

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, ADOPTING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF FRESNO AND 2500 MLK, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, PURSUANT TO THE PROVISIONS OF SECTION 65864 ET SEQ. OF THE GOVERNMENT CODE AND ARTICLE 60 OF CHAPTER 15 OF THE FRESNO MUNICIPAL CODE

WHEREAS, pursuant to the provisions of Government Code Sections 65864, et seq., and Article 60 of Chapter 15 of the Fresno Municipal Code, the City of Fresno ("City") is authorized to enter into and amend a development agreement with any person having a legal or equitable interest in real property for the development of the property; and

WHEREAS, the City, on the one hand, and MLK 2500, LLC ("Developer") on the other hand, are parties to that certain Development Agreement, dated as of March 5, 2020, approved by the Council of the City of Fresno through Ordinance No. 2020-006, and recorded in the Official Records of Fresno County, California (the "Official Records") on April 14, 2020, as Document No. 20200046756 (the "Original Development Agreement"); and

WHEREAS, the Original Development Agreement pertains to the development of the West Creek Village Project (as defined in the Original Development Agreement), located on approximately 115.95 acres of land within the City of Fresno, referred to as the West Creek Village Project Area (as defined in the Original Development Agreement); and

1 of 6

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval:



Ordinance No.

WHEREAS, Developer holds fee title to the West Creek Village Project Area; and

WHEREAS, Fresno Municipal Code Section 15-6009 provides for the amendment of approved Development Agreements, and further states that a Development Agreement may specify the procedures by which the agreement may be amended; and

WHEREAS, the Original Development Agreement specifies that major changes and amendments to the Development Agreement must be heard by Council at a noticed hearing; and

WHEREAS, the parties desire to amend the Original Development Agreement to revise Section 3.9(a) to clarify that density limitations for the West Creek Village Project Area are not to exceed 481 residential units total; and

WHEREAS, approval of this Amendment to the Original Development Agreement will allow continued development of the West Creek Village Project Area and any amendments thereto; and

WHEREAS, the City, as Lead Agency, approved: (i) Environmental Assessment No. A-17-007/R-17-010/ANX-17-005/TPM-17-06, a Mitigated Negative Declaration dated August 2, 2017 (“MND”); and, (ii) an Addendum to the previously adopted MND (“First EA Addendum”); and

WHEREAS, the City, as Lead Agency, has determined that for the purposes of CEQA, only minor modifications have been made to the project through this Amendment to the Original Development Agreement and that none of the conditions described in California Environmental Quality Act (CEQA) Guidelines Section 15162 or 15163 (the “CEQA Guideline Sections”) or California Public Resources Code §21166, which govern the need for the preparation of a subsequent environmental impact report, negative

declaration or a supplement to the EIR, have occurred. Accordingly, the City has prepared an Addendum to the First EA Addendum and MND (the “Second EA Addendum”), dated March 29, 2022; and

WHEREAS, the Planning Commission of the City of Fresno held a public hearing on the 4th day of May to consider the Second EA Addendum and Amendment to the Original Development Agreement, and recommended approval to the Council of the City of Fresno through Resolution No. 13739; and

WHEREAS, the Council of the City of Fresno, on the 9th day of June 2022 received the recommendations of the Planning Commission and City staff as specifically detailed in the Report to the City Council for this Ordinance approving the Amendment to the Original Development Agreement by and between the City and Developer dated June 9, 2022.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. The Council in a prior action taken on June 9, 2022, made all of the necessary findings pursuant to CEQA and the CEQA Guidelines to approve the Second EA Addendum dated March 29, 2022, for purposes of the Amendment to the Original Development Agreement.

SECTION 2. Council finds in its independent judgment, based upon its review of the Second EA Addendum dated March 29, 2022, and the entire administrative record, including but not limited to the Staff reports, the oral and documentary evidence submitted to Council and the Planning Commission, that the Amendment to the Original Development Agreement is part of the project assessed under the Second EA Addendum dated March 29, 2022.

