of the land authorized by Government Code Section 66462.5.

The provisions contained in Section 66462.5 shall govern the applications of this Section.

SECTION 6. DEDICATIONS.

Developer shall reserve for dedication, dedicate, and/or construct those public improvements in accordance with the Conditions and existing City policies as required to service the Project. Developer will dedicate property for fire stations as identified in the Conditions, and will receive a credit for the value of the land against any public safety fee adopted by the City. The value of the property dedicated for fire station(s) shall be determined in accordance with City ordinances relating to park dedication.

SECTION 7. OVERSIZING.

City agrees to reimburse Developer for the cost to oversize all oversized public facilities (Category 2 improvements) installed by Developer in accordance with City ordinance. In the event that there is no ordinance providing for oversizing, then Developer shall receive no reimbursement for the improvements installed, unless City does pass such an ordinance and collects monies from other benefited parties for reimbursement to Developer. For those current City ordinances providing for oversizing, Developer shall be entitled to the benefit thereof, except that no monies shall be reimbursed to Developer until and unless said monies are collected from other benefited parties for said purpose.

SECTION 8. ASSIGNMENT. The rights and obligations of Developer hereunder shall not be assigned or transferred, except that on thirty (30) days written notice to City, Developer may assign all or a portion of Developer's rights and obligations hereunder to any person or persons, partnership or corporation who purchases all or a portion of Developer's right, title and interest in the Property, provided such assignee or grantee assumes in writing each and every obligation of Developer hereunder yet to be performed, and further provided that Developer obtains the consent of City to the assignment, which consent shall not be unreasonably withheld. The notice to City shall include the identity of any such assignee and a copy of the written assumption of assignor's obligations hereunder pertaining to the portion assigned or transferred. After such notice and the receipt of such consent, the assignor shall have no further obligations or liabilities hereunder. The City Manager shall act on behalf of City regarding any actions concerning the assignment of this Agreement. Developer may appeal to the City Council, the action of the City Manager regarding the assignment of this Agreement.

SECTION 9. STATUS OF AGREEMENT. This Agreement shall supersede, replace and render null and void any and all prior oral or written representations, contracts, agreements, or understandings between or among any of the parties hereto relating to or arising out of any of the matters referred to herein that are inconsistent with the terms and provisions of this Agreement.

SECTION 10. AGREEMENT IS ENTIRE AGREEMENT. This written Agreement contains the sole and entire agreement between the parties. It supersedes any and all other agreements between the parties. The parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this Agreement or any representation including the execution and delivery hereof, except such representation as are specifically set forth herein, and each party acknowledges that he or it has relied on its own judgment in entering into this Agreement. The parties further acknowledge that any statements or representations that may have heretofore been made by either of them to the other are void and of no effect and neither of them has relied thereon in connection with their dealings with each other.

SECTION 11. WAIVER OR MODIFICATION OF TERMS. No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged herewith. Furthermore, no evidence of any waiver or modification shall be offered or received in evidence in any proceeding or litigation between the parties arising out of or affecting this Agreement, or the rights or obligations of any party hereunder, unless such waiver or modification is in writing, duly executed as aforesaid. The provisions of this paragraph may not be waived except as herein set forth.

SECTION 12. AMENDMENT. This Agreement and the Conditions may be amended from time to time by mutual consent of the parties hereto and in accordance with the provisions of Government Code Sections 65867 and 65868, provided that any such amendment shall require a public hearing thereon before the City Council only if required by state or federal law, unless the City chooses to conduct a public hearing.

SECTION 13. RELATIONSHIP OF PARTIES. It is understood that the contractual relationship between the City and Developer is such that Developer is an independent contractor and not the agent of the City.

SECTION 14. CANCELLATION OF THIS AGREEMENT. Except as otherwise permitted herein, this Development Agreement may be canceled in whole or in part only by the mutual consent of the parties or their successors-in-interest, or in the event of a violation of any material term hereof, in the manner set forth in California Government Code Sections 65865.1, 65867, 65867.5, and 65868.

SECTION 15. ENFORCEMENT. Unless amended or cancelled in accordance with the terms of this Agreement, this Development Agreement is specially enforceable by either party. Nothing herein shall be construed to limit the authority of the City to fix the amount of fees and taxes of general application which may otherwise be lawfully imposed by the City.

SECTION 16. DEFAULT, REMEDIES, TERMINATION.

Section 16.01. General Provisions. Subject to extensions of time by mutual consent in writing, failure or delay by either party to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party not less than thirty (30) days notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any such thirty (30) day period, the party charged shall not be considered in default for purposes of termination or institution of legal proceedings. After notice and expiration of the thirty (30) day period, the other party to this Agreement, at its option, may institute legal proceedings pursuant to this Agreement, or give notice of intent to termination of the Agreement pursuant to California Government Code Section 65868 and regulations of the City implementing said Government Code Section. Following notice of intent to terminate, the matter shall be scheduled for consideration and reviewed in the manner set forth in Government Code Section 65865, and 65868, and City regulations implementing said sections by the Council within thirty (30) calendar days. Following consideration of the evidence presented in said review before the Council, either party alleging the default by the other party may be given written notice of termination of this Agreement to the other party. Evidence of default may also arise in the course of a regularly scheduled

periodic review of this Agreement pursuant to Government Code Section 65865.1. If either party determines that the other party is in default following the completion of the normally scheduled periodic review, said party may give written notice of termination of this Agreement specifying in said notice the alleged nature of the default and potential actions to cure said default, where appropriate. If the alleged default is not cured within thirty (30) days, or within such longer period specified in the notice, or the defaulting party waives its right to cure such alleged default, this Agreement shall be deemed terminated at the option of the non-defaulting party.

Section 16.02. Annual Review. City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Developer with the terms of this Agreement. Such periodic review shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code Section 65865.1. Notice of such annual review shall include the statement that any review may result in amendment or termination of this Agreement. A finding by City of good faith compliance by Developer with the terms of this Agreement shall conclusively determine said issue up to and including the date of said review. City's failure in any year to review the extent of compliance by Developer shall be deemed a finding by City of good faith compliance by Developer with the terms of this Agreement. Developer shall be permitted an opportunity to be heard

orally or in writing regarding its performance under this Agreement before the City Council, or if the matter is referred to the City Planning Commission, before said Commission.

Section 16.03. Legal Action to Interpret and/or Enforce the Agreement. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default to enforce any covenant or agreement herein, or to enjoin any threatened or attempted violation, or to interpret the provisions hereof and declare the rights and obligations of the parties hereto.

SECTION 17. HOLD HARMLESS AGREEMENT. Developer hereby agrees to save and hold City and its elected and appointed representatives, officers, agents, and employees, harmless from claims, costs and liabilities for any personal injury, death, or property damage which arises, directly or indirectly, from operations performed under this Agreement by Developer or Developer's contractors, subcontractors, agents, or employees, whether such operations were performed by Developer or by any of Developer's contractors, subcontractors, by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. In addition, Developer shall defend City and its elected and appointed representatives, officers, agents, and employees against actions arising out of such personal injury, death, or property damage which is caused, or alleged to have been caused by reason of

Developer's activities in connection with the Property. Developer further agrees to and shall save and hold City harmless from any and all claims, costs and liability arising as a result of any legal action brought against City which challenges the validity of this Agreement.

SECTION 18. INSURANCE. Before beginning any development of the Property, Developer shall obtain the insurance required under this paragraph and receive the approval of the City Attorney as to form, amount and carrier. Developer shall maintain the insurance during the term of this Agreement. The insurance shall extend to the City its elective and appointed boards, commissions, officers, agents, employees and representatives and to Developer and each contractor and subcontractor performing work on the Property.

(a) Compensation Insurance. Developer shall maintain workers' compensation insurance for all persons employed on the Property. Developer shall require each contractor and subcontractor similarly to provide workers' compensation insurance for their respective employees. Developer agrees to indemnify the City for damage resulting from its failure to take out and maintain such insurance.

(b) Public Liability and Property Damage Insurance. Developer shall maintain public liability insurance in an amount of not less than \$500,000 for injuries (including death) to any one person and subject to the same limit for each person in an amount of not less than \$500,000 on account of any one occurrence; and

Property Damage insurance in an amount of not less than \$500,000 for damage to the property of each person on account of any one occurrence.

(c) Contractual Liability Insurance. Developer shall maintain an insurance policy in an amount of \$500,000 insuring against damages sustained by reason of any action, claim or demand made by reason of breach or claim for breach of contract or by reason of any contractual liability or alleged contractual liability on any contract entered into by Developer or its contractors, subcontractor, agent or employee.

(d) Developer shall furnish City concurrently with the execution of this Agreement satisfactory evidence of the insurance required and evidence that the carrier is required to give the City at least thirty (30) days prior written notice of cancellation or reduction in coverage in the policy.

SECTION 19. COOPERATION IN THE EVENT OF LEGAL CHALLENGE. In the event of any legal action instituted by a third party or other governmental entity or official challenging the approval or validity of any provision of this Agreement, the parties hereby agree to cooperate in defending such action. Developer agrees to provide and cover the cost of a defense and indemnify the City in the event legal action is commenced against the City to set aside this Agreement.

