

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Purchase and Sale Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the City of Merced, a California Charter Municipal Corporation ("Seller") and El Capitan Hotel Merced, LLC ("Buyer").

### WITNESSETH

WHEREAS, Buyer desires to purchase that certain real property owned by Seller and identified as APN: 031-133-014 (the "Subject Property"); and

WHEREAS, Buyer desires to purchase the Subject Property for use in connection with Buyer's development of the El Capitan Hotel;

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

SECTION 1. PURCHASE & EXCHANGE. With the payment of no additional consideration by either Buyer or Seller, Buyer agrees to pay and deliver, as applicable, the Purchase Price (as defined below) to Seller, and Seller agrees to deed and Buyer agrees to acquire the Subject Property pursuant to the deed in the form attached hereto as Exhibit "A" and as described in Exhibit "B".

SECTION 2. PURCHASE PRICE VALUE. The parties agree that the value of the Subject Property shall be deemed to be One-Thousand Four Hundred Seventy-Eight Dollars and Ninety Cents (1,478.90) (the "Purchase Price Value"), which shall be paid as follows:

- a. Cash: Ten Dollars (\$10.00) to be paid at closing; and
- b. Artwork: One or more pieces of public artwork to be located in the immediate vicinity of Main Street between M and N Streets, such as, without limitation, a building mural, decoration of public improvements, statue or sculpture, as determined by Buyer, to be commissioned by Buyer from one or more local or regional artists; and,
- c. Artwork shall be presented to the City of Merced Arts and Culture Commission as an INFORMATION ONLY ITEM prior to work starting on the project.
- d. Artwork shall be installed and completed within eighteen (18)-months from close of escrow.

SECTION 3. ESCROW. Escrow shall open on the Subject Property within ten (10) days at a title company in Merced, California, selected by Seller, and shall close within ninety (90) days thereafter, subject to the terms and conditions of this Purchase and Sale Agreement. All costs of the escrow shall be the responsibility of the Buyer.

SECTION 4. ASSIGNMENT. This Purchase and Sale Agreement shall be binding upon and inure to the benefit of the respective parties hereto and to their respective heirs, transferees, successors, assignee, partners, and legal representatives. Neither this Purchase and Sale Agreement nor any part thereof shall be assignable except with the prior written consent of the other party hereto. Such consent

shall not be unreasonably withheld. Any attempted assignment or delegation of the rights and responsibilities under this Purchase and Sale Agreement not executed in writing by the other party hereto shall constitute a material breach of this Purchase and Sale Agreement and shall be null and void.

SECTION 5. REAL ESTATE COMMISSIONS. Buyer warrants and represents to Seller that there are no other real estate or similar commissions due or owed for this transaction and agrees that any other commissions due or owed as a result of Buyer's close of escrow on the Subject Property shall be the financial responsibility of Buyer.

SECTION 6. DUE DILIGENCE & ENVIRONMENTAL STUDIES.

a. Within ten (10) days after the mutual execution of this Purchase and Sale Agreement, or as soon thereafter as possible through reasonable diligence on behalf of Seller, Seller shall furnish Buyer with a preliminary California Land Title Association report of the title to the Subject Property and each document shown as an exception or encumbrance in the report. This shall be done at the expense of Seller. Within fifteen (15) days after the delivery of the title report and related documents to Buyer, Buyer shall notify Seller in writing of any objection to any exception therein. Buyer's failure to object in this matter to any exception shall be an approval by Buyer of that exception.

b. Buyer's acceptance of the condition of the Subject Property, and any other matter affecting the Subject Property, is a contingency of this Purchase and Sale Agreement. Buyer and Buyer's agents and representatives, shall have unrestricted access to the property to conduct all inspections, investigations, tests, surveys, analysis, and other studies, immediately upon execution of this Purchase and Sale Agreement.

c. Therefore, Buyer shall have forty-five (45) days from the date this Purchase and Sale Agreement is mutually executed to undertake and complete any and all studies, reports, investigations, inspections, and analysis Buyer deems necessary regarding the Subject Property. All studies, reports, investigations, and analysis undertaken by Buyer or any representative of Buyer shall be performed at Buyer's own and sole cost and expense.

