

PARKING LEASE AGREEMENT

THIS PARKING LEASE AGREEMENT ("Agreement") dated _____, 2020, ("Approval Date") is by and among the City of Merced, a California Charter Municipal Corporation ("City"), the Parking Authority of the City of Merced, a parking authority created pursuant to Street and Highways Code Section 32500 et seq ("Authority"), and Tioga Investors, LLC ("Tioga").

WHEREAS, Tioga has secured Site Plan Review approval from the Site Plan Review Committee for the redevelopment of the Tioga ("Project"); and

WHEREAS, Project includes uses such as restaurants, retail and apartment lobby on the first floor, supporting a 70-unit apartment renovation project; and

WHEREAS, Authority is the owner of certain real property in the City of Merced as shown on the maps attached hereto as Exhibits A-1 and A-2 ("Premises"); and

WHEREAS, Tioga requires up to 70 parking spaces for the Project, and desires to lease up to 70 parking spaces on the Premises from the Authority; and

WHEREAS, Tioga seeks to enter and use a portion of the Premises as follows: up to 24 parking spaces from Parking Lot #4 and up to 46 parking spaces from Parking Lot #5.

NOW, THEREFORE, Authority and the Tioga hereby agree as follows:

ARTICLE 1 - GRANT OF LICENSE

1.1 Authority hereby grants Tioga and to its tenants a revocable license to enter and use the Premises for the purpose, and at the times, set forth in Article 3, below.

ARTICLE 2 - TERM

2.1 The initial term of this Agreement shall be five years beginning on the date City issues a Certificate of Occupancy to Tioga. Tioga may extend the term of this Agreement for three successive five-year terms beyond the initial term, subject to approvals by the Authority and the Merced City Council, both of which shall not be unreasonably withheld. In order to extend the term of this Agreement beyond the initial term and each successive five-year term, Tioga must submit a notice in writing of its request to extend no later than ninety (90) days prior to the end of the each respective term of this Agreement.

2.2 All parties, understand, acknowledge and agree that if Tioga extends the terms of this Agreement pursuant to section 2.1 above, that Authority shall, in its sole discretion, set the price to be paid by Tioga for the parking spaces during the extended term of this Agreement, and all prices set by Authority shall be based off then current fair market value rates.

ARTICLE 3 - USE OF PREMISES

3.1 Tioga shall use the Premises as parking for residents parking for the Project apartments only.

3.2 Time of Use. Tioga shall have access to their reserved 70 parking spaces at all times to address tenant needs during the term of this Agreement. For purposes of clarity, the Tioga will operate as a 24 hour, 7 day per week, 365-day business that will remain open indefinitely for the tenants; hence the need for continuous and uninterrupted use of Tioga spaces.

3.3 Resident Parking Only. The leased parking spaces granted by Authority to the Tioga under this Agreement are provided pursuant to a revocable license (which may only be revoked as provided in this Agreement) for parking only during the term of this Agreement, and shall be used solely by the residents of the Tioga apartment for the parking of motor vehicles on the Premises identified in this Agreement, under the terms, conditions, and obligations herein and in accordance with the rules and regulations posted at the Premises. Subject to the indemnification and hold harmless provision of paragraph 8.2 of this Agreement and the requirements of the Vehicle Code, the leased spaces are intended to be treated as private property for purposes of the California Vehicle Code only including, but not limited to, section 22658.

3.4 Identification. The Tioga, at its sole expense, shall provide signage or markings as approved by the Authority, for parking spaces to identify reserved parking spaces for use by the Tioga apartment residents. Said signage or markings require prior written approval from the Authority or its designee, which shall not be unreasonably withheld.

3.5 Parking Maintenance and Repair. Parking spaces within the Premises shall be maintained by the City and/or Authority in good order and repair including parking areas, exits, streets, entrances, and sidewalks. In addition, City or Authority shall maintain and repair all lighting of the parking area as part of regular maintenance. Damage to any part of the Premises not caused by the Tioga apartment residents shall be repaired by the City and Authority. If City and Authority are not able to repair or begin to repair such damage within 72 hours, Tioga may perform such repairs, and City shall forgive Tioga's quarterly payments in an amount equal to the costs of any repairs performed and paid for by Tioga. In contrast, damage to any part of the Premises caused by Tioga residents shall be repaired by Tioga at its sole cost and Tioga shall repair or begin to repair such damage within 72 hours.

The City or Authority shall keep the parking area, including parking spaces, exit streets, entrances, sidewalks, and driveways in reasonably clean condition. If City and Authority are not able to keep the parking area reasonably clean, Tioga shall provide notice to City and Authority by contacting Frank Quintero or his designee at (209) 385-6826 or such other phone number that is provided to Tioga. The Premises are part of the Maintenance District and are regularly maintained.