SECTION 20. DAMAGES UPON DEFAULT; SPECIFIC PERFORMANCE. In no event shall Developer be entitled to any of the following

damages against the City upon the City's default under this Development Agreement:

1. Punitive Damages
2. Damage for Loss of Profits
3. Damage for expenditures or costs incurred prior to the date of this Development Agreement
4. Damages if terminated for any reason other than default by the City

In no event shall City be entitled to recover any damages in excess of the assets of Developers; there shall be no personal liability of any of the individual partners of Developer pursuant to this Agreement.

All the terms of this Development Agreement shall be specifically enforceable by either party hereto.

SECTION 21. ATTORNEYS FEES AND COSTS. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party is entitled to reasonable attorneys fees and court costs.

SECTION 22. IMPROVEMENT SECURITY. By the terms of this Agreement and the Conditions, Developer is required to construct certain public improvements which are not normally required as part of a subdivision map. At the time that a subdivision final map is approved, the Developer shall secure any such improvements required within as part of said subdivision in the same manner as though

said improvement was required to be secured by the Subdivision Map Act.

SECTION 23. NOTICES. All notices herein provided to be given, or which may be given, by either party to the other, shall be deemed to have fully been fully given when made in writing and deposited in the United States mail, certified or registered and postage prepaid, addressed as follows:

"CITY"

City of Merced
ATTN: City Manager
678 West 18th Street
Merced, CA 95340

"DEVELOPER"

1991 Vierra Family Trust
ATTN: Anthony Vierra
23160 W. Williams
Hilmar, CA 95324

Pluim Family Partnership
ATTN: Al Pluim
P. O. Box 1298
Merced, CA 95340

Sutco Construction, Inc.
ATTN: Thomas Sutter, President
P. O. Box 3250
Modesto, CA 95352

SECTION 24. MISCELLANEOUS. All section headings contained herein are for convenience only and are not intended to define or limit the scope of any provision of this Agreement. This Agreement shall be governed exclusively by the provisions hereof and by the laws of the State of California as the same from time to time exist. The waiver by either party of any breach by the other shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

SECTION 25. SEVERABILITY. The unenforceability, invalidity, or illegality of any provision, covenant, condition, or term of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

SECTION 26. COVENANT OF GOOD FAITH AND FAIR DEALING. Neither party shall do anything which shall have the effect of harming or injuring the right of the other party to receive the benefits of this Agreement. Each party shall refrain from doing anything which would render impossible its performance, or the performance of the other party.

SECTION 27. GOVERNING LAW. This Agreement, and rights and obligations of the parties hereunder, shall be governed by and interpreted in accordance with the laws of the State of California.

SECTION 28. COUNTERPARTS. For convenience, the signatures of the parties to this Agreement may be executed and acknowledged on separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.

SECTION 29. TIME. Time is of the essence of this Agreement and each and every term and condition hereof.

SECTION 30. INITIAL ANNEXATION WITHIN TWELVE MONTHS.

If annexation of the property described in Exhibit A is not completed within twelve (12) months, this Agreement shall automatically terminate, annexation proceedings shall be immediately terminated, rezoned property shall be rezoned to

agricultural use, and any tentatively approved mapping shall be null and void.

SECTION 31. ESTOPPEL CERTIFICATE.

Within ten (10) days following any written request which either party may make from time to time, the other party shall execute and deliver to the requesting party a statement certifying that:

(a) This Agreement is unmodified and in full force and effect, or if there have been modifications hereto, that this Agreement is in full force and effect, as modified, and stating the date and nature of such modifications;

(b) There are no current uncured defaults under this Agreement or specifying the dates and nature of any such defaults and the manner for their cure; and

(c) Any other reasonable information requested.

The failure to deliver such statement within such time shall be conclusive upon the party which fails to deliver such statement that this Agreement is in full force and effect without modifications except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party.

SECTION 32. EFFECT OF ASSIGNMENT OR TRANSFER IN OWNERSHIP.

It is specifically agreed and understood by and between the parties that upon assignment or transfer by Developer of part or all of the Property, that all notices required to be given or which may be

given regarding said assigned or transferred property shall be deemed to have been duly given when made in writing and deposited in the United States mail, certified or registered and postage prepaid addressed to the transferee or assignees.

Upon any amendment or modification affecting the transferred property, or upon any repayments for oversizing, etc., the City is only required to directly deal with Assignee and has no obligation to obtain approval from the other owners of the Property.

SECTION 32. CURE/REAPPROVAL.

In the event that a court enters a judgment requiring reconsideration by City of any matter pertaining to the Project, the Project Approvals, or this Agreement, then City shall reconsider that matter in a manner consistent with the intent of this Agreement. If any such judgment invalidates all or any portion of any of the Project, the Project Approvals, or this Agreement, City and Developer shall work together to attempt to cure any deficiencies identified in any such judgment. Upon City and Developer reaching agreement, City shall then readopt the Project, the Project Approvals, or this Agreement, as may be needed to remedy the deficiency or deficiencies consistent with such judgment.

SECTION 34. COOPERATION-IMPLEMENTATION.

1. Processing. If necessary or required, upon satisfactory completion by Developer of all required preliminary actions and payments of appropriate processing fees, if any, City shall

promptly commence and diligently proceed to complete all steps required or necessary for the implementation of this Agreement and the development by Developer of the Property in accordance with the Project Approvals. City and Developer acknowledge that in order to develop the Project, significantly more entitlements may be required, including but not limited to, General Plan Amendments, Specific Plan Amendments, zoning, final development plans, tentative maps, parcel maps, final maps, resubdivisions, amendments to maps, subdivision improvement agreements, lot line adjustments, encroachments, grading and building permits, and related matters, all as necessary for the completion of the development of the Project. In connection with such entitlement processing, City agrees that all legislative and non-legislative actions by the City pursuant to applications made regarding the foregoing entitlements shall be concluded within six (6) months from the date upon which the application is complete.

Developer will, in a timely manner, provide City with all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder and cause Developer's planners, engineers, and all other consultants to submit in a timely manner all required materials and documents therefor. It is the express intent of Developer and City to cooperate and diligently work to implement any General Plan amendment, zoning, final development plan and/or other land use,

grading or building permits or approvals which are necessary or desirable in connection with the development of the Property.

2. Other Governmental Permits. In addition, Developer shall apply in a timely manner for such other permits and approvals as may be required by other governmental or quasi-governmental agencies having jurisdiction over the Project in connection with the development of, or provision of services to, the Project. City shall cooperate with Developer in its efforts to obtain such permits and approvals and shall, from time to time at the request of Developer, attempt with due diligence and in good faith to enter into binding agreements with any such entity necessary to assure the availability of such permits and approvals of services, provided such agreements are reasonable and not detrimental to City.

SECTION 35. SUBSEQUENT "SLOW/NO GROWTH" MEASURES.

Consistent with this development, the City and Developer specifically agree that any subsequently enacted initiatives, referendums, or amendments to the City's General Plan and/or Zoning Code which contain "slow/no growth" measures, moratorium or other limitations on growth, or which by their terms are intended to, or have such effect shall have no application to the Property or any aspect of the Project or the Project Approvals. Notwithstanding any such measures, the mitigation measures required for the development are limited to those established by this Development Agreement or approved in accordance with the Plan.

IN WITNESS WHEREOF, City and Developer have executed and approved this Development Agreement as of the date set forth above.

"CITY"
CITY OF MERCED
A Municipal Corporation
BY: [Signature]
City Manager

ATTEST:
BY: Carol Bregman
Deputy City Clerk

APPROVED AS TO FORM:
BY: [Signature]
City Attorney

950346
FUNDS/ACCOUNTS/VERIFIED
BY: [Signature] Date

DEVPLMVRA
no funds required 7/18/95
plp

"DEVELOPER"
BY: [Signature]
Title: ANTHONY VIERRA
Address: 2360 Williams to Helen 95324
Telephone: 209 667 6744

[Signature]
ALBERT R. PLUIM
P.O. Box 1298
Merced, Calif. 95340
Phone 723-5366

[Signature]
RIDGE SUTTER
P.O. BOX 3520
MODESTO, CA. 95352
209-529-6361

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

State of California

County of Merced

On July 26, 1995 before me, Mildred A. White, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared James H. Marshall
NAME(S) OF SIGNER(S)

personally known to me - **OR** - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.
Mildred A. White
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER
- _____ TITLE(S)
- PARTNER(S) LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

_____ TITLE OR TYPE OF DOCUMENT

_____ NUMBER OF PAGES

_____ DATE OF DOCUMENT

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

_____ SIGNER(S) OTHER THAN NAMED ABOVE

**DESCRIPTION OF THE
EXTERIOR BOUNDARY
OF THE
WEAVER AREA ANNEXATION
TO THE
CITY OF MERCED, CALIFORNIA**

That portion of Section 27, 28, 33, and 34 in T.7S., R.14E., M.D.B. & M., and a portion of Section 3, T.8S., R.14E., M.D.B. & M., as shown on the "Map of Merced Colony" filed for record February 3, 1910, in Volume 4 of Official Plats at Page 24, Merced County Records, "Map of Grimes Subdivision No. 1", filed for record April 5, 1927, in Volume 9 of Official Plats at Page 19, Merced County Records, and the "Map of Smith's Merced Tract" filed for record June 6, 1911, in Volume 5 of Official Plats at Page 4, Merced County Records, being more particularly described as follows:

Beginning at a point that is S.0°21'E. 30.00 feet and N.89°55'E. 20.00 feet from the northwest corner of said Section 3, said point being the intersection of the southerly extension of the east line of Lot "E" as shown on said "Map of Merced Colony", now known as Coffee Street, with the south line of a 60 foot wide county road as shown on said "Map of Smith's Merced Tract", now known as Mission Avenue; thence N.0°21'W. 2,704.00 feet along the existing city limit and the east line of said Lot "E" (Coffee Street) to the north line of Lot "J" as shown on said "Map of Merced Colony", now known as Gerard Avenue; thence N.89°58'30"W. 40.00 feet to the west line of said Lot "E" (Coffee Street); thence leaving the existing city limit N.0°21'W. 2,664.00 feet to the north line of Lot "G" as shown on said "Map of Merced Colony", now known as Childs Avenue; thence N.89°47'E. 1,337.24 feet along the north line of said Lot "G" (Childs Avenue) to the west line of Lot 92 as shown on said "Map of Merced Colony"; thence N.0°13'47"E. 2,646.45 feet along the west line of said Lot 92 and Lot 2 and its projection northerly to the north line of the A.T. & S.F. railroad right-of-way also being the south line of State Highway 140 and the existing city limits line; thence along said line (being railroad, State Highway and city limit line) S.89°52'E. 1,315.44 feet to existing city limit corner; thence S.0°12'34"W. along the existing

city limit line and the east line of Lots 1 & 93 and their projection northerly 2,142.93 feet; thence N.89°47'E. 100.00 feet along the existing city limit; thence S.0°12'34"W. 495.60 feet along the existing city limit to the south line of said Lot "G" (Childs Avenue); thence S.89°47'W. 100.00 feet along the existing city limit and the south line of said Lot "G" to the east line of Lot 94 as shown on said "Map of Merced Colony"; thence S.0°17'E. along the existing city limit and the east line of Lots 94 and 170 as shown on said "Map of Merced Colony" a distance of 2,631.72 feet to the south line of said Lot "J" (Gerard Avenue); thence, leaving the existing city limit, N.89°51'0"W. 1,318.55 feet along the south line of said Lot "J" (Gerard Avenue) to the east line of Lot 173 as shown on said "Map of Merced Colony"; thence S.0°19'E. 2,657.92 feet along the east line of Lots 173 and 230 to the south line of said 60 foot wide county road (Mission Avenue); thence S.89°55'W. 1,300.00 feet along the south line of Mission Avenue to the point of beginning.

Contains: 322 Acres (approximately)



WEAVER AREA ANNEXATION TO THE CITY OF MERCED

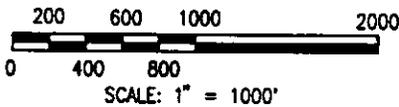
A PORTION OF SECTIONS 27, 28, 33 & 34 IN
T.7 S., R.14 E., M.D.B. & M. AND A PORTION OF
SECTION 3 IN T.8 S., R.14 E., M.D.B. & M.,

SCALE: 1" = 1000'

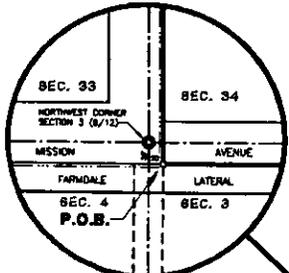
MARCH 18, 1993

LEGEND

- EXISTING CITY LIMIT LINE
- PROPOSED ANNEXATION LINE
- P.O.B. POINT OF BEGINNING
- APN ASSESSOR'S PARCEL NUMBER



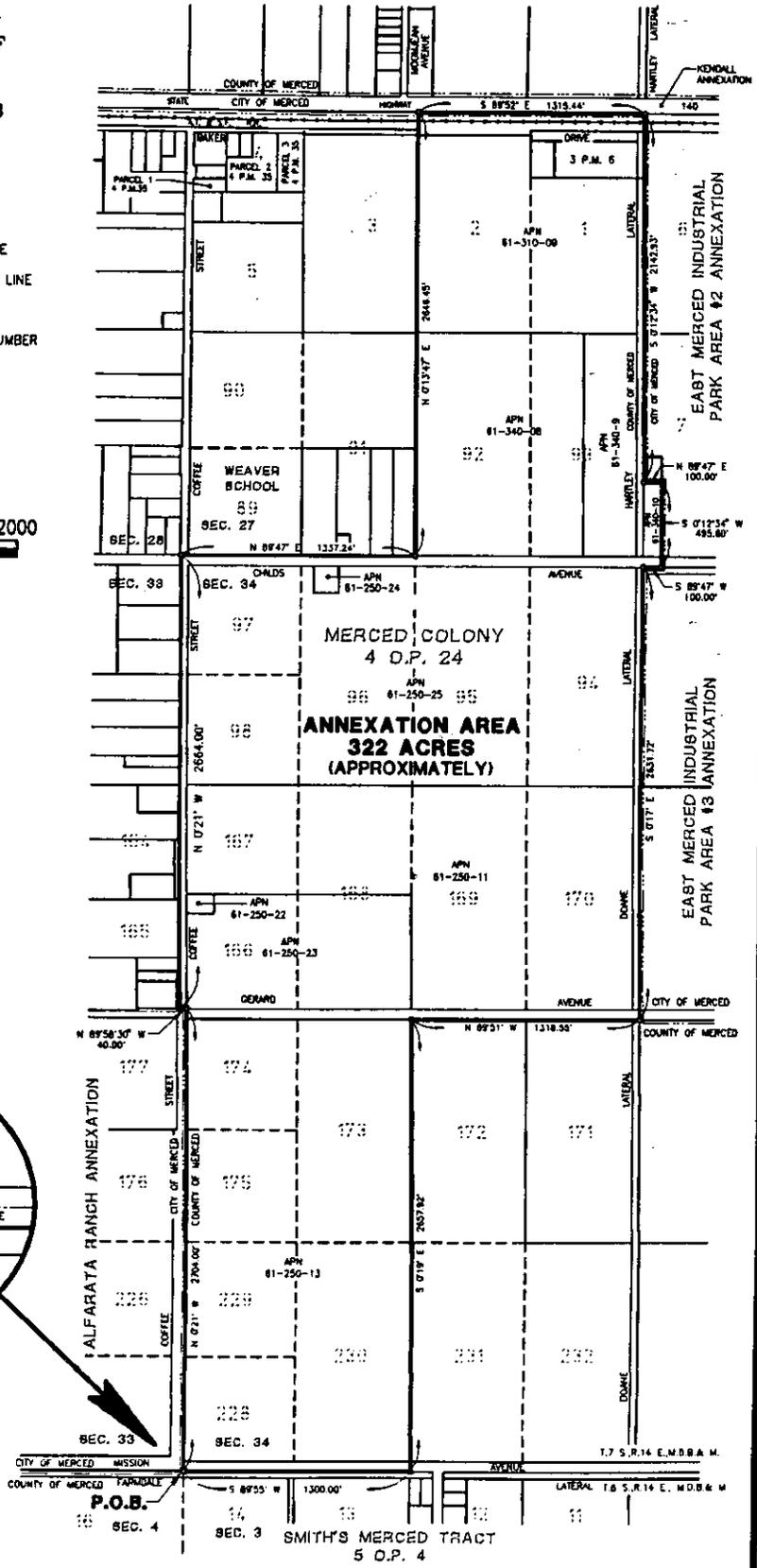
Lawrence L. Bowers
7-11-95



BEDESEN-CARDOZA-ANDREWS, Inc.
777 W. 22nd St., P.O. Box 391
Merced, California 95340
(209) 722-8042

REVISED: 07-03-95 RPR
REVISED: 01-03-95 RPR
FILE NAME: BB147WAA.DWG
BY: R. ROWLAND

JOB NO.: 88147



June 15, 1995

CONDITIONS for the PLUIM-SUTTER-VIERRA (WEAVER AREA NO. 1) PROJECT

01.00 AIR QUALITY

01.01 (MM) In light of the existing regulatory requirements which will be applied to the project as a matter of law, the following measures shall be implemented to reduce impacts associated with implementation of the proposed projects:

a. An air quality study for specific industrial uses shall be submitted to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) for review and approval prior to project implementation, in accordance with requirements of the SJVUAPCD.

b. All new residences and businesses with wood burning appliances that comply with SJVUAPCD performance standards.

c. Low NOx emission water heating devices shall be used within the project where such devices are available for use for which it is to be applied.

d. Project development plans shall be reviewed to determine the relationship of pedestrian access to employment, services, residential use areas and public transportation facilities.

e. Internal street design for Collector and higher order streets shall include the installation of pedestrian/bicycle pathways to the commercial/ employment centers of the site as per City standards; commercial and/or industrial facilities shall include bicycle parking facilities.

f. Establish setback areas and buffers between land use classes which are major potential sources of emissions and land use classes which are sensitive receptors, both within the site and on adjacent properties.

g. Follow City landscape standards for plant and tree placement within parking and landscape areas.

(Note: tree standards already exist for parking and parkstrip areas; other public areas such as buffer setbacks on arterials will be placed in maintenance districts and landscaped consistent with City practices for existing public areas)

01.02 Development proposals within the project area will comply with all City and State air quality requirements in effect at the time of approval of any such proposals as well as, where applicable, at individual issuance of building permits.

01.03 To encourage a land use design which promotes regional air quality standards, the following measures shall will be considered during planning/review of development proposals within the project area:

- a. Seek to coordinate land use locations and residential densities to facilitate opportunities for pedestrian/bicycle travel for local trips.
- b. Locate neighborhood parks and schools in close proximity to residential uses.

