

FIRST AMENDMENT TO AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

This First Amendment to the Amended and Restated Disposition and Development Agreement (First Amendment) made and entered into as of this _____ day of _____, 2017, amends the Amended and Restated Disposition and Development Agreement entered between Cesar Chavez Foundation, a California non-profit public benefit corporation (CCF) and the City of Fresno, a municipal corporation (City).

RECITALS

On or about March 5, 2015, CCF and the City entered into an Option Agreement for real property located at the 5100 block of E. Kings Canyon Road (Property). The Option Agreement included a Disposition and Development Agreement (DDA) regarding a proposed 135-unit affordable multi-family development on the Property.

On or about June 20, 2016, CCF and the City entered into an Amended Disposition and Development Agreement (Amended DDA), which amended the Disposition and Development Agreement to modify the Option Period, Purchase Price, and included a provision for CCF to reconvey a portion of the Property back to the City.

On or about March 23, 2017, CCF and the City entered into an Amended and Restated Disposition and Development Agreement (Amended and Restated DDA) which realigned performance deadlines associated with securing Low Income Housing Tax Credits and other forms of public and private mortgage and debt financing.

The Parties hereto desire to modify the terms of the Amended and Restated DDA to clarify the parties' roles in the construction and maintenance of the Project's improvements.

AMENDMENT

NOW, THEREFORE, in consideration of the foregoing, the terms and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree the aforesaid Amended and Restated DDA be amended as follows:

1. Section 1.14 of the Amended and Restated Agreement is deleted and replaced as follows:

1.14 Improvements. "Improvements" means the development and construction of the Project on the Property, including, the development of a separate parcel which shall serve as a common driveway for the Project and additionally the improvements, amenities and infrastructures as set forth in Exhibit "B". Except as otherwise provided in Exhibit "B", the completed improvements as set forth in Exhibit "B" will be inspected, accepted, and thereafter maintained by the City.

2. Section 2.14.3 of the Amended and Restated Agreement is deleted and replaced as follows:

2.14.3. Subsequent to the Close of Escrow and conveyance of the Reconveyed Parcel to the City, the Developer will maintain, insure, and fully indemnify the City for the Reconveyed Parcel in perpetuity at the Developer's sole cost and expense. The Developer shall execute a Covenant illustrating the maintenance, indemnity and insurance requirements for the Reconveyed Parcel.

3. Section 4.4 of the Amended and Restated DDA is deleted and replaced as follows:

4.4 Certificate of Completion. After the Developer has satisfactorily completed the Project according to this Agreement and after the completion of the Project, the Developer shall submit to the City: 1) certification in writing to that the Project has been substantially completed in accordance with the plans and scope of work, approved by the City; 2) a recorded Notice of Completion; 3) a cost-certifying final budget where the Developer shall identify the actual costs of construction of the Project