

**DEPOSIT AND REIMBURSEMENT AGREEMENT
FOR RESIDENTIAL DEVELOPMENT**

COMMUNITY FACILITY DISTRICT 2003-2 (SERVICES)

OF THE CITY OF MERCED

ANNEXATION NO. 22

(Improvement Area No. 48)

**(Landscaping & Other Improvements Acceptance Upon Collection of Sufficient Special
Taxes to Support Maintenance)**

by and between

CITY OF MERCED

and

**CEB HOLDINGS, LLC,
a California Limited Liability Company,**

as Developer

Dated as of January 3, 2023

**DEPOSIT AND REIMBURSEMENT AGREEMENT
(Services Only)**

THIS DEPOSIT AND REIMBURSEMENT AGREEMENT (the “Agreement”) is made and entered into as of January 3, 2023 (“Effective Date”), by and between the CITY OF MERCED, a California Charter Law Municipal Corporation (hereinafter referred to as “City”) and CEB Holdings, LLC, a California Limited Liability Company (hereinafter referred to as “Developer”).

RECITALS

WHEREAS, The City Council of the City of Merced (hereinafter the “Council”) has proposed, from time to time, to establish one or more Community Facilities District(s) pursuant to the provisions of the Mello-Roos Community Facilities Act of 1982, as amended, commencing with Section 53311 of the Government Code of the State of California (hereinafter referred to as the “Act”). Pursuant thereto, the Council established Community Facilities District No. 2003-2 of the City of Merced (the “CFD” or “District”) pursuant to Act for the provision of the Services (as defined below). The boundaries of the District, with the Property (as defined below) being annexed as contemplated herein, are depicted on the map attached hereto and incorporated herein as Exhibit “A”; and,

WHEREAS, Developer has an approved Vesting Tentative Subdivision Map (VTSM #1291) covering approximately 39.35 acres (the “Property”) as shown thereon at Exhibit “B”, attached hereto and incorporated herein by this reference; and,

WHEREAS, A condition of approval of VTSM #1291, including COA 6 (attached to Planning Commission Reso. No. 2871) as well as Section 24 and Exhibit D-1, Section 8 of the Pre-Annexation and Development Agreement dated April 17, 2006 (“PADA”), requires the provision of funding for the Services which may be the annexation of the Property to the District ; and,

WHEREAS, Developer's Property is proposed to be developed as one hundred sixty (161) single family lots subject to required entitlements and approvals ("Project"); and,

WHEREAS, In accordance with City's policy regarding use of the Act, Developer is required to pay to City all actual costs incurred in connection with the annexation of the Property to the District, including the establishment of the rate and method analysis ("RMA") of the special tax to be imposed on the Property pursuant to the District; and,

WHEREAS, Section 53314.9 of the Act provides that, at any time either before or after the formation of a community facilities district, the legislative body may accept advances of funds from any source, including, but not limited to, private persons or private entities and may provide, by resolution, for the use of those funds for any authorized purpose, including, but not limited to, paying any cost incurred by the local agency in the formation of or annexation to a community facilities district; and, WHEREAS, Section 53314.9 of the Act further provides, in relevant part, that the legislative body may enter into an agreement, by resolution, with the person or entity advancing the funds, to repay all or a portion of the funds advanced, as determined by the legislative body, under all of the following conditions:

- (a) The proposal to repay the advances is included in both the resolution of intention to establish a community facilities district adopted pursuant to Section 53321 of the Act and in the resolution of formation to establish a community facilities district pursuant to Section 53325.1 of the Act,
- (b) Any proposed special tax is approved by the qualified electors of the community facilities district pursuant to the Act, and,

(c) Any agreement shall specify that if the qualified electors of the community facilities district do not approve the proposed special tax, the local agency shall return any funds which have not been committed for any authorized purpose by the time of the election, to the person or entity advancing the funds; and, WHEREAS, The District to which the Property is to be annexed is for the purpose of funding public services and maintenance consisting of the annual operating costs for public safety (police and fire) services, public landscaping, street trees, street lights, parks and open space, and storm drainage services for the Project (collectively, the “Services”); and, WHEREAS, The intent of utilizing a community facilities district for the Services is to replace traditional maintenance districts such as landscaping and lighting and other maintenance districts which City would otherwise have required of Developer; and,

WHEREAS, Developer and City desire to enter into this Agreement in accordance with Section 53314.9 and Section 53332(b) of the Act in order to provide for the advancement of funds by Developer to be used to pay costs incurred in connection with the annexation of the Property to the District; and,

WHEREAS, Developer and City wish to provide for the payment of the actual costs expended to annex the Property to the District; and,

WHEREAS, There is a substantial lag time between the annexation to the District and the collection of sufficient special tax revenue to off-set the costs of providing certain maintenance activities associated with landscape and storm drain facilities installed by Developer pursuant to the Project’s approvals to be dedicated to City; and,

WHEREAS, such landscaping and storm drain facilities may be eligible for acceptance prior to the collection and receipt by City of sufficient special tax revenue to offset the costs of maintenance.