01.05 In the future the City may encourage, or seek to require, telecommuting by favoring designs that accommodate home offices and satellite work centers within the project area.

01.07 Future development proposals within the project area are strongly encouraged to use building orientation and designs that will reduce heating and cooling requirements.

03.00 NOISE

03.01 (MM) Consistent with existing City construction requirements, during periods of construction within the project area:

- a. Construction hours should be limited to between 6:00 am and 5:00 pm, Monday through Saturday;
- b. All construction equipment used on the site should be properly and adequately muffled and properly maintained; and,
- c. Whenever practical construction-related truck traffic should be prohibited from using adjacent arterial and collector streets, and all truck traffic should be directed to State Highway 140 via Childs Avenue or Gerard Avenue to Kibby Road.

03.02 (MM) For development within the project area:

- a. Provide acoustical treatment for those planned residential units that are located in areas of 65 dB or above noise contours, particularly for residential units located in the vicinity of the Santa Fe Railroad tracks and State Highway 140, extending as much as 700 feet south of the railroad (and may be applicable for certain units located along the lateral canal - eastern edge of the site - if the Merced Beltway/Bypass is constructed along a corridor just east of the canal);
- b. Install noise barriers (berms, walls, or other aesthetically pleasing structures) between the surrounding roadways and adjacent noise sensitive land

uses (based upon land uses defined in the Project Plan, such barriers should be erected along the south side of Baker Drive, and both sides of Childs Avenue and Gerard Avenue).

03.04 A minimum six-foot wall (masonry block, stucco, or pre-cast concrete wall system, or other comparable system as approved by staff) with a minimum twelve to fifteen foot wide landscape buffer area shall be required along all project residential areas adjacent to designated arterials, to provide a noise/visual barrier. Design details for walls and buffers, at a detail level acceptable to City staff, shall be submitted for review and approval by the City Planning Commission concurrent with tentative subdivision maps for each development or portion thereof that contains such frontages. Details of ownership for these areas will be subject to acceptance by and approval of the City; care and maintenance of landscaping and the walls will be by landscape maintenance district or other method of responsibility acceptable to the City.

03.05 The walls or wall systems required along major streets shall be of high quality materials, with details to be worked out at the appropriate tentative subdivision map stage. Provision for emergency access and for more flexible pedestrian and other non-vehicle circulation, will be used to interrupt any long walls along major streets. Access at these points may be open, partially open, or may be limited to gate access only, but shall also involve special design and landscape features that will identify such areas along the street frontage for those using them, subject to City design approval.

04.00 *LAND USE*

04.01 (MM) Project design shall include open space and buffer areas between residential and non-residential uses, both within the project site and between the project site uses and adjacent lands including agricultural lands.

04.02 (MM) Prior to conducting annexation proceedings, the applicant will demonstrate to the City that the LAFCO guidelines are met by the project to ensure that the procedural requirements of Government Code Section 56000 and County LAFCO requirements are satisfied.

04.03 (MM) Future zoning proposals in the Weaver area should be developed consistent with the (staff) proposed circulation plan for the Weaver area, for purposes of reducing traffic congestion and assuring adequate neighborhood levels of services.

04.04 A provision shall be recorded by the applicants/developer or successors, at time of sale of any residentially-zoned property within the project that lies within 1,000 feet of the external boundary of any non-project property which currently has an active agricultural operation (including 4-H projects), or has had an agricultural operation on it during the calendar year preceding the year within which the sale

takes place. This provision shall notify the buyer(s) and any subsequent owner(s) of the possible inconvenience or discomfort of farming operations, arising from the use of agricultural chemicals, including pesticides, and fertilizers, as well as from the pursuit of agricultural operations including plowing, spraying, and harvesting which occasionally generate dust, smoke, noise and odor, and the priority to which Merced County places on agricultural operations.

04.05 To the extent possible low-medium or greater density residential land uses (greater than six dwelling units per acre density) within the project shall be oriented and located in proximity to planned retail commercial and other service facilities, as well as public facilities such as schools and parks, necessary to serve everyday needs of the multi-family population.

07.00 *TRANSPORTATION AND CIRCULATION*

07.05 No project access for vehicles shall be allowed to Baker Drive; the only exception shall be if controlled, emergency access is required for emergency service vehicles only, with design details to be worked out with City staff at the initial discretionary approval sought for any portion of the subject project area located north of Childs Avenue.

07.06 Access to Childs Avenue from that portion of the project area located north of Childs will be limited to the one access point (as shown on initial site plans for the project); the centerline of this access point shall be as close as possible to the one-quarter mile (1,320 feet) point measured from the centerline of Coffee Street (in no event shall the street centerline be more than 47 feet from the project's western property line).

07.06A During early development stages of the project area north of Childs Avenue, if a second access to a public roadway becomes necessary and the project at that point fronts solely on Childs Avenue, a temporary second access, configured and located as approved by City staff, may be provided to Childs Avenue. To receive this temporary second access, however, the applicant for the secondary access must obtain a legal agreement acceptable to the City from the property owner(s) of the property(ies) located directly west of this area; this agreement must provide full legal right of access for at least one of the two future road right-of-ways to Coffee Street spelled out in Condition 07.15.

07.07 No private access will be allowed from any residential lot within the project to a designated arterial roadway within or adjacent to the project area, other than any that is currently existing.

07.10 The minimum pavement (travel) width required for a partial street, the first two lanes installed of a future major road, will be 20 feet, or 24 feet if used for two-

way traffic, or whatever the existing City standard is a the time of requirement (the City of Merced reserves the right to increase this minimum if local circumstances so dictate for individual road segments).

- 07.11 Deceleration lanes shall be installed on all arterials at all intersections, subject to review by City staff.
- 07.15 The internal circulation system for that portion of the project north of Childs Avenue will provide a minimum of one stub street to each of the two adjacent parcels of land directly to the west of the project (and north of the Weaver School Site):
- a. the stub to Assessor's Parcel 61-340-01 (parcel immediately north of Weaver School) will have a right-of-way (ROW) width of 74 feet, equivalent to a collector street right-of-way, and will line up with the possible future extension of Merced Avenue; and,
 - b. the stub to Assessor's Parcel 61-310-13 (northerly parcel) will have a right-of-way (ROW) width of 64 feet, equivalent to a local street right-of-way, and its centerline will line up as closely as possible with a point on Coffee Street that measures 1,980 feet north of the centerline of Childs Avenue.
- 07.16 The following right-of-ways (ROW's), unless revised in the future, will be required from existing streets, equivalent to their designated status on the City of Merced's General Plan Circulation Plan Map (wider ROW's will be required in proximity to arterial-arterial intersections, consistent with the Merced General Plan):
- a. a 94 foot full arterial width for Childs Avenue;
 - b. a 74 foot full collector width for Gerard Avenue;
 - c. a half-street based upon a 128 foot full provisional or major arterial width for Mission Avenue; and,
 - d. a half-street requiring a dedication of a minimum of 37 feet along Coffee Street.
- 07.17 The southernmost access point shown from Coffee Street into the project shall be a right-angle intersection and shall be relocated at the mid-point between Mission and Gerard Avenues.
- 07.18 Every effort shall be made to adapt current (and proposed) roads into a distinct hierarchy system of streets within the project and surrounding area, based upon intersection spacing provisions, functional road classifications, and design standards contained in the Transportation and Circulation Element of the City's General Plan. Residential lots within this project shall not be allowed to face onto

any designated arterial streets (Childs or Mission Avenues) or streets fulfilling the function of major collector streets, by virtue of their location at either a midpoint between two designated arterial streets (Gerard Avenue), or at a location one mile distant from the nearest arterial (that, but for special circumstances, would itself be otherwise designated an arterial -- Coffee Street); such lots may also be prohibited on streets designated as collectors or identified as fulfilling the function of a collector street in this condition, adjacent to or within the project, including the possible extensions of Merced Avenue, Dinkey Creek Avenue, or Buckner Road, or the north-south collector located approximately one-quarter mile east of, and parallel to, Coffee Street. Collectors are those roadways that fulfill a collector function and are located at or in proximity to quarter-mile {or a multiple of quarter-mile} spacing from the nearest parallel major collector or arterial. Exceptions such as a looped drive or acceptable alternative will be allowed only if there is no other reasonable design alternative.

- 07.21 Any internal circulation system proposed/adopted for that portion of the project area between Childs and Gerard Avenues will provide a stub street, driveway or access easement to the NAPOTS (Not A Part Of This Site) parcel fronting on the south side of Childs Avenue approximately 750 feet east of Coffee Street, if it is determined that such is necessary and feasible, during consideration of a tentative subdivision map that deals with the area immediate adjacent to the subject parcel.
- 07.22 The project will pay a traffic mitigation fee as shown in Attachment A. Attachment A represents the project share of local (non-state) street improvements. State facility improvements impacted by the project will be addressed through a local infrastructure financing system. These fees will be reviewed annually and adjusted as needed, consistent with provisions contained in the project development agreement.
- 07.23 The residentially-zoned property along the project's east property line (the Doane-Hartley Lateral) shall be zoned residential as shown on the Conceptual Site Map; no construction shall occur within the easterly 300 feet of the said area for ten (10) years unless (1) the contiguous I-H (Heavy Industrial) zoned property is rezoned to any other designation; (2) the City takes action to acquire the contiguous property for "Beltway" corridor; or (3) the Developer applies for and receives a determination from the City that the residential construction will not interfere with existing or future I-H land uses of the contiguous property. Upon receipt of an application for such a determination or upon its own motion within the ten (10) year period, the City may, in its discretion, determine that residential construction will interfere with existing or future I-H use of the contiguous property. In such event, the City Council may rezone said property to a non-residential use.