SECTION 7. NOTICE. All notices required or available to be sent pursuant to this Purchase and Sale Agreement shall be delivered by either first-class certified mail, return receipt requested, and properly addressed with correct postage fully paid thereon or by personal delivery to the individuals designated above at the address designated below. All mailed notices shall be deemed delivered within three (3) business days of deposit in the U.S. Mail and personal delivery shall be deemed delivered upon actual delivery thereof at the addresses set forth below:

SELLER:                      City Clerk  
                                    City of Merced  
                                    678 West 18th Street  
                                    Merced, California 95340

With a copy to: City Attorney  
                                    City of Merced  
                                    678 West 18th Street  
                                    Merced, California 95340

BUYER: El Capitan Hotel Merced, LLC  
3848 McHenry Ave., Ste. 135 - #254  
Modesto, CA 95356

SECTION 8. INTERPRETATION. This Purchase and Sale Agreement shall be governed by and construed in accordance with the laws of the State of California. The use of the singular herein includes the plural, and the use of the neuter herein includes the masculine and/or feminine, as the context may require. The captions of the sections and subsections of this Purchase and Sale Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction.

SECTION 9. NO PRESUMPTION RE DRAFTER. The parties hereto acknowledge and agree that the terms and provisions of this Purchase and Sale Agreement have been negotiated and discussed between the parties and their attorneys, and this document reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Purchase and Sale Agreement, and therefore no presumption for or against validity or as to any interpretations hereof, based upon the identity of the drafter, shall be applicable in interpreting or enforcing this document.

SECTION 10. RELATIONSHIP OF PARTIES. Nothing contained in this Purchase and Sale Agreement shall be interpreted or understood by any of the parties, or by any third person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between Seller and Buyer or their agents, employees, or contractors. Except as either party may specify in writing, neither party shall have the authority to act as an agent of the other party or to bind the other party to any obligation.

SECTION 11. NO THIRD PARTY BENEFICIARIES. The parties hereto intend not to create rights in, or to grant to any third party as a beneficiary of the agreement or of any duty, covenant, obligation, or undertaking established herein.

SECTION 12. ENTIRE AGREEMENT. This Purchase and Sale Agreement is a fully integrated agreement that contains the complete, final, entire, and exclusive expression of the agreement and understanding of the parties hereto. This Purchase and Sale Agreement supersedes and replaces all negotiations, and all proposed agreements, whether oral or written, between the parties hereto regarding, arising out of, or relating to the subject matter hereof. Each party acknowledges that it has read this Purchase and Sale Agreement and has signed it freely and voluntarily without reliance on any representations or promises made by any of the other, or their attorneys or its representatives, other than as expressly set forth within this Purchase and Sale Agreement.

SECTION 13. AMENDMENTS IN WRITING. This Purchase and Sale Agreement may be amended or modified only by a written agreement executed by or on behalf of each of the parties hereto and approved and adopted as required by law. Any attempted amendment not in compliance with the provisions of this Section shall be null and void.

SECTION 14. WAIVER. Any waiver by either party of any obligation or condition in this Purchase and Sale Agreement must be in writing. No waiver will be implied from any delay or failure by either party to take action on any breach or default of the other party or to pursue any remedy allowed under this Purchase and Sale Agreement or applicable law. Any extension of time granted to either party to perform any obligation under this Purchase and Sale Agreement shall not operate as a waiver or release from any of its obligation under this Purchase and Sale Agreement. Consent by either party to any act or

omission by the other party shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the other party's written consent to future waivers.