NOW THEREFORE, for and in consideration of the mutual promises and covenants herein contained in the Recitals, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto agree as follows:

SECTION 1. INITIAL DEPOSIT AND DEVELOPER CONTRIBUTION.

(a) Prior to the commencement of any legal proceeding to annex the Property to the District, Developer shall deposit with City for the benefit of the District the amount of Twenty-Five Thousand Dollars (\$25,000.00) (the “Initial Deposit”). City, by its execution hereof, acknowledges receipt of and accepts the Initial Deposit.

(b) The Initial Deposit, together with any subsequent deposit required to be made by Developer pursuant to the terms hereof (collectively, the “Deposits”), are to be used to pay for any actual costs incurred for any authorized purpose in connection with the annexation of the Property to the District, including, without limitation, the following:

- (i) The reasonable fees and expenses of any consultants to City employed in connection with the annexation of the Property to the District, including an engineer, special tax consultant, financial advisor, special counsel, and any other consultant reasonably deemed necessary or advisable by City; and,
- (ii) The reasonable costs of the RMA, feasibility studies, and/or other reports reasonably deemed necessary or advisable by City in connection with the annexation of the Property to the District; and,
- (iii) The reasonable costs of publication of notices, preparation and mailing of ballots and other costs related to any hearing, election or other actions or

proceedings undertaken in connection with the annexation of the Property to the District; and,

- (iv) Reasonable charges for City staff time incurred in connection with the annexation of the Property to the District, including a reasonable allocation of City overhead expense related thereto; and,
- (v) Any and all other actual costs and expenses incurred by City in connection with the annexation of the Property to the District, including establishment of the RMA (collectively, the “Initial Costs”). City may draw upon the Deposits from time to time to pay the Initial Costs.

(c) If, at any time, the unexpended and unencumbered balance of the Deposits is less than Five Thousand Dollars (\$5,000.00), City may request, in writing, that Developer make an additional deposit in an amount estimated to be sufficient, together with any such unexpended and unencumbered balance, to pay for all Initial Costs. Developer shall make such additional deposit with City within two (2) weeks of the receipt by Developer of City’s written request therefor. If Developer fails to make any such additional deposit within such two-week period, City may temporarily suspend all work related to the annexation of the Property to the District and withhold further permits or approvals for the Project that are conditioned upon annexation of the Property to the District. Notwithstanding anything to the contrary in the foregoing, promptly upon receipt of the additional deposit from Developer, City shall re-commence the work related to the annexation of the Property to the District and diligently prosecute same to completion.

(d) The Deposits may be commingled with other funds of City for purposes of investment and safekeeping, but City shall at all times reasonably maintain records as to the expenditure of the Deposits.

(e) City shall provide Developer with a written monthly summary of expenditures made from the Deposits, and the unexpended balance thereof, within ten (10) business days of receipt by City of a written request therefor submitted by Developer, provided that City shall not be required to provide a summary of expenditures more frequently than one time during each calendar month. The cost of providing any such summary shall be charged to the Deposits.

SECTION 2. REIMBURSEMENT.

As provided in Section 53314.9 of the Act, if the qualified electors of the District do not approve the proposed levy of special tax, City shall have no obligation to repay the Developer any portion of the Deposits expended or encumbered to pay Initial Costs. In accordance with Section 53314.9 of the Act, if the qualified electors of the District do not approve the proposed levy of special tax, City shall return without interest to Developer any portion of the Deposits which have not been expended or encumbered to pay Initial Costs by the time of the election on said proposed levy of special tax and Developer shall not be entitled to develop or proceed with the Project until such time as the Property is included within a District and a special tax levied.

SECTION 3. AGREEMENT NOT DEBT OR LIABILITY OF CITY.

As provided in Section 53314.9(b) of the Act, this Agreement does not constitute a debt or liability of City. City shall not be obligated to advance any of its own funds to pay Initial Costs or any other costs incurred in connection with the annexation of the Property to the District, including the establishment of the RMA. No Member of City Council of the City and no officer, employee, or agent of City shall to any extent be personally liable hereunder.

SECTION 4. ASSIGNMENT.