08.00 PUBLIC SERVICES

- 08.01 (MM) An elementary school site of nine to twelve acres (target size for Weaver school district purposes is eleven acres) shall be reserved for acquisition by the school district, at the site shown on the approved project master site plan or as otherwise acceptable to the school district and City, consistent with the adopted rezoning for the project area and provisions of the Development Agreement; this site shall be reserved until substantial completion of (certificates of occupancy have been issued for) 50% of the residentially zoned area within the project.
- 08.05 One or more well sites will likely be needed for an approved project, with locations to be determined by the City Engineer based upon need during subsequent subdivision or other discretionary approvals. Design of the project water system will require looping of the system.
- 08.06 Water conservation measures shall be implemented as required by state law.
- 08.08 At the time the City Engineer determines the following is necessary, the project shall install a continuous pedestrian/bicycle walkway system along Childs Avenue westward from the intersection of Childs Avenue and Coffee Street to connect to Parsons Avenue or to the point where a similar system extends east from Parsons Avenue (temporary access, such as an asphalt sidewalk, could be considered for this area), and pay all associated costs needed to obtain construction rights, if necessary, subject to reimbursement.
- 08.10 This project shall pay its fair share of the full cost of extension of City sewer lines necessary to provide sewer service to the project, from the existing sewer line terminus location to the farthest point of extension required to fulfill sewer extension provisions of the Merced municipal code. The project may be required to construct the line(s), with reimbursement, if any, from others who connect to the line(s).
- 08.13 All storm drainage must comply with the Merced County Critical Area Flooding and Drainage Plan (Master Plan) and any applicable requirements of the Merced Irrigation District:
- * All storm drainage facilities including storm drainage pump stations shall meet City standards, be approved by the City Engineer, and be included in a maintenance district.
 - * Drainage basins are to be combined into landscaped open space retention areas (no fee credit will be given), placed in underground systems, or located behind decorative walls and/or acceptable open fence/heavily landscaped safety/visual barriers, any of which will be included in a maintenance district.

08.14 For any off-site roadway improvements, if associated curb and gutter is not a requirement by the City of Merced, necessary right-of-way for and a four-foot wide paved shoulder (air quality requirement) will be needed, unless requirements have been modified by time of implementation.

08.16 Easement, Open Space and Park areas may, at the discretion of the City, be placed in a Maintenance and Landscaping District or substitute mechanism acceptable to the City of Merced, that may be used for continued maintenance of such areas; such districts or acceptable substitute may include but shall not necessarily be limited to:

- *the landscape buffer areas (including walls) along arterial roads
- *public parks/open space
- *public open space/trail systems in proximity to creeks/laterals as well as other off-street bicycle/pedestrian path systems
- *Public open space that may be associated with any public park but not designated as, or given credit as, a park
- *storm drain systems
- *arterial median landscaping
- *other areas may be required at City discretion or applicant request with City approval
- *street trees
- *street lights

08.17 For any off-site road-related improvement, the City retains the right to require a sidewalk (or substitute such as a temporary pedestrian walkway, where circumstances allow) at time of construction in the event such a sidewalk is needed to connect existing sidewalks/ walkways on both ends of the subject road segment.

08.18 Improvements or facilities needed to serve the subject project, and to mitigate off-site impacts created by development of the project, shall be classified into three categories:

CATEGORY 1 Public improvements that will be constructed as part of the Weaver project and will be fully attributable to benefiting the Weaver (Pluim-Sutter-Vierra) project. This category of improvements includes the following:

- Curb, gutter and sidewalk within the project area
- Local and collector street paving
- Street lighting
- Local sanitary sewer collection systems

Local on-site storm drainage collection systems including pump stations, detention facilities, pipes, manholes, inlet structures and outlet structures

Domestic water and fire flow distributions systems, piping, valves and hydrants

Arterial road curb, gutter, sidewalk, and street lighting

Such other improvements as are necessary to effectively and safely serve the Weaver Project are included

CATEGORY 2 Public improvements required to develop the Property where oversizing of facilities is required due to the expectation that said facilities will not only be used by the Weaver Project but also adjacent parcels which may develop in the future and will require service from the improvements or facilities. Such improvements include:

Sewer trunk line extensions/pump stations

Water transmission mains

Traffic systems

CATEGORY 3 Public Improvements of local off-site as well as regional facilities that will be impacted by the ultimate buildout of the Weaver Project. These improvements (in the Weaver EIR Traffic and Circulation Element - October 1994) shall include

SR 99: SR 140 to Childs Avenue (A, Table 9)

Widen SR 99 from 6 lanes to 8 lanes.

SR 140: Parsons to Kibby (F)

Widen from 2 lanes to 4 lanes.

Parsons Avenue: North of Childs (M)

Upgrade to 2 lane arterial with left turn lane.

Childs Avenue: West of SR 99, East of Coffee (H, K)

Widen from 2 lanes to 4 lanes.

Childs Avenue: SR 99 to Coffee Road (I, J)

Upgrade Childs Avenue from SR 99 to Coffee Road to 4 lanes with left turn lane.

Parsons Avenue & SR 140 (See Table 8 for intersections)

Construct an additional two through lanes in the eastbound and westbound directions, and an exclusive right turn lane in the eastbound direction, and two exclusive left turn lanes in the northbound direction.

Kibby Road & SR 140

Construct an additional two through lanes in the eastbound and westbound directions, and an exclusive left turn lane in the westbound direction, and an exclusive right turn lane in the northbound and southbound directions.

SR 99 SB Ramps & Childs Avenue

Construct an exclusive right turn lane and two exclusive left turn lanes in the southbound direction, and an additional two through lanes and an exclusive right turn lane in the eastbound direction, and two through lanes and an exclusive left turn lane in the westbound direction.

SR 99 NB Ramps & Childs Avenue

Construct two additional through lanes and an exclusive left turn lane and an exclusive right turn lane in the eastbound direction, an exclusive right turn lane and an exclusive left turn lane in the southbound direction, and three exclusive left turn lanes in the westbound direction.

Parsons Avenue & Childs Avenue

Construct two additional through lanes and exclusive right turn lane in the eastbound and westbound directions, and an exclusive left turn lane in the southbound direction.

Coffee Road & Childs Avenue

Construct an additional through lane and an exclusive right turn lane and an exclusive left turn lane in the westbound and eastbound directions.

Kibby road & Childs Avenue

Construct an exclusive right turn lane in the westbound and southbound directions, and an exclusive left turn lane in the eastbound direction.

09.00

UTILITIES

- 09.01 (MM) The project will be responsible for the costs of extending and/or expanding sewer and water mains in the area in accordance with City standards.
- 09.02 (MM) The project shall implement all City standards with respect to source reduction/recycling of solid waste.
- 09.03 (MM) Construction related waste reduction programs shall be implemented at the construction permit phase of project development.
- 09.04 (MM) Design and construction of the storm water system shall be approved by the City of Merced and shall be designed utilizing City standards for on-site detention.
- 09.05 (MM) Detention/retention basins shall be designed to function without control valves and human interaction to the greatest extent possible.
- 09.06 (MM) The on-site drainage system shall be maintained in good working order and shall be free of noxious odors, weeds, and vectors.
- 09.07 (MM) The detention/retention ponds shall be designed so that no water is left standing at the conclusion of the storm water drainage cycle.
- 09.08 (MM) The project shall negotiate an agreement with the Merced Irrigation District (MID) for storm water drainage.
- 09.09 The project applicant will be required to receive a consent agreement from Pacific Gas & Electric (PG&E) prior to the issuance of any permits for development within any PG&E easements.
- 09.10 All existing and new utilities shall be undergrounded consistent with utility and Public Utility Commission guidelines.

10.00 HUMAN HEALTH

- 10.01 (MM) Prior to any construction on the project site, a Phase I Site Assessment of the project site will be conducted by a qualified hazardous waste assessment firm in accordance with methodologies accepted by the Merced County Health Department and the State Department of Health Services.
- 10.02 (MM) In the event that the Phase I site assessment discloses the existence, or possible existence, of hazardous substances on the project site that violate state and local guidelines, a site remediation plan shall be prepared and implemented in accordance with the requirements of the appropriate public health agency with jurisdiction.

- 10.03 (MM) Public utility line easements within or adjacent to the project area shall meet agency PG&E requirements.
- 10.04 (MM) Prior to final subdivision map approval, the project applicant shall negotiate an agreement with the Merced Irrigation District (MID) for the project area's irrigation canals.
- 10.05 Any abandoned automobiles, farm equipment, tires and other miscellaneous farm refuse shall be removed to an appropriate disposal facility prior to issuance of project grading permits for that portion of the project.

