

**CITY OF MERCED
NOTE**

(Gateway Terrace Apartment II Project—CDBG Loan)

\$370,590

Merced, California

_____, 2018

FOR VALUE RECEIVED, Merced Gateway Investors II, LP, a California Limited Partnership (“Borrower”), promises to pay to the City of Merced, a California Charter Municipal Corporation (the “City”), or order, the principal sum of Three Hundred Seventy Thousand Five Hundred Ninety Dollars (\$370,590), or so much thereof as may be advanced by the City to or on behalf of the Borrower pursuant to a Deed Restriction Covenant and Loan Agreement dated _____, 2018 (the “CDBG Loan Agreement”), by and between the Borrower and the City (B-17-MC-06-0044 under the Community Development and Block Grant (CDBG) and administered by the U.S. Department of Housing and Urban Development (“HUD”) (14.218-Entitlement Grant) with a Federal Award Date of September 22, 2017), together with interest thereon as specified herein (the “CDBG Loan Agreement”). The obligation of the Borrower in respect of all such advances is subject to the terms of (a) a City Loan Commitment Agreement dated as of July 17, 2017 (the “CLCA”), between the City of Merced (the “City”) and the Borrower, (b) Agreement Contains Covenants Affecting Real Property between the Borrower and the City dated _____, 2018 (the “CDBG Regulatory Agreement”), (c) this CDBG Note, (d) the Deed of Trust and Security Agreement of even date hereof, securing this CDBG Note, recorded in the Official Records of the County Recorder of Merced County, California (the “CDBG Deed of Trust”), and (e) the CDBG Loan Agreement, which together with all other loan related documents and instruments required by the City are collectively referred to as the “CDBG Loan Documents.”

1. **Borrower’s Obligation.** This promissory note (the “CDBG Note”) evidences the Borrower’s obligation to pay the City the principal amount of Three Hundred Seventy Thousand Five Hundred Ninety Dollars (\$370,590) for the funds advanced to the Borrower by City to refinance the development of the Property (the “Development”) for the purposes and pursuant to the terms set forth in the CLCA. Borrower shall submit monthly draw requests, up to a cumulative total of \$370,590. All capitalized terms not otherwise defined in this CDBG Note shall have the meanings set forth in the CLCA.

2. Interest. The outstanding principal balance of this CDBG Note shall bear simple interest at the rate of zero percent (0%) from the date of initial advance by the City until completion of construction of the Development, as evidenced by the issuance of the certificate of occupancy for the Development (the “Conversion Date”), and thereafter, shall bear simple interest at the rate of three percent (3%) per annum until repaid; provided, however, if a Default occurs, interest on the principal balance shall begin to accrue, as of the date of Default (following expiration of applicable notice and cure periods), and continuing until such time as the Loan funds are repaid in full or the Default is cured, at the default rate of the lesser of seven percent (7%), compounded annually, or the highest rate permitted by law.

3. Term and Repayment Requirements. The term of this CDBG Note (the “Term”), shall commence with the date of this CDBG Note and shall expire on the date that is forty (40) years following the Conversion Date. This CDBG Note shall be due and payable as set forth in the CLCA. Payments shall be paid annually in arrears, no later than June 1 of each year with respect to the previous calendar year, with payments deferred until the Net Cash Flow (as defined in the CLCA) of the Project provide that payments should begin and in the priority as described in the CLCA.

Borrower shall have the right to prepay this CDBG Note in whole or in part without penalty.

Unless otherwise specified hereinabove, each payment shall be credited first on interest (if any) then due and the remainder on principal; and interest shall thereupon cease upon the principal so credited.

4. No Assumption. This CDBG Note shall not be assumable by the successors and assigns of Borrower without the prior written consent of the City, or as set forth in the CDBG Loan Agreement and CDBG Regulatory Agreement.

5. Security. This CDBG Note is secured by the CDBG Deed of Trust, wherein the Borrower is the Trustor and the City is the Beneficiary, covering the Property.

6. Terms of Payment.

(a) All payments due under this CDBG Note shall be paid in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

(b) All payments on this CDBG Note shall be paid to City at the office of the City, 678 West 18th Street, Merced, CA 95340, Attn: Housing Division & City Clerk, or to such other place as the City may from time to time designate in writing.

(c) All payments on this CDBG Note shall be without expense to the City, and the Borrower agrees to pay all costs and expenses, including reconveyance fees and reasonable attorney's fees of the City, incurred in connection with the payment of this CDBG Note and the release of any security hereof.