SECTION 3. Council finds that the Second EA Addendum dated March 29, 2022, is appropriate pursuant to the evidence and findings provided in the Staff Report to Council dated June 9, 2022.

SECTION 4. Council finds, in accordance with Section 65864 et. seq., of the California Government Code, and pursuant to the evidence and findings provided in the Staff Report to Council dated June 9, 2022 that:

(a) The Amendment to the Original Development Agreement is being adopted pursuant to this Ordinance and is subject to referendum.

(b) The provisions of the Amendment to the Original Development Agreement are consistent with the Fresno General Plan. Furthermore, the Amendment to the Original Development Agreement is consistent with the purpose of the Development Code to promote growth in an orderly and sustainable matter, and to promote and protect the public health, safety, peace, comfort, and general welfare. Approval of the Amendment to the Original Development Agreement will allow the completion of the originally proposed project and will provide for orderly development in the West Creek Village Project Area.

(c) The Amendment to the Original Development Agreement will provide substantial public benefit by establishing services and desirable uses in proximity to residential uses.

SECTION 5. Council finds that the Amendment to the Original Development Agreement complies with the California Government Code, the Fresno Municipal Code, and other applicable ordinances, standards, policies and regulations of the City of Fresno

pursuant to the evidence and findings provided in the Staff Report to Council dated June 9, 2022.

SECTION 6. Council finds that the Amendment to the Original Development Agreement furthers the public health, safety and welfare and will not be materially detrimental to the use, enjoyment, or valuation of property of other persons located in the vicinity of the West Creek Village Project Area, pursuant to the evidence and findings provided in the Staff Report to the Council dated June 9, 2022.

SECTION 7. Council finds that the construction of public facilities required in conjunction with the development is adequate to serve the development pursuant to the findings provided in the Staff Report to the Council dated June 9, 2022.

SECTION 8. Council finds that the Amendment to the Original Development Agreement provides for clear and substantial public benefit to the City of Fresno and residents pursuant to the evidence and findings provided in the Staff Report to Council dated June 9, 2022.

SECTION 9. Council hereby adopts and approves the Agreement titled "Amendment to the Development Agreement for the West Creek Village Project," attached hereto as "Exhibit A," in substantially the same form as that presented to Council in the Staff Report to Council dated June 9, 2022, and authorizes the City Manager and/or his or her designee to finalize and execute the Amendment to the Original Development Agreement, subject to the City Attorney's Office approval as to form, on behalf of the City of Fresno.

SECTION 10. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2022.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2022
Mayor Approval/No Return: _____, 2022
Mayor Veto: _____, 2022
Council Override Vote: _____, 2022

TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Talía Kolluri Date
Assistant City Attorney

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

City Clerk
City of Fresno
2600 Fresno Street, Room 2133
Fresno, CA 93721-3603

NO FEE – California Government Code §6103

SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY

**AMENDMENT
TO THE DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF FRESNO
AND 2500 MLK, LLC.
FOR THE WEST CREEK VILLAGE PROJECT**

This Amendment to the Development Agreement by and between the City of Fresno and 2500 MLK, LLC. for the West Creek Village Project (the "**Amendment**") is entered into by and between the CITY OF FRESNO, a municipal corporation, organized and existing pursuant to the laws of the State of California and the Charter of the City of Fresno (the "**City**"), on the one hand, and 2500 MLK, LLC, a California limited liability company ("**Developer**"). This Amendment shall have an effective date of _____, 2022 (the "**Amendment Date**"). The City and Developer enter into this Amendment with reference to the following facts:

RECITALS

A. City and Developer are parties to that certain Development Agreement, dated as of March 5, 2020, that was recorded in the Official Records of Fresno County, California (the "**Official Records**") on April 14, 2020, as Document No. 20200046756 (the "**Original Development Agreement**") with respect to the West Creek Village Project (as defined in the Original Development Agreement) in the West Creek Village Project Area (as defined in the Original Development Agreement). The West Creek Village Project Area contains approximately 115.95 acres of land. The West Creek Village Project Area is legally described on Exhibit "A-1" hereto. The Fresno City College–West Fresno Satellite Parcel is legally described on Exhibit "A-2" hereto.