12.00 DESIGN

- 12.02 Whenever possible streets should not be lined by blank walls or garage doors.
- 12.03 Whenever possible residential garages should be designed to reduce the visual impact of the automobile along residential streets; a garage accessing directly onto a public street from a residential front yard shall be set back a minimum of 20 feet from the front property line or residence-side edge of the adjacent sidewalk, whichever is closer to the residence. In the event an exception is granted for an individual project that allows less than traditional single family minimum driveway lengths (20 feet) as measured from the pertinent exterior yard property line, such units must have roll-up garage doors.
- 12.04 Buildings, fences, and walls shall be of durable and attractive materials, landscaping of high quality, and all shall be harmonious in color and texture.
- 12.05 Energy conservation shall be considered emphasized during design, construction and landscaping within the overall project. 12.06 When feasible landscaping shall be oriented towards native and drought-resistant (low water usage) plant materials in areas included within public maintenance districts; developers of subdivision projects in this area shall make available information on such plantings for new home buyers within the project area.
- 12.07 Prior to the approval of conditional use permits, the project applicant shall submit to the City Planning Department for review and approval detailed landscape plans for common areas and commercial areas as well as for on and off-site landscaping to include native and drought resistant (low water usage) plant materials.

13.00 GENERAL ADMINISTRATIVE CONDITIONS

- 13.01 All other applicable codes, ordinances, plans, resolutions, policies, etc., adopted by the City of Merced, shall apply.

13.02

Approval of a General Plan Amendment(s), Annexation, and/or Rezoning for the Weaver project is subject to all adopted Mitigation Measures for Significant Impacts contained in the Final Environmental Impact Report (EIR) for the subject project, excepting those for which overriding considerations have been adopted.

ADDENDUM NO. 1
TO DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF MERCED AND PLUIM FAMILY PARTNERSHIP,
SUTCO CONSTRUCTION, INC. AND
1991 VIERRA FAMILY TRUST

This Addendum made and entered into this 17th day of July, 1995, to the certain Development Agreement made and entered into on the 17th day of July, 1995, by and between the CITY OF MERCED, (hereinafter "City") and PLUIM FAMILY PARTNERSHIP, A CALIFORNIA PARTNERSHIP, SUTCO CONSTRUCTION, INC., A CALIFORNIA COPORATION AND 1991 VIERRA FAMILY TRUST, (hereinafter "Developer").

WHEREAS, Jim Lynn, owner of real property included within the developed area covered by the Development Agreement and owner of Assessor's Parcel No. 61-34-9, desires to be bound by the terms contained in said Development Agreement.

WHEREAS, the CITY agrees to include Mr. Jim Lynn's parcel within the terms and conditions of said Development Agreement.

IT IS HEREBY AGREED, BY AND BETWEEN THE CITY AND JIM LYNN AS FOLLOWS:

1. The burden of the above-referenced Development Agreement shall bind, and its benefits enure to the benefit of the real property of Mr. Jim Lynn, address 3464 E. Childs Avenue, Merced, California 95340, APN: 61-34-9, consisting of 6.6 acres, more or less.

In all other respects, said Development Agreement is to remain unchanged and in full force and effect between the undersigned.

IN WITNESS WHEREOF, the City of Merced, has caused this Addendum to be signed and executed in its behalf by the City Manager, and duly attested by its City Clerk, and the Developer has

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July 10, 1995

1 of 2

VOL 3393 PAGE 835

signed and executed this Addendum, both in duplicate, the day and year first above written.

"CITY"

CITY OF MERCED
A Municipal Corporation

By: *[Signature]*
City Manager

[Signature]
JAMES LYNN

ATTEST:

By: *[Signature]*
Deputy City Clerk

APPROVED AS TO FORM:

By: *[Signature]*
City Attorney

950346
FUNDS/ACCOUNTS/VERIFIED
no funds required 8/23/95 pd

By: *[Signature]*



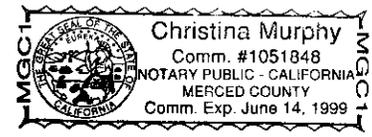
STATE OF CALIFORNIA } ss.
COUNTY OF Merced

On July 12, 1995, before me, Christina Murphy,
personally appeared James Lynn

_____, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Christina Murphy



(This area for official notarial seal)

Title of Document _____
Date of Document _____ No. of Pages _____
Other signatures not acknowledged _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

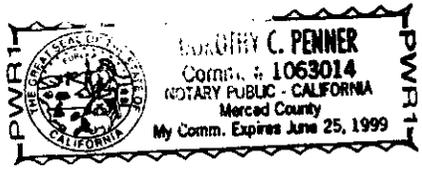
State of California

County of Merced

On 8-23-95 before me, Dorothy C. Penner, Notary Public,
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared JAMES G. MARSHALL,
NAME(S) OF SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Dorothy C. Penner
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER
- _____ TITLE(S)
- PARTNER(S) LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

_____ TITLE OR TYPE OF DOCUMENT

_____ NUMBER OF PAGES

_____ DATE OF DOCUMENT

_____ SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

ADDENDUM NO. 2
TO DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF MERCED AND PLUIM FAMILY PARTNERSHIP,
SUTCO CONSTRUCTION, INC. AND
1991 VIEPRA FAMILY TRUST

This Addendum made and entered into this 17th day of July, 1995, to the certain Development Agreement made and entered into on the 17th day of July, 1995, by and between the CITY OF MERCED, (hereinafter "City") and PLUIM FAMILY PARTNERSHIP, A CALIFORNIA PARTNERSHIP, SUTCO CONSTRUCTION, INC., A CALIFORNIA COPORATION AND 1991 VIERRA FAMILY TRUST, (hereinafter "Developer").

WHEREAS, Charlie Parish, owner of real property included within the developed area covered by the Development Agreement and owner of Assessor's Parcel Nos. 61-31-10 and 61-31-11, desires to be bound by the terms contained in said Development Agreement.

WHEREAS, the CITY agrees to include Mr. Charlie Parish's parcels within the terms and conditions of said Development Agreement.

IT IS HEREBY AGREED, BY AND BETWEEN THE CITY AND CHARLIE PARISH AS FOLLOWS:

1. The burden of the above-referenced Development Agreement shall bind, and its benefits enure to the benefit of the real property of Mr. Charlie Parish, APNS: 61-31-10 and 61-31-11, consisting of 3.4 acres, more or less.

In all other respects, said Development Agreement is to remain unchanged and in full force and effect between the undersigned.

IN WITNESS WHEREOF, the City of Merced, has caused this Addendum to be signed and executed in its behalf by the City Manager, and duly attested by its City Clerk, and the Developer has

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July 10, 1995

1 of 2

VOL 3393 PAGE 839

signed and executed this Addendum, both in duplicate, the day and year first above written.

"CITY"

CITY OF MERCED
A Municipal Corporation

By: *[Signature]*
City Manager

[Signature]
CHARLIE PARISH

ATTEST:

By: *[Signature]*
Deputy City Clerk

APPROVED AS TO FORM:

By: *[Signature]*
City Attorney

950346
FUNDS/ACCOUNTS/VERIFIED
no funds required 8/23/95 phd

By: *[Signature]*

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

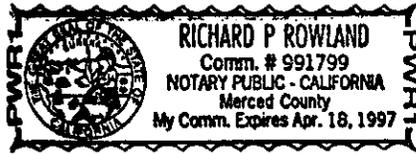
State of CALIFORNIA

County of MERCED

On 17 July 1995 before me, RICHARD P ROWLAND, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared CHARLIE PARISH
NAME(S) OF SIGNER(S)

personally known to me - **OR** - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Richard P Rowland
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
 - CORPORATE OFFICER
- _____ TITLE(S)
- PARTNER(S) LIMITED
 - GENERAL
 - ATTORNEY-IN-FACT
 - TRUSTEE(S)
 - GUARDIAN/CONSERVATOR
 - OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

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_____ NUMBER OF PAGES

_____ DATE OF DOCUMENT

_____ SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

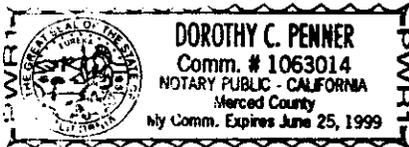
State of California

County of Merced

On 8-23-95 before me, Dorothy C. Penner Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared James G. Marshall
NAME(S) OF SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Dorothy C. Penner
SIGNATURE OF NOTARY

OPTIONAL

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- CORPORATE OFFICER
- _____ TITLE(S)
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SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

_____ SIGNER(S) OTHER THAN NAMED ABOVE

ADDENDUM NO. 3
TO DEVELOPMENT AGREEMENT BY AND BETWEEN
THE CITY OF MERCED AND PLUIM FAMILY PARTNERSHIP,
SUTCO CONSTRUCTION, INC. AND
1991 VIERRA FAMILY TRUST

This Addendum made and entered into this 17th day of July, 1995, to the certain Development Agreement made and entered into on the 17th day of July, 1995, by and between the CITY OF MERCED, (hereinafter "City") and PLUIM FAMILY PARTNERSHIP, A CALIFORNIA PARTNERSHIP, SUTCO CONSTRUCTION, INC., A CALIFORNIA COPORATION AND 1991 VIERRA FAMILY TRUST, (hereinafter "Developer").

WHEREAS, Maurice A. Trejo and Velia E. Trejo, owners of real property included within the developed area covered by the Development Agreement and owner of Assessor's Parcel Nos. 61-34-10, desire to be bound by the terms contained in said Development Agreement.

WHEREAS, the CITY agrees to include Maurice A. Trejo's and Velia E. Trejo's parcel within the terms and conditions of said Development Agreement.

IT IS HEREBY AGREED, BY AND BETWEEN THE CITY AND MAURICE A. TREJO AND VELIA E. TREJO AS FOLLOWS:

1. The burden of the above-referenced Development Agreement shall bind, and its benefits enure to the benefit of the real property of Maurice A. Trejo and Velia E. Trejo, APN: 61-34-10.

