

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 April 20, 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]

DRAFT

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

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.