B. As of the Amendment Date:

B(1) 2500 MLK, LLC is the current owner of fee title to all of the legal parcels within the West Creek Village Project Area, which is approximately 115.95 acres. As of the Amendment Date, 2500 MLK, LLC has not transferred or assigned to any person or entity any of its rights or obligations under the Modified Development Agreement with respect to the West Creek Village Project Area or any portion thereof.

C. On August 2, 2017, the Planning Commission of the City of Fresno approved Plan Amendment No. A-17-007, Pre-zone Application No. R-17-010, and Tentative Parcel Map No. TPM-17-06, referred to in the Original Development Agreement as the “**Prior West Creek Village Approvals.**”

D. On August 24, 2017, the City Council of the City of Fresno approved: (i) Environmental Assessment No. A-17-007/R-17-010/ANX-17-005/TPM-17-06, a Mitigated Negative Declaration dated August 2, 2017 (“**MND**”); (ii) Resolution No. 2017-230 for Annexation Application No. ANX-17-005 (“**Annexation**”); (iii) Resolution No. 2017-231 for Plan Amendment Application No. A-17-007 (“**Original Plan Amendment**”); (iv) Ordinance Bill No. 2017-43 for Pre-zone Application No. R-17-010 (“**Pre-zone**”); and, (v) Resolution No. 2017-232 for Tentative Parcel Map No. 17-06 (“**TPM 2017-06**”).

E. On February 5, 2020, the Planning Commission of the City approved Plan Amendment Application No. P18-03290, Rezone Application No. P18-03290, and a Development Agreement, referred to in the Original Development Agreement as the “**Subsequent Approvals.**”

F. On February 13, 2020, the City Council of the City of Fresno approved: (i) an Addendum to the previously adopted Mitigated Negative Declaration prepared for Environmental Assessment No. A-17-007/R-17-010/ANX-17-005/TPM-17-06, dated August 2, 2017 (“**First EA Addendum**”); (ii) Resolution No. 2020-028 for Plan Amendment Application No. P18-03290 (“**Current Plan Amendment**”); and (iii) Ordinance Bill No. 2020-005 for Rezone No. P18-03290 (“**Rezone**”).

G. On March 5, 2020, the City Council of the City of Fresno approved Ordinance Bill No. 2020-006 for the Original Development Agreement.

H. The Developer has submitted a written request to the City for one certain amendment to the Original Development Agreement that is set forth in this Amendment. The City and Developer desire to enter into this Amendment in order to set forth and approve such amendment to the Original Development Agreement.

I. On May 4, 2022, at a duly notice public meeting and after due review and consideration of (i) the report of City staff, (ii) the recommendations of the Planning Commission of the City (adopted following a duly noticed public hearing before the Planning Commission), (iii) all other evidence heard and submitted at the public hearing, and (iv) all other appropriate documentation and circumstances, the City Council adopted Ordinance Bill No. _____ to approve this Amendment and any amendments to the Original Development Agreement set forth herein.

NOW THEREFORE, with reference to the above Recitals, the City and Developer agree as follows:

AGREEMENT

1. Recitals. Each and all of the foregoing recitals of background facts are incorporated herein by this reference as though set forth herein verbatim.
2. Acknowledgements. The proposed amendment in this Amendment: (a) will not increase the aggregate total density and intensity of the West Creek Village Project; (b) will not result in the permitted uses being modified from those in the Prior West Creek Village Approvals or Subsequent Approvals; and, (c) are in accordance with the Existing City Requirements as required by the Original Development Agreement, or as superseded by this Agreement.
3. Environmental Assessment Addendum. The proposed modification in this Amendment will not necessitate any changes or additions to the MND or First Addendum. In addition, none of the conditions described in CEQA Guidelines Sections 15162 or 15163 (the “**CEQA Guideline Sections**”) or California Public Resources Code §21166, which govern the need for the preparation of a subsequent environmental impact report, negative declaration, or a supplement to the EIR, have occurred.
4. Modification to Section 3.9(a) of the Original Development Agreement
 - 4.1 Section 3.9(a) of the Original Development Agreement provides that the density limitations of the West Creek Village Project Area does not exceed a total of 481 residential units comprised of 92 single-family detached, 25 single-family attached, 264 multi-family, and 100 lofts over ground floor retail.
 - 4.2 The City and Developer agree that the following specified text be removed from Section 3.9(a) of the Original Development Agreement: “... comprised of 92 single-family detached, 25 single-family attached, 264 multi-family, and 100 lofts over ground floor retail.”
5. Conflict. In the event of a conflict between this Amendment and all or any portion of the Original Development Agreement, the provisions of this Amendment shall govern and control.
6. Previously approved Mitigation Measures. As and when required under the provisions of the following applicable documents, the Developer shall comply with all applicable mitigation measures set forth in the MND and First Addendum.
7. Future Environmental Review. The Developer acknowledges that any Future Discretionary Approvals sought by the Developer in connection with the West Creek Village Project subsequent to the approvals granted

pursuant to this Amendment may require additional environmental review and that nothing in this Amendment constitutes a representation by the City of Fresno as to the degree of environmental review required under CEQA for such Future Discretionary Approvals and shall not be construed as such.

8. Binding and Effective. This Amendment shall become: (a) binding upon the effective date of Ordinance Bill No. _____, an Ordinance of the City of Fresno approving the Amendment to the Development Agreement for the West Creek Village Project; and (b) upon becoming binding pursuant to clause (a), shall be deemed effective as of the Amendment Date.

[SIGNATURES ARE ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this Fifth Amendment at Fresno, California, on the day and year first above written.

“City”


CITY OF FRESNO,
A California municipal corporation

By: _____
Georgeanne White
City Manager

ATTEST:
TODD STERMER, MMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

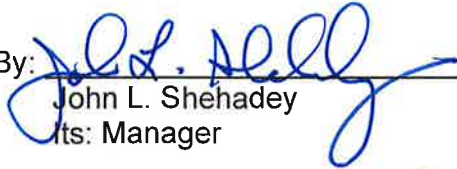
By:  _____
Talia Kolluri
Assistant City Attorney


Address for City:

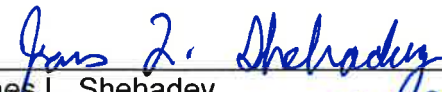
City of Fresno
Attention: Rob Holt
Planning and Development Department
2600 Fresno Street
Fresno, CA 93721
Phone: (559) 621-8056

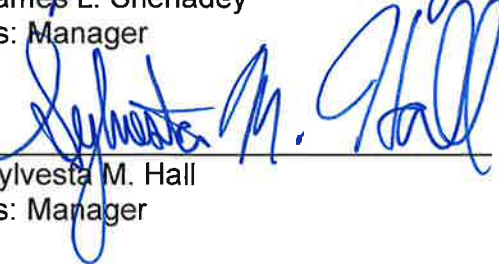
[SIGNATURES FOR DEVELOPER ARE ON THE FOLLOWING PAGE]

2500 MLK, LLC
a California limited liability company

By: 
John L. Shehadey
Its: Manager

By: 
Stephen J. Shehadey
Its: Manager

By: 
James L. Shehadey
Its: Manager

By: 
Sylvesta M. Hall
Its: Manager

Address for Developer:

c/o 2500 MLK, LLC
405 North Palm Avenue
Fresno, CA 93701
Attention: Stephen J. Shehadey
Facsimile: (559) 266-3115

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 Fresno)

On May 9, 2022, before me, Karen L. Kearns, a Notary Public, personally appeared James L. Shehadey, Stephen J. Shehadey, Sylvesta M. Hall and John L. Shehadey, 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.