Additional lighting, security, security cameras, and other amenities requested by the Tioga shall be fully paid for by the Tioga. Tioga must secure written permission from the City/Authority or its designee to install any improvements or amenities to the Premises prior to making such changes or improvements.

ARTICLE 4 - CONSIDERATION

4.1 Pay Period. During the initial term of this Agreement Tioga shall pay Authority in advance the amounts specified below prior to the first day of each quarter (January, April, July, and October): Fifty Dollars (\$50) per month for each space leased pursuant to this Agreement. Within ten (10) days after the commencement of the term of this Agreement and on the first day of each calendar month thereafter, Tioga shall notify Authority of the number of parking stalls it desires to lease for the applicable month, provided such amount may not exceed 70; if Tioga does not notify Authority of this amount when required herein, then the amount shall be deemed to be the same as in the previous month or actual usage, whichever is greater. During any extended term of this Agreement, the amount to be paid by Tioga shall be determined by Authority in its sole discretion but shall be reasonably negotiated using then current fair market value rates. Notwithstanding the above, in no event shall the amount to be paid by Tioga be less than the rates charged during the initial term of this Agreement.

ARTICLE 5 - NOTICES

5.1 All notices to be addressed by the Tioga to City and/or Authority in connection with this Agreement shall be given in writing to Authority at:

Frank Quintero
Director of Economic Development
678 W. 18th Street
Merced, CA 95340

With a copy to:
City Attorney, City of Merced
678 W. 18th Street
Merced, CA 95340

All notices to be addressed by City or Authority to Tioga in connection with this Agreement shall be given in writing to:

John Martin
Tioga Investors, LLC
3848 McHenry Avenue, Suite 135, #254
Modesto, CA 95356

All notices shall be sent by first class or certified mail, or by personal delivery, to the addresses set forth above. They will be deemed sent on the date of the postmark, or if personally delivered on the date of delivery provided delivery occurs prior to 5:00 p.m. If personally delivered after 5:00 p.m., the notice shall be deemed to have been sent on the following business day.

ARTICLE 6 - TERMINATION

6.1 Any Party to this Agreement may terminate this Agreement by providing at least ninety (90) days, written notice to the other Parties. Should the Agreement be terminated by City or Authority for any reason other than a breach of the Agreement by Tioga, City acknowledges that at time of the termination, the Tioga may be subject to a minimum parking requirement. City agrees to negotiate in good faith during the ninety day notice period to locate or provide parking on substantially similar economic terms, at one or more of the Parking Relocation Sites identified on Exhibit B, if space is available to accommodate the additional parking load.

6.2 Notwithstanding the provisions of section 6.1 above, in the event that the Premises are damaged from any cause rendering the Premises totally or partially inaccessible or unusable during the term of this Agreement as reasonably determined by Authority, Authority may terminate this Agreement by giving the Tioga seven (7) days written notice thereof.

6.3 In the event that Tioga fails to perform any term, condition, or obligation under this Agreement, and such failure continues for at least 30 days after City or Authority provides written notice of such failure (each, a "default"), in addition to all other remedies provided by law, City or Authority may terminate this Agreement upon five days' written notice to Tioga. Notwithstanding the foregoing, City and Authority agree to provide Tioga an additional period of 30 days to cure any default under this Agreement that cannot reasonably be cured within the initial 30 days period, provided that Tioga has begun to cure the default during the initial 30 day period after notice was provided to Tioga.

6.4 All parties understand and agree that the Director of Economic Development for City is empowered to terminate this Agreement on behalf of Authority.

6.5 No right or remedy herein conferred upon or reserved to Authority and/or City is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute.

6.6 Upon expiration or earlier termination of this Agreement, the Tioga shall surrender all rights to use the Premises granted by this Agreement.

ARTICLE 7 - PARKING RULES AND REGULATIONS

7.1 In its use of the Premises, the Tioga shall at all times comply, and shall cause its employees, residents and guests to comply, with any rules and regulations established by Authority ("Rules"). Authority may unilaterally modify or amend such Rules from time to time and will provide to Tioga written notification of such modification or amendment within 72 hours after any such modification or amendment. Tioga shall not be deemed to be in breach of this Agreement for violating any modified or amended rules or regulations prior to receiving notice of any modification or amendment.

ARTICLE 8 - INDEMNITY AND HOLD HARMLESS

8.1 Authority shall indemnify, defend and hold harmless City, Tioga, its officers, agents, and employees from and against any and all claims, damages, costs, expenses, or liabilities (collectively "Claims") arising out of or in any way connected with this Agreement including, without limitation, Claims for loss or damage to any property, or for death or injury to any person or persons, but only in proportion to and to the extent that such Claims arise from the negligent or wrongful acts or omissions of Authority, its officers, partners, agents, or employees.