Developer shall be entitled to assign its rights, duties, and obligations under this Agreement in connection with any sale, conveyance, or transfer of its interest in the Project

and/or the Property. In connection with any such assignment, Developer shall provide notice to City of same, and thereafter Developer shall be released from its obligations under this Agreement that are so assigned and City shall look to the assignee for satisfaction of any remaining obligations hereunder, such as, for example, payment of any additional deposits required under Section 1, above.

SECTION 5. DISCLOSURE.

Developer covenants to City that Developer shall provide, and shall include in any contract(s) with other developers or merchant builders who purchase all or portions of the Property from Developer to provide: (a) the “Notice of Special Tax” as required by Section 53341.5 of the Act or any similar successor statute, and (b) a notice approved and provided by City to be distributed and signed by prospective purchasers in a form similar to the Notice of Special Tax (the “Information Notice”). Developer agrees to include, and shall include in any contract(s) with other developers or merchant builders who purchase all or portions of the Property from Developer, a statement in the Notice of Special Tax and/or the Information Notice that prospective purchasers acknowledge that due to the RMA and timing of the close of escrow, the special tax levy may not be levied in time to appear on the initial property tax bill for such purchaser. Developer further covenants, and shall include in any contract(s) with other developers or merchant builders who purchase all or portions of the Property from Developer, to send copies to City of such executed Notices within thirty (30) days after execution by a prospective purchaser. Developer expressly acknowledges that City and the District shall have no duty or obligation and shall incur no liability, jointly or severally, with respect to the foregoing covenant of Developer.

SECTION 6. MUTUAL ASSISTANCE AND COOPERATION.

City and Developer shall assist one another mutually in the annexation of the Property to the District, the formulation of special taxes to be levied within the District on the Property, and both parties shall mutually assist one another in otherwise undertaking and furthering the goals and objectives set forth in this Agreement.

Once the fifty percent (50%) threshold for occupancy of the Project and payment of District taxes has been met, City shall notice Developer of the date that City will accept the landscaped areas and storm drain facilities. On and after the date that City actually accepts such landscaped areas and storm drain facilities, the District shall be responsible for the maintenance thereafter, except for any remaining warranty or maintenance work to be performed by the Developer, the Developer's surety or their respective agents.

SECTION 7. DELAYED ACCEPTANCE OF LANDSCAPED AREAS AND STORM DRAIN FACILITIES.

City and Developer agree that it is in the best interests of the parties hereto that landscape and storm drain facilities installed by Developer to be dedicated to City shall be maintained by Developer until such time as sufficient special tax revenue is collected by the County Tax Collector and distributed to City to allow City to provide for the proper maintenance and care thereof.

SECTION 8. CITY TO PROVIDE ESTIMATED COSTS OF MAINTENANCE.

Developer shall provide City at the time that Developer believes the Project's landscape and storm drain facilities meet City standards for acceptance an estimate of the cost of on-going maintenance and care. Developer shall provide City with the number of building permits already pulled and estimated to be pulled for the next six (6) months. City shall take these numbers and

estimates and make an estimate of when there may be sufficient revenues to support acceptance of the landscape areas and storm drain facilities.

**SECTION 9. CITY ACCEPTANCE OF LANDSCAPED AREAS AND
STORM DRAIN FACILITIES.**

Upon written request from Developer, City shall promptly review the special tax revenue and determine if sufficient special tax revenues have been received by City to support the on-going maintenance and care of the landscaped areas and storm drain facilities, City shall notify Developer of the date City will accept the landscaped areas and storm drain facilities and thereafter be responsible for the maintenance thereof, excepting any remaining warranty or guaranty work as provided for under the subject subdivision improvement agreement.

SECTION 10. NOTICES.

All written notices to be given hereunder shall be given to the party entitled thereto at its address set forth below, or at such other addresses as such party may provide to the other parties in writing from time to time, namely:

Developer: CEB Holdings, LLC
 1620 N. Carpenter Rd., Bldg B
 Modesto, CA 95351
 Attn: Loura Erickson
 Email: lerickson@bright-homes.com

City: City of Merced
 678 West 18th Street
 Merced, CA 95340
 Attention: City Attorney
 Email:

with a copy to: City of Merced
 678 West 18th Street
 Merced, CA 95340
 Attention: Planning Department
 Email:

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request, or other communication hereunder shall be deemed delivered to the party to whom it is addressed:

- (a) If personally served or delivered, upon delivery,
- (b) If given by electronic communication, whether by email, telex, telegram or telecopier upon the sender's receipt of an appropriate answerback or other written acknowledgement,
- (c) If given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, seventy two (72) hours after such notice is deposited with the United States mail,
- (d) If given by overnight courier, with courier charges prepaid, twenty four (24) hours after delivery to said overnight courier, or
- (e) If given by any other means, upon delivery at the address specified in this Section.