SECTION 15. COUNTERPARTS. This Purchase and Sale Agreement may be executed in counterparts and when each party has signed and delivered at least one such counterpart to the other parties hereto, each counterpart shall be deemed an original, and all counterparts taken together will constitute one and the same agreement, which will be binding and effective as to Seller and Buyer. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Purchase and Sale Agreement is delivered in accordance with Section 7 of this Purchase and Sale Agreement.

SECTION 16. AUTHORITY TO EXECUTE. Each party hereto expressly warrants and represents that he/she/they has/have the authority to execute this Purchase and Sale Agreement on behalf of his/her/their governmental or business entity and warrants and represents that he/she/they has/have the authority to bind his/her/their entity to the performance of its obligations hereunder.

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


CITY OF MERCED  
A California Charter Municipal Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
\_\_\_\_\_, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY:  \_\_\_\_\_  
City Attorney

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Officer

*[Signature page continued on following page]*

BUYER

El Capitan Hotel Merced, LLC

DocuSigned by:  
BY: Jim Schneringer  
D9D047AE70324C3  
Print Name: Jim Schneringer  
Title: Authorized Signer

47-38665318  
Taxpayer I.D. No. \_\_\_\_\_

ADDRESS: 3848 McHenry Ave., Ste. 135 -  
#254, Modesto, CA 95356

TELEPHONE: (919) 669-9650

E-MAIL: jmartin@NuovoRE.com

**RECORDING REQUESTED BY:**

City of Merced, A California charter  
municipal corporation

**WHEN RECORDED MAIL TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**MAIL TAX STATEMENTS TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

EXHIBIT "A"  
GRANT DEED

(Above for Recorder's Use Only)

**GRANT DEED**

FOR A VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby  
acknowledged and agreed, the City of Merced (hereinafter referred to as the "Grantor") hereby grants  
to \_\_\_\_\_ (hereinafter referred to as the "Grantee") the following property  
("Subject Property") in the City of Merced, County of Merced, State of California and as legally  
described as follows:

**GRANTOR:**

CITY OF MERCED  
A California Charter Municipal Corporation

By: \_\_\_\_\_  
City Manager

**ALL-PURPOSE ACKNOWLEDGMENT**  
**Civil Code § 1189**

**A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

State of California )

County of \_\_\_\_\_ )

On \_\_\_\_\_, before me, \_\_\_\_\_,  
Date Name And Title Of Officer (e.g. "Jane Doe, Notary Public")

Notary Public, personally appeared \_\_\_\_\_,  
Name(s) of Signer(s)

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

*Place Notary Seal Above*

Signature: \_\_\_\_\_

## **EXHIBIT B**

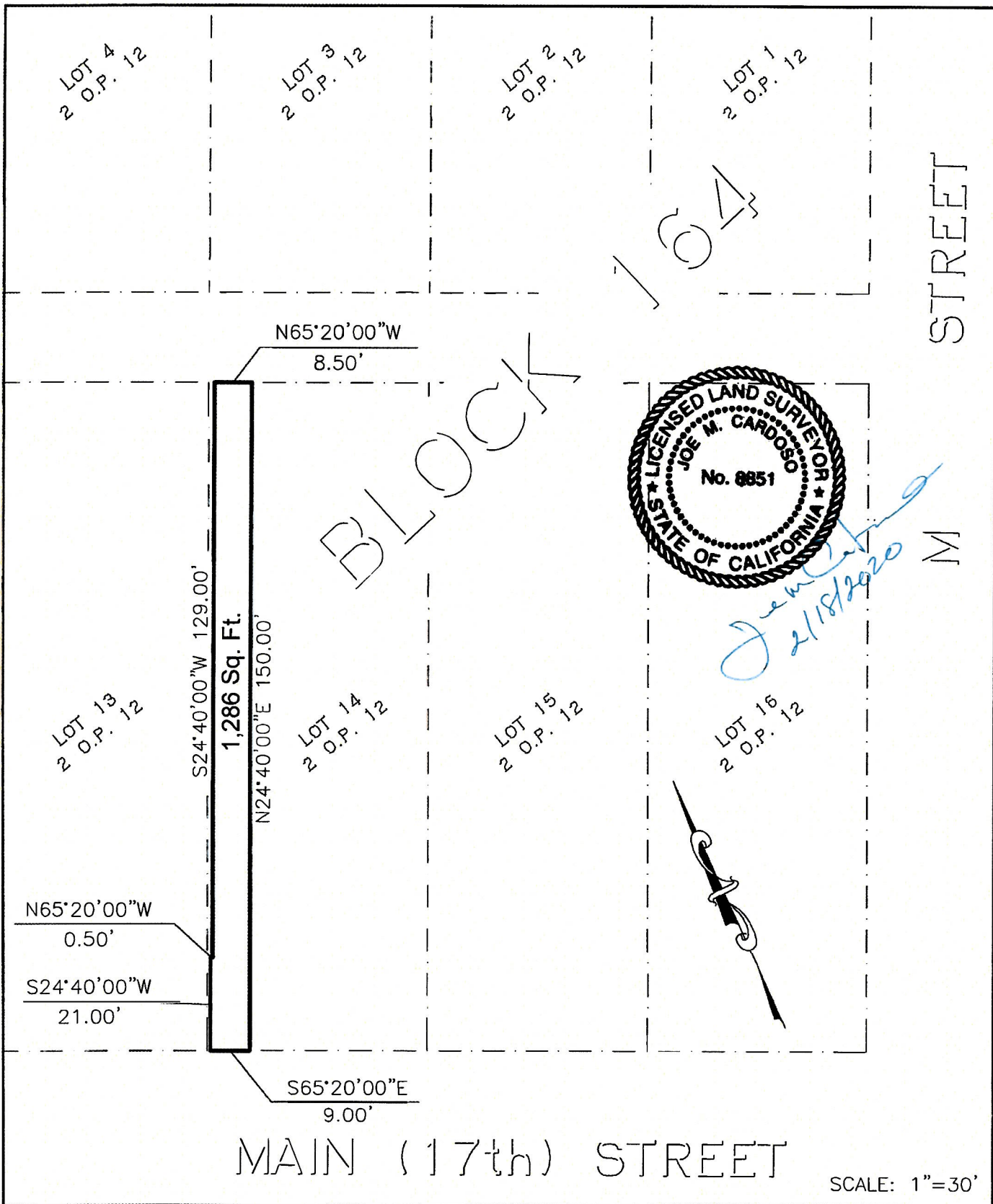
All that portion of Lot 14, in Block 164, "SUPPLEMENTAL MAP TO TOWN OF MERCED, recorded March 4, 1889 in Volume 2, Official Plats, at Page 12, Merced County Records, described as follows:

Commencing at a point that is S65°20'E, a distance of 9.8 feet from the Southwest corner of said Lot 14; thence the following courses and distances: North 24°40' East, a distance of 150 feet; North 65°20' West, a distance of 8.5 feet; South 24°40' West, a distance of 129 feet; North 65°20' West, a distance of 0.5'; South 24°40' West, a distance of 21 feet; South 65°20' East, a distance of 9 feet to the POINT OF BEGINNING.

The above-described strip of land is delineated on Exhibit C, attached hereto, and made a part hereof.

The above-described strip of land contains 1,286 Sq. Ft., more or less, and is subject to any liens, encumbrances, covenants, restriction, and rights-of-way or easements of record or legally acquired.





**City of Merced**  
"Gateway to Yosemite"

**DEVELOPMENT SERVICES**  
ENGINEERING PROJECTS AND STANDARDS  
678 W. 18th Street (209) 385-6846

**EXHIBIT C**

DR. BY: CARDOSO
DATE: 2/18/20
CH. BY:
DATE:
File No.
SCALE: 1"=30'