Signature *Karen L. Kearns*



Exhibit "A-1"
Legal Description of
West Creek Village Project Area
Owned by Master Developer

Those parcels of real property situated in the County of Fresno, State of California described as follows:

PARCEL 1

Lot 39 in Section 16, Township 14 South, Range 20 East, Mount Diablo Base and Meridian, in the County of Fresno, State of California, according to the map thereof recorded in Volume 2 of Plats at page 8, Fresno County Records.

Lots 37 and 38 in Section 16, Township 14 South, Range 20 East, Mount Diablo Base and Meridian, in the County of Fresno, State of California, according to the map thereof recorded in Volume 2 of Plats at page 8, Fresno County Records.

The above described property excludes, however, that portion of Lots 38 & 39 of the Fresno Colony Tract, according to the map recorded in Book 2 of Plats, at Page 8, Fresno County Records, lying within the Southwest Quarter of Section 16, Township 14 South, Range 20 East, Mount Diablo Base and Meridian, according to the Official Plat thereof, in the County of Fresno, State of California, being more particularly described as follows.

The North half and the North one third of the South half of Lots 38 and 39 of said Tract. Containing an area of 26.06 acres, more or less.

PARCEL 2: APN 479-060-02

The North half of Lot 51 of Fresno Colony, according to the map thereof recorded in Book 2 Page 8 of Plats, Fresno County Records.

PARCEL 3: APN 479-060-03

The North half of Lot 52 of Fresno Colony, according to the map thereof recorded in Book 2 Page 8 of Plats, Fresno County Records.

PARCEL 4: APN 479-060-10

The South half of Lot 51 of Fresno Colony, according to the map thereof recorded in Book 2 Page 8 of Plats, Fresno County Records.

Excepting therefrom the South 20 feet thereof.

For the purpose of this Description, the South boundary of said Lot 51 is assumed to be 30 feet North of the South Boundary of Section 16, Township 14 South, Range 20 East, Mount Diablo Base and Meridian.

PARCEL 5: APN: 479-060-11

Lot 50 of Fresno Colony, according to the map thereof recorded in Book 2 Page 8 of Plats, Fresno County Records. Excepting therefrom the South 20 feet thereof.

For the purposes of this Description, the South boundary of said Lot 50 is assumed to be 30 feet North of the South Boundary of Section 16, Township 14 South, Range 20 East, Mount Diablo Base and Meridian.

PARCEL 6: APN: 479-060-09

The South half of Lot 52 of Fresno County, according to the Map thereof recorded in Book 2 Page 8 of Plats, Fresno County Records.

Excepting therefrom the Southeast quarter of said South half.

Also excepting therefrom the South 20 feet thereof.

For the purposes of this Description, the South boundary of said Lot 52 is assumed to be 30 feet North of the South boundary of Section 16, Township 14 South, Range 20 East, Mount Diablo Base and Meridian.

PARCEL 7: APN: 479-060-08

The Southeast quarter of the South half of Lot 52 of Fresno Colony, according to the map thereof recorded in Book 2 Page 8 of Plats, Fresno County Records.

Excepting therefrom the South 20 feet thereof.

For the purposes of this Description, the South boundary of said Lot 52 is assumed to be 30 feet North of the South boundary of Section 16, Township 14 South, Range 20 East, Mount Diablo Base and Meridian.

Exhibit "A-2"
Legal Description of
Fresno City College–West Fresno Satellite Parcel

That portion of Lots 38 & 39 of the Fresno Colony Tract, according to the map recorded in Book 2 of Plats, at Page 8, Fresno County Records, lying within the Southwest Quarter of Section 16, Township 14 South, Range 20 East, Mount Diablo Base and Meridian, according to the Official Plat thereof, in the County of Fresno, State of California, being more particularly described as follows.

The North half and the North one third of the South half of Lots 38 and 39 of said Tract. Containing an area of 26. 06 acres, more or less.