In all other respects, said Development Agreement is to remain unchanged and in full force and effect between the undersigned.

IN WITNESS WHEREOF, the City of Merced, has caused this Addendum to be signed and executed in its behalf by the City Manager, and duly attested by its City Clerk, and the Developer has

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///

July 10, 1995

1 of 2

VOL 3393 PAGE 843

signed and executed this Addendum, both in duplicate, the day and year first above written.

"CITY"

CITY OF MERCED
A Municipal Corporation

By: *Quayle*
City Manager

ATTEST:

By: *Carol Bryan*
Deputy City Clerk

MAURICE A. TREJO

Velia E. Trejo
VELIA E. TREJO

APPROVED AS TO FORM:

By: *Demetrius P. ...*
City Attorney

950346
FUNDS/ACCOUNTS/VERIFIED
no funds required 8/23/95 paid

By: *SKJwh*



STATE OF CALIFORNIA
COUNTY OF Merced

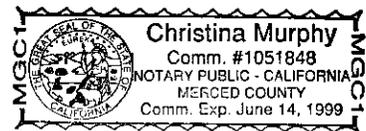
} ss.

On August 22, 1995, before me, Christina Murphy,
personally appeared Velia E. Trejo

_____, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



(This area for official notarial seal)

Title of Document Addendum No. 3 to Development Agreement

Date of Document July 17, 1995 No. of Pages 2

Other signatures not acknowledged None

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

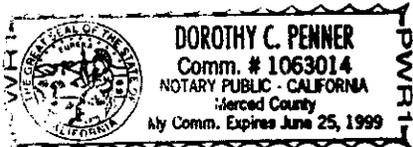
State of California

County of Merced

On 8-23-95 before me, Dorothy C. Penner, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared James G. Marshall
NAME(S) OF SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Dorothy C. Penner
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER
- _____ TITLE(S)
- PARTNER(S) LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

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_____ DATE OF DOCUMENT

_____ SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

31876

RECORDED BY

City of Merced

SEP 18 1996 AT 08:10am

VOL 3514 PAGE 358

OFF'L RECORDS OF
MERCED COUNTY
CALIFORNIA
JAMES L. BALL
Recorder

DH

1996-9-16-1
804-95-346

up 8-19-96

orig up 7-17-95

RECORDING REQUESTED BY:

RETURN TO:

CITY CLERK'S OFFICE
CITY OF MERCED
COURT HOUSE
MERCED, CA 95340

DOCUMENT TITLE(S)

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT
FOR WEAVER AREA NO. 1 PROJECT

FIRST AMENDMENT TO DEVELOPMENT
AGREEMENT FOR WEAVER AREA NO. 1 PROJECT

This First Amendment to Development Agreement was made and entered into in the City of Merced on this 19th day of August, 1996 by and between the City of Merced, a municipal corporation ("CITY") and Pluim Family Partnership, a California Partnership, Sutco Construction, Inc., a California Corporation, 1991 Vierra Family Trust, Charlie Parrish, Jim Lynn, Maurice A. Trejo and Velia E. Trejo ("WEAVER AREA NO. 1 PROJECT").

W I T N E S S E T H

WHEREAS City and Weaver Area No. 1 Project entered into a Development Agreement dated July 17, 1995, including Addendums 1, 2, and 3, and recorded at Volume 3393, Page 789, et seq., Instrument No. 30288, Merced County Records on September 21, 1995 affecting the land described in Exhibit A hereto; and

WHEREAS the parties desire to amend said Agreement to extend the time for annexation,

NOW, THEREFORE CITY AND WEAVER AREA NO. 1 PROJECT agree to amend the Development Agreement as follows:

1. Section 30 of the Development Agreement is amended to provide that the deadline for annexation of the Initial Annexed Property is extended twelve (12) months from the date this First Amendment to Development Agreement is recorded.

2. Except as herein amended, the Development Agreement as modified by Addendums 1, 2, and 3 shall remain in full force and effect.

IN WITNESS WHEREOF City and Weaver Area No. 1 Project have executed and approved this First Amendment to Development Agreement as of the date set forth above.

"WEAVER AREA NO. 1 PROJECT"

BY: Anthony L. Vierra
Anthony L. Vierra, Trustee

BY: Charles A. Parish
Charles A. Parish

BY: Marie F. Vierra
Marie F. Vierra, Trustee

BY: Sandra J. Parish
Sandra J. Parish

Address: 23160 Williams Avenue
Hilmar, CA 95324-9604
Telephone: (209) 667-8744

Address: 4498 East Highway 140
Merced, CA 95340

PLUIM FAMILY PARTNERSHIP

BY: James L. Lynn
James L. Lynn

BY: Albert R. Pluim
Albert R. Pluim

BY: Catherine J. Lynn
Catherine J. Lynn

Address: P. O. Box 1298
Merced, CA 95341
Telephone: (209) 723-5366

Address: 3464 East Childs Ave.
Merced, CA 95340

SUTCO CONSTRUCTION, INC.

BY: Maurice A. Trejo
Maurice A. Trejo

BY: Ridge Sutter
Ridge Sutter

BY: Velia E. Trejo
Velia E. Trejo

Address: P. O. Box 3520
Modesto, CA 95352
Telephone: (209) 529-6361

Address: 3506 East Childs Ave.
Merced, CA 95340-9589

"CITY"

ATTEST: Barbara C. Lerner
Deputy City Clerk

CITY OF MERCED
A Municipal Corporation
BY: James J. ...
City Manager

APPROVED AS TO FORM:
BY: [Signature]
City Attorney
DA1AMWVR1A

950346
FUNDS/ACCOUNTS/VERIFIED
BY: Albrecht 9-16-96
Finance Office Date
no funds necessary 9/16/96 paid

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

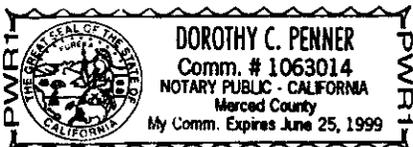
State of California

County of Merced

On 9-16-96 before me, Dorothy C. Penner, Notary Public
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared James G. Marshall
NAME(S) OF SIGNER(S)

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person (X) whose name (X) is/are subscribed to the within instrument and acknowledged to me that (he/she/they) executed the same in (his/her/their) authorized capacity (ies), and that by (his/her/their) signature (s) on the instrument the person (s), or the entity upon behalf of which the person (s) acted, executed the instrument.



WITNESS my hand and official seal.

Dorothy C. Penner
SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- INDIVIDUAL
- CORPORATE OFFICER

TITLE(S)

- PARTNER(S) LIMITED
- GENERAL
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- GUARDIAN/CONSERVATOR
- OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE



STATE OF CALIFORNIA
COUNTY OF Merced

}ss.

On September 3, 1996, before me, Christina Murphy,
personally appeared Maurice A. Trejo

_____, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature *Christina Murphy*



(This area for official notarial seal)

Title of Document	_____
Date of Document	_____ No. of Pages <u>2</u>
Other signatures not acknowledged	<u>None</u>



STATE OF CALIFORNIA
COUNTY OF MERCED

} ss.

On September 5, 1996, before me, Christina Murphy,
personally appeared Catherine J. Lynn

_____, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



(This area for official notarial seal)

Title of Document _____
Date of Document _____ No. of Pages 2
Other signatures not acknowledged None



STATE OF CALIFORNIA
COUNTY OF MERCED

} ss.

On September 6, 1996, before me, Christina Murphy,
personally appeared Sandra J. Parish

_____, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature *Christina Murphy*



(This area for official notarial seal)

Title of Document	_____
Date of Document	_____ No. of Pages <u>2</u>
Other signatures not acknowledged	<u>None</u>



STATE OF CALIFORNIA
COUNTY OF MERCED

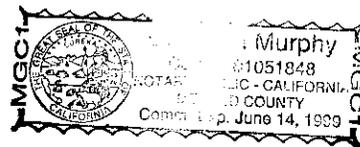
}ss.

On August 28, 1996, before me, Christina Murphy,
personally appeared Velia E. Trejo

_____, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



(This area for official notarial seal)

Title of Document First Amendment to Development Agreement for Weaver Area No. 1 Project
Date of Document _____ No. of Pages 2
Other signatures not acknowledged None



STATE OF CALIFORNIA } ss.
COUNTY OF Merced }

On August 27, 1996, before me, Christina Murphy,
personally appeared Anthony L. Vierra and Marie F. Vierra

_____, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature *Christina Murphy*



(This area for official notarial seal)

Title of Document First Amendment to Development Agreement for Weaver Area No. 1 Project
Date of Document _____ No. of Pages 2
Other signatures not acknowledged None



STATE OF CALIFORNIA
COUNTY OF Merced

} ss.

On August 27, 1996, before me, Christina Murphy,
personally appeared Albert R. Pluim

_____, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature



(This area for official notarial seal)

Title of Document First Amendment to Development Agreement for Weaver Area No. 1 Project
Date of Document _____ No. of Pages 2
Other signatures not acknowledged None



STATE OF CALIFORNIA
COUNTY OF Merced

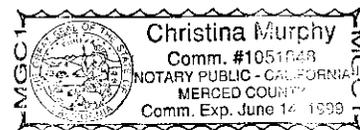
} ss.