8.2 Tioga shall indemnify, defend and hold harmless City, Authority, its officers, partners, agents, and employees from and against any and all Claims arising out of or in any way connected with this Agreement including, without limitation, Claims for loss or damage to any property or for death or injury to any person or persons, but only in proportion to and to the extent that such Claims arise from the negligent or wrongful acts or omissions of the Tioga, its officers, partners, agents, or employees.

ARTICLE 9 - INSURANCE

9.1 The Tioga, at its sole cost and expense, shall insure its activities in connection with this Agreement and obtain, keep in force and maintain insurance as follows:

- a. General Liability Insurance (contractual liability included) with minimum limits as follows:

Each Occurrence	\$ 1,000,000
Products/Completed Operations Aggregate	\$ 2,000,000
Personal and Advertising Injury	\$ 1,000,000
General Aggregate	\$ 2,000,000

- b. Business Automobile Liability Insured Program or Self-Insurance Program for owned, non-owned, or hired automobiles with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence.
- c. Property, Fire and Extended Insurance in an amount sufficient to reimburse Tioga for all of its equipment, trade fixtures, inventory, fixtures and other personal property located on or in the Premises including leasehold improvements hereinafter constructed or installed.
- d. Workers' Compensation as required by California law.

The coverages referred to under a. and b. of this Section 9.1 shall include City, Authority, and both of their officers, agents and employees as additional insureds, and Authority shall be listed on the coverage described in c. as its interest may appear. The Tioga, upon the execution of this Agreement, shall furnish City and Authority with certificates of insurance evidencing

compliance with all requirements. Certificates shall provide for thirty (30) days advance written notice to the City and Authority of any material modification, change or cancellation of any of the above insurance coverages.

The coverages required herein shall not limit the liability of the Tioga.

ARTICLE 10 - COVENANTS AGAINST DISCRIMINATION

10.1 City, Authority and the Tioga each agree for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, as follows:

“There shall be no discrimination against or segregation of any person or group of persons on account of race, color creed, national origin, religion, sex, disability, marital status, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Premises herein granted, nor shall the Tioga, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, occupancy of tenants, lessees, sublessees, subtenants or vendees in the Premises herein granted.”

ARTICLE 11 - WAIVER

11.1 Any party's failure to enforce any breach of any term, covenant or condition contained herein shall not be deemed to be a waiver of such terms, covenants or conditions, or any subsequent breach of same, or any other term, covenant or condition contained herein.

ARTICLE 12 - ASSIGNMENT OR TRANSFER

12.1 This Agreement or the right to use the Premises may not be assigned or transferred by the Tioga by voluntary act or otherwise without the City's and Authority's prior written consent, which shall not be unreasonably withheld. Any attempted assignment or other transfer of this Agreement in violation of this Section shall be void.

ARTICLE 13 - GOVERNING LAW

13.1 The law governing this Agreement shall be that of the State of California.

ARTICLE 14 - VENUE

14.1 The Parties hereto agree that any and all lawsuits or legal proceedings relating to this Agreement, its interpretation or the Parties' performance of this Agreement, shall take place in Merced County Superior Court.

ARTICLE 15 - ATTORNEY'S FEES

15.1 If any Party to this Agreement brings an action to enforce the terms of this Agreement or to declare rights hereunder, the substantially prevailing party in any such action, on trial or appeal, shall be awarded its reasonable attorney's fees to be paid by the substantially losing party as fixed by the Court.

ARTICLE 16 - ENTIRE AGREEMENT

16.1 This Agreement contains the entire agreement and understanding between the parties and supersedes all prior written or oral agreements with respect to the subject matter herein. No representation, warranty, condition, or agreement of any kind or nature whatsoever shall be binding upon the parties hereto unless incorporated in this Agreement. This Agreement may be modified only by a written Amendment signed by City, Authority and the Tioga.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

AUTHORITY:
**PARKING AUTHORITY OF THE CITY OF
MERCED**

By: _____
Steve Carrigan, Executive Director

TIOGA:
TIOGA INVESTORS, LLC

By: _____
Name: _____
Title: _____

CITY:
CITY OF MERCED
A California Charter Municipal Corporation

By: _____
Steve Carrigan, City Manager

ATTEST:
**Steve CARRIGAN, CITY CLERK/AUTHORITY
SECRETARY**

By: _____
Assistant/Deputy City Clerk
Authority Secretary

APPROVED AS TO FORM:



City Attorney/General Counsel

Date



Parking Lot #5 - 46 Parking Spaces

Burger
Time

16TH ST

NSI



EXHIBIT A-1

THE TIOGA
Parking Facility Agreement
Parking Lot #5
46 Spaces (Marked in Yellow)



Parking Lot #4 - 24 Parking Spaces

Fluetsch & Busby
Building

18TH ST

THE TIOGA
Parking Facility Agreement
Parking Lot #4
24 Spaces (Marked in Yellow)



EXHIBIT A-2



Portion of
City Parking Lots

City of Merced
Relocation Parking Lots
(Subject to Change)

EXHIBIT B