SECTION 11. ATTORNEYS' FEES.

In the event of the bringing of any action or suit by either party against the other arising out of this Agreement, the party in whose favor final judgment shall be entered shall be entitled to recover from the other party all costs and expenses of suit, including reasonable attorneys' fees.

SECTION 12. SEVERABILITY.

If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

SECTION 13. BINDING ON SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and inure to the benefit of the heirs, successors-in-interest and assigns of the parties hereto.

SECTION 14. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties with respect to the matters provided for herein. There are no oral or written representations, understandings, undertakings or agreements which are not expressly referred to or contained herein, and any such representations, understandings, undertakings, or agreements are superseded by this Agreement.

SECTION 15. AMENDMENTS.

This Agreement may be amended or modified only in writing signed by both parties.

SECTION 16. GOVERNING LAW.

This Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California.

SECTION 17. USAGE OF WORDS.

As used herein, the singular of any word includes the plural, and terms in the masculine gender shall include the feminine.

SECTION 18. NO THIRD PARTY BENEFICIARIES.

Except as may be specifically provided herein to the contrary, no third party shall be the express or implied beneficiary of this Agreement or any of its provisions, no such third party may bring action at law or in equity with respect thereto.

SECTION 19. VENUE.

Any action at law or in equity arising under this Agreement brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this

Agreement shall be filed and tried in the Superior Court of the County of Merced, State of California, and the parties waive all provisions of law providing for the filing, removal or change of venue to any other Court.

SECTION 20. APPROVAL OF AGREEMENT BY RESOLUTION.

This Agreement, pursuant to Section 53314.9 of the Act, shall only be effective if approved by City's City Council by Resolution thereof.

SECTION 21. 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 parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have executed this Deposit and Reimbursement Agreement as of the day and year written below.

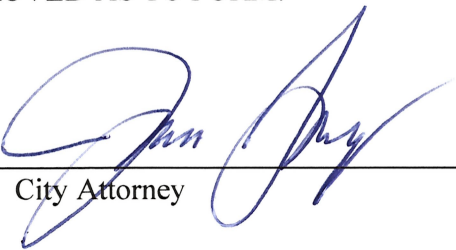
CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEPHANIE R. DIETZ, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: 
City Attorney