On August 27, 1996, before me, Christina Murphy,
personally appeared James L. Lynn

_____, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature *Christina Murphy*



(This area for official notarial seal)

Title of Document First Amendment to Development Agreement for Weaver Area No. 1 Project
Date of Document _____ No. of Pages 2
Other signatures not acknowledged None



STATE OF CALIFORNIA
COUNTY OF MERCED

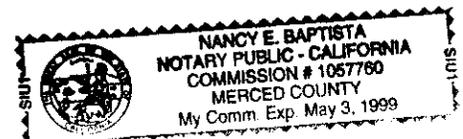
} ss.

On August 27, 1996, before me, Nancy E. Baptista,
personally appeared Charles A. Parish
_____, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Nancy E. Baptista



(This area for official notarial seal)

Title of Document First Amendment to Development Agreement

Date of Document August 27, 1996 No. of Pages 2

Other signatures not acknowledged _____



STATE OF CALIFORNIA
COUNTY OF MERCED

} ss.

On August 28, 1996, before me, Christina Murphy,
personally appeared Ridge Sutter

_____, personally known to me
(or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same
in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Christina Murphy



(This area for official notarial seal)

Title of Document First Amendment to Development Agreement for Weaver Area No. 1 Project
Date of Document _____ No. of Pages 2
Other signatures not acknowledged None

DESCRIPTION OF THE
EXTERIOR BOUNDARY
OF THE
WEAVER AREA ANNEXATION
TO THE
CITY OF MERCED, CALIFORNIA

That portion of Section 27, 28, 33, and 34 in T.7S., R.14E., M.D.B.& M., and a portion of Section 3, T.8S., R.14E., M.D.B.& M., as shown on the "Map of Merced Colony" filed for record February 3, 1910, in Volume 4 of Official Plats at Page 24, Merced County Records, "Map of Grimes Subdivision No. 1", filed for record April 5, 1927, in Volume 9 of Official Plats at Page 19, Merced County Records, and the "Map of Smith's Merced Tract" filed for record June 6, 1911, in Volume 5 of Official Plats at Page 4, Merced County Records, being more particularly described as follows:

Beginning at a point that is S.0°21'E. 30.00 feet and N.89°55'E. 20.00 feet from the northwest corner of said Section 3, said point being the intersection of the southerly extension of the east line of Lot "E" as shown on said "Map of Merced Colony", now known as Coffee Street, with the south line of a 60 foot wide county road as shown on said "Map of Smith's Merced Tract", now known as Mission Avenue; thence N.0°21'W. 2,704.00 feet along the existing city limit and the east line of said Lot "E" (Coffee Street) to the north line of Lot "J" as shown on said "Map of Merced Colony", now known as Gerard Avenue; thence N.89°58'30"W. 40.00 feet to the west line of said Lot "E" (Coffee Street); thence leaving the existing city limit N.0°21'W. 2,664.00 feet to the north line of Lot "G" as shown on said "Map of Merced Colony", now known as Childs Avenue; thence N.89°47'E. 1,337.24 feet along the north line of said Lot "G" (Childs Avenue) to the west line of Lot 92 as shown on said "Map of Merced Colony"; thence N.0°13'47"E. 2,646.45 feet along the west line of said Lot 92 and Lot 2 and its projection northerly to the north line of the A.T.& S.F. railroad right-of-way also being the south line of State Highway 140 and the existing city limits line; thence along said line (being railroad, State Highway and city limit line) S.89°52'E. 1,315.44 feet to existing city limit corner; thence S.0°12'34"W. along the existing

city limit line and the east line of Lots 1 & 93 and their projection northerly 2,142.93 feet; thence N.89°47'E. 100.00 feet along the existing city limit; thence S.0°12'34"W. 495.60 feet along the existing city limit to the south line of said Lot "G" (Childs Avenue); thence S.89°47'W. 100.00 feet along the existing city limit and the south line of said Lot "G" to the east line of Lot 94 as shown on said "Map of Merced Colony"; thence S.0°17'E. along the existing city limit and the east line of Lots 94 and 170 as shown on said "Map of Merced Colony" a distance of 2,631.72 feet to the south line of said Lot "J" (Gerard Avenue); thence, leaving the existing city limit, N.89°51'0"W. 1,318.55 feet along the south line of said Lot "J" (Gerard Avenue) to the east line of Lot 173 as shown on said "Map of Merced Colony"; thence S.0°19'E. 2,657.92 feet along the east line of Lots 173 and 230 to the south line of said 60 foot wide county road (Mission Avenue); thence S.89°55'W. 1,300.00 feet along the south line of Mission Avenue to the point of beginning.

Contains: 322 Acres (approximately)



WEAVER AREA ANNEXATION TO THE CITY OF MERCED

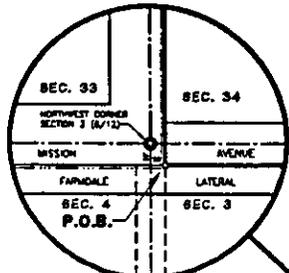
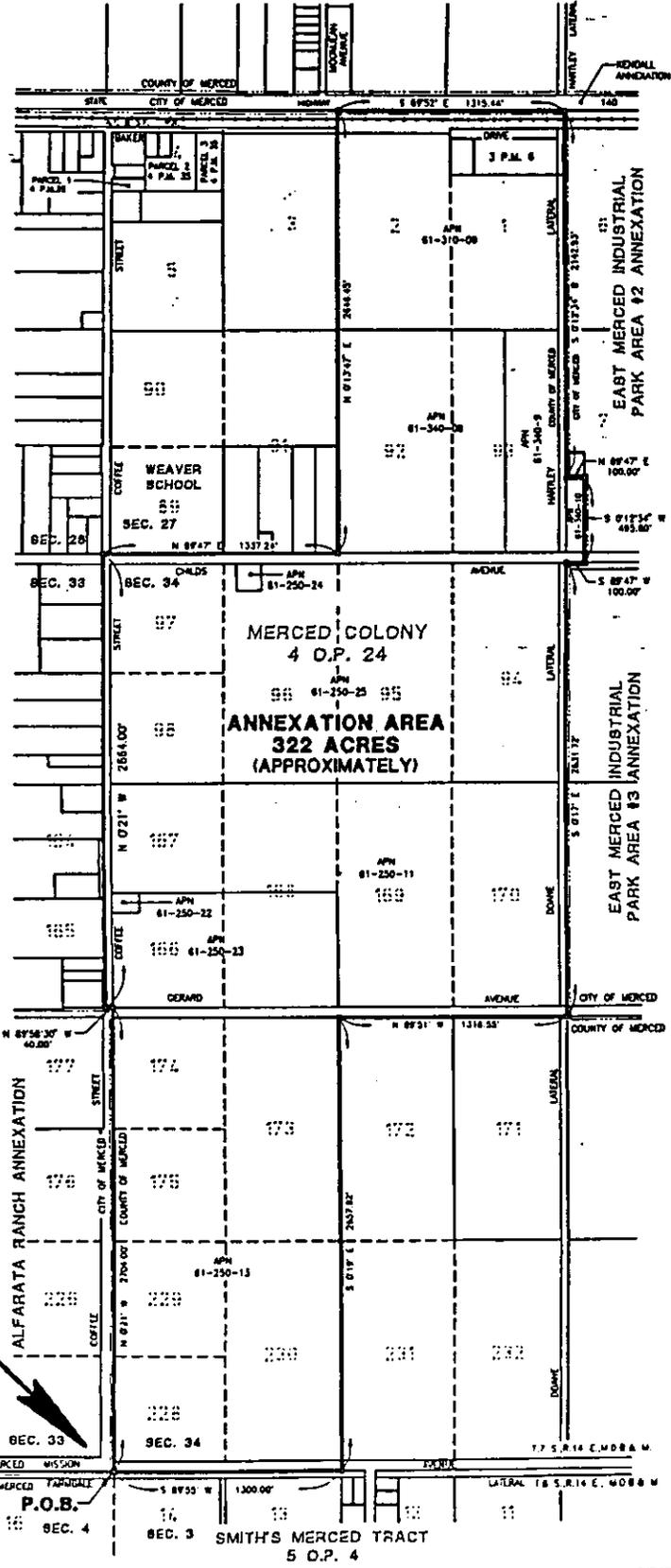
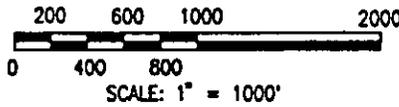
A PORTION OF SECTIONS 27, 28, 33 & 34 IN
T.7 S., R.14 E., M.D.B. & M. AND A PORTION OF
SECTION 3 IN T.8 S., R.14 E., M.D.B. & M.,

SCALE: 1"=1000'

MARCH 18, 1993

LEGEND

- EXISTING CITY LIMIT LINE
- PROPOSED ANNEXATION LINE
- P.O.B. POINT OF BEGINNING
- APN ASSESSOR'S PARCEL NUMBER



BCA - surveying
- engineering

BEDESEN-CARDOZA-ANDREWS, Inc.
777 W. 22nd St., P.O. Box 381
Merced, California 95340
(209) 722-8042

REVISED: 07-03-95 RPR
REVISED: 01-03-95 RPR
FILE NAME: 88147WAA.DWG
BY: R. ROWLAND

JOB NO.: 88147

EXHIBIT D

Total Acres Dedicated: 1.5

Negotiated price/acre: \$154,666

Total Reimbursement: \$232,000

*Reimbursement Amount shall be given in fee credits toward the Public Safety portion of the Public Facilities Financing Program (PFFP) Impact Fees.