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CITY OF FRESNO
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**Regular Council Meeting
December 2, 2021**

FRESNO CITY COUNCIL



Information Packet

ITEM(S)

File ID 21-964, 1-X

Items related to Campus Pointe development:

A. Approve Implementation Agreement modifying 2007 Settlement Agreement with Kashian Enterprises, L.P.; and

B. ***Approve Annual Appropriation Resolution (AAR) amendment for a total of \$517,022.00, for reimbursement of certain development fees paid under protest (Requires 5 Affirmative Votes) (Subject to Veto).

**Contents of Supplement:
Implementation Agreement**

Item(s)

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

IMPLEMENTATION AGREEMENT

This AGREEMENT is made and entered into by and between the CITY OF FRESNO, a municipal corporation (the City), and Kashian Enterprises, L.P., a California limited partnership (Developer), (each a Party or jointly Parties).

RECITALS

- A. Developer (and related entities) is the primary developer of the remainder of the Campus Pointe Project (the Project) located on the campus of California State University, Fresno (CSUF).
- B. In September 2007, a Settlement Agreement (Settlement Agreement) was entered into wherein the Developer agreed to pay certain development and facilities fees to the City, among other terms, for the Project (Exhibit A hereto). This Implementation Agreement (Agreement) serves to clarify and modify the Settlement Agreement.
- C. The Parties, following fourteen years of implementation of the Settlement Agreement, now find that the Project has proven and will prove to be a valuable addition to the City, providing commercial, residential, and recreational facilities and amenities for City residents, and further development of the Project is beneficial and desired.
- D. The Parties also agree that since the CSUF Police Department is the primary law enforcement responder for the Project, the agreement concerning collection of certain Police facilities fees should be modified.
- E. The Parties also agree that the Project is providing substantial park and recreational facilities, so that the agreement concerning collection of certain Parks facilities fees should also be modified.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, it is mutually agreed as follows:

1. Recitals. Each of the recitals are true and incorporated herein.
2. Effective Date. This Agreement shall become effective when fully approved by Council and executed by all Parties (Effective Date).
3. Prior Agreement. Except as expressly clarified or modified herein, all terms of the Settlement Agreement shall remain in full force and effect.
4. Deleted Terms of Agreement: As between the City and Developer, the following sections and paragraphs of the Settlement Agreement shall be deleted and have no effect, from and after the Effective Date forward: 2.1, 2.2, 3.1, 3.2.3, 3.2.4, 3.2.7, 3.3 through 3.20.
5. Existing Public Park and Recreation Amenities. Recognition of the C.S.U.F. on-campus Park and Recreation Amenities available to the public and Campus Pointe residents was a factor supporting the Implementation Agreement including, without limitation, the following:
 - Seven (7) "Bulldog Trails" comprising 8.5 miles of campus walking routes.

- The Arboretum: Thousands of trees and over one hundred kinds of trees; the Peace Garden: stately conifers and grass; the Maple Mall where individual trees are memorials to the American submarines and crews lost at sea; the Shade Garden near the Memorial Fountain; the Allen Lew Memorial Grove; the Rose Garden and Iris Garden.
- Arbor Day Foundation's Tree Campus USA Program Award recipient for "its dedication to campus forestry management and environmental stewardship: Fresno State is the only one of the 23 California State University campuses to earn the designation, and one of only 16 campuses across the United States.
- Willow Trail-Link from Bullard to Barstow
- J.E. O'Neill Park
- Dean Richard Ford Memorial
- Maya Cinemas

6. Modified Terms of Settlement Agreement: As between the City and Developer, the following sections and paragraphs of the Settlement Agreement shall be deemed amended, as stated herein, with the following terms replacing these sections and paragraphs, in whole, from and after the Effective Date forward:

3.2.12 General Provision of City Services to Campus Pointe. The City agrees that the City will provide city services (including but not limited to police and fire services) to Campus Pointe project in the same manner and to the same extent as it provides such services to similarly situated, private developments. Nothing in this Agreement is intended to impose upon the City any greater responsibilities or duties to provide any public services not otherwise required by law.

7. Labor Compliance. Developer shall be solely responsible for compliance with any and all labor code requirements and obligations and shall indemnify the City as set forth herein, respecting future construction of improvements within Campus Pointe.

8. Indemnification. To the furthest extent allowed by law, Developer, and each of its related entities and subcontractors for the Project, shall indemnify, hold harmless and defend the City and its officials, employees, and agents for any loss or claim resulting, directly or indirectly, from this Agreement. Developer's obligations shall apply regardless of whether City or any of its officials, employees, or agents are negligent. This section shall survive termination of this Agreement.

9. Notices. Any notice to be given under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by electronic service or facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth below or at such other address as the Parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

City: City Manager
City of Fresno
2600 Fresno Street
Fresno, California 93721

Developer: Kashian Enterprises, L.P./Lance-Kashian & Company/Maravillosa, LLC.
265 E. River Park Circle, Suite 420
Fresno, California 93720

10. Representation of Authority of Parties/Signatories. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

11. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

12. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

13. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning. Accordingly, the Parties hereby waive the benefit of California Civil Code §1654 and any successor or amended statute, providing that in cases of uncertainty, language of a contract should be interpreted most strongly against the Party who caused the uncertainty to exist.

14. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses. For the purposes of this Agreement, "attorney's fees and legal expense" includes, without limitation, paralegals' fees and expenses, attorneys, consultants fees and expenses, expert witness fees and expenses, and all other expenses incurred by the prevailing party's attorneys in the course of litigation, whether or not otherwise recoverable as "attorneys' fees" or as "costs" under California law, and the same may be sought and awarded in accordance with California procedure as pertaining to an award of contractual attorneys' fees.

15. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral.

This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Developer.

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

CITY

DEVELOPER

CITY OF FRESNO,
a California municipal corporation

KASHIAN ENTERPRISES, L.P., a
California Limited Partnership

By: _____
Thomas Esqueda, City Manager

By: Lance Kashian & Company, a
California Corporation
Its: General Partner

By: _____
Name: Edward M. Kashian
Title: Chief Executive Officer

ATTEST:
TODD STERMER, CMC, City Clerk

MARAVILLOSA, LLC., a California
limited liability company

By: _____
Deputy Date

By: Lance-Kashian & Company, a
California Corporation
Its: Manager

APPROVED AS TO FORM:
DOUGLAS T. SLOAN, City Attorney

By: _____
Name: Edward M. Kashian
Title: Chief Executive Officer

By: _____
City Attorney Date

Exhibit A – Settlement Agreement