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

DEVELOPER
CEB HOLDINGS, LLC,
A California Limited Liability Company

BY: Carol Bright Tougas
Carol Bright Tougas

ITS: Manager

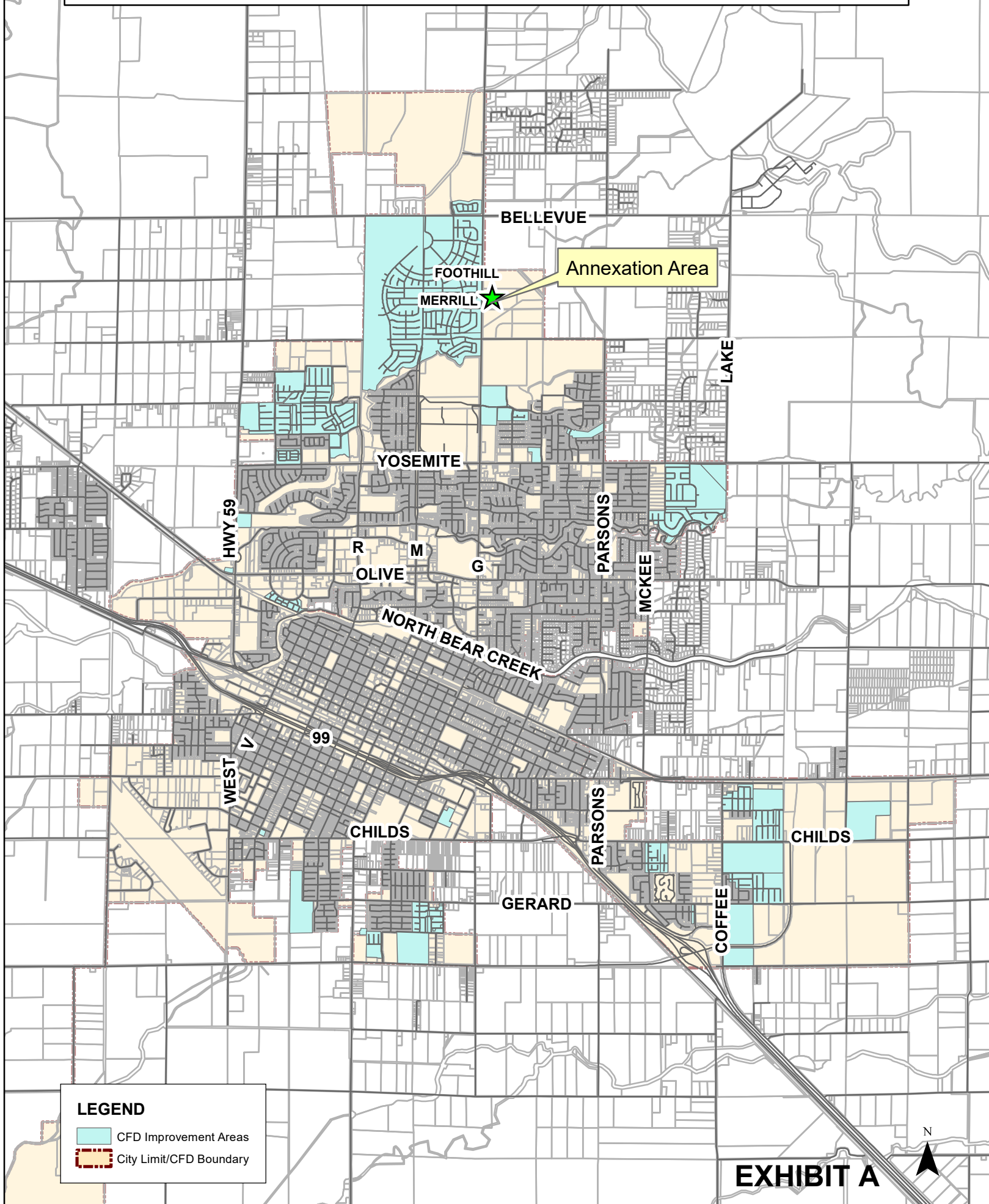
Taxpayer I.D. No. 94-1741340

ADDRESS: 1620 N. Carpenter Rd.
Bldg. B
Modesto, CA 95351

TELEPHONE: (209) 526-8242

E-MAIL: lerickson@bright-homes.com

COMMUNITY FACILITIES DISTRICT 2003-2 (SERVICES)



Modified Map Approved by
the Planning Commission
October 3, 2018.

GOLDEN VALLEY
ENGINEERING & SURVEYING
1700 West Main Street, Suite 100
Merced, CA 95341
Phone: (209) 723-3254
Fax: (209) 723-3254

PROJECT NO.:
DATE:
DRAWN BY:
CHECKED BY:

CALIFORNIA

**MODIFIED VESTING TENTATIVE SUBDIVISION MAP FOR
BRIGHT DEVELOPMENT
PORTION SECTION 5 & 8, T.7 S., R.14 E., M.D.B. & M.**

MERCED

PROJECT NO.:
DATE:
DRAWN BY:
CHECKED BY:

BRIGHT DEVELOPMENT
Attn: Dave Buz
1520 N. Carpenter Rd., Bldg. B
Merced, CA 95341
Phone: (209) 526-3242

PROJECT NO.:
DATE: April 2018
SCALE: AS SHOWN
DRAWN BY: Rick R.
JOB NO.: 18-001
SHEET NUMBER:

2



PHASE 2 (84 Lots)
SEE ENLARGED MAP
SHEET 4

PHASE 1 (77 Lots)
SEE ENLARGED MAP
SHEET 3

Phase Line

Emergency Vehicle
Access (EVA)

Modified Map Approved by
the Planning Commission
October 3, 2018.

GOLDEN VALLEY
ENGINEERING & SURVEYING
105 West Live Street, Suite 100
Merced, CA 95341
Phone: (209) 723-8264
Fax: (209) 723-8264

PROJECT NO.: 18-031
SHEET NO.: 3

CALIFORNIA

**MODIFIED VESTING TENTATIVE SUBDIVISION MAP FOR
BRIGHT DEVELOPMENT
PORTION SECTION 5 & 8, T.7 S., R.14 E., M.D.B. & M.**

MERCED

STATION

SUBDIVISION MAP

BRIGHT DEVELOPMENT
Atty. One Buz
1850 N. Carpenter Rd., Bldg. B
Merced, CA 95341
Phone: (209) 624-0242

PROJECT DATA:
Date: April 2018
Scale: As Shown
Drawn By: Rick R.
Job No.: 18-031
SHEET NUMBER:

3



Modified Map Approved by
the Planning Commission
October 3, 2018.