(d) Notwithstanding any other provision of this CDBG Note, or any instrument securing the obligations of the Borrower under this CDBG Note, if, for any reason whatsoever, the payment of any sums by the Borrower pursuant to the terms of this CDBG Note would result in the payment of interest which would exceed the amount that the City may legally charge under the laws of the State of California, then the amount by which payments exceeds the lawful interest rate shall automatically be deducted from the principal balance owing on this CDBG Note, so that in no event shall the Borrower be obligated under the terms of this CDBG Note to pay any interest which would exceed the lawful rate.

(e) This CDBG Note shall be nonrecourse to Borrower and its partners.

7. Default.

(a) Any of the following shall constitute an Event of Default under this CDBG Note:

(i) Any failure to pay, in full, any regularly scheduled payment required under this CDBG Note when due following written notice by City of such failure and ten (10) days opportunity to cure;

(ii) Any failure in the performance by the Borrower of any terms, condition, provision or covenant set forth in this CDBG Note subject to the notice and cure period set forth in the CLCA; and

(iii) The occurrence of any Event of Default under the CDBG Loan Agreement, the CDBG Deed of Trust, or the CDBG Regulatory Agreement, or other instrument securing the obligations of the Borrower under this CDBG Note or under any other promissory notes hereafter issued by the Borrower to the City pursuant to the CDBG Loan Agreement or the CDBG Deed of Trust, subject to notice and cure period, if any, set forth therein.

Notwithstanding anything to the contrary contained herein, City hereby agrees that any cure of any default made or tendered by one or more of Borrower's limited partners shall be deemed to be a cure by Borrower and shall be accepted or rejected on the same basis as if made or tendered by Borrower. Copies of all notices which are sent to Borrower hereunder shall also be sent to Merced Gateway Investors II, LP, a California Limited Partnership, 3351 "M" Street, Suite #100, Merced, California 95348, Attention: Christina Alley.

(b) Upon the occurrence of such an Event of Default, the entire unpaid principal balance, together with all interest thereon, if any, and together with all other sums then payable under this CDBG Note and CDBG Deed of Trust shall, at the option of the City, become due and payable in full, without further demand.

(c) The failure to exercise the remedy set forth in Subsection 7(b) above or any other remedy provided by law upon the occurrence of one or more of the foregoing events of default shall not constitute a waiver of the right to exercise any remedy at any subsequent time in respect to the same or any other default. The acceptance by the City of any payment which is less than the total of all amounts due and payable at the time of such payment shall not constitute a waiver of the right to exercise any of the foregoing remedies or options at that time or any subsequent time, or nullify any prior exercise of any such remedy or option, without the express consent of the City, except as and to the extent otherwise provided by law.

8. Waivers.

(a) The Borrower hereby waives diligence, presentment, protest and demand and notice of protest, notice of demand, and notice of dishonor of this CDBG Note. The Borrower expressly agrees that this CDBG Note or any payment hereunder may be extended from time to time and that the City may accept further security or release any security for this CDBG Note, all without in any way affecting the liability of the Borrower.

(b) No extension of time for payment of this CDBG Note or any installment hereof made by agreement by the City with any person now or hereafter liable for payment of this CDBG Note shall operate to release, discharge, modify, change or affect the original liability of the Borrower under this CDBG Note, either in whole or in part.

(c) The obligations of the Borrower under this CDBG Note shall be absolute and the Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this CDBG Note for any reason whatsoever.

9. Miscellaneous Provisions.

(a) All notices to the City or the Borrower shall be given in the manner and at the addresses set forth in the CDBG Loan Agreement, or to such addresses as the City and the Borrower may hereinafter designate.

(b) The Borrower promises to pay all costs and expenses, including reasonable attorney's fees, incurred by the City in the enforcement of the provision of this CDBG Note, regardless of whether suit is filed to seek enforcement.

(c) This CDBG Note may not be changed orally, but only by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

(d) This CDBG Note shall be governed by and construed in accordance with the laws of the State of California.

(e) The times for the performance of any obligations hereunder shall be strictly construed, time being of the essence.

(f) This document, together with the CDBG Loan Documents, contains the entire agreement between the parties as to the CDBG Loan. It may not be modified except upon written consent of the parties.

MERCED GATEWAY INVESTORS
II, LP,
A California Limited Partnership

By: Merced Gateway Investors LP, a
California Limited Partnership

By: _____
Christina Alley

ADDRESS: 3351 "M" Street,
Suite 100
Merced, CA 95348

TELEPHONE: _____

FAX: _____

E-MAIL: _____

APPROVED AS TO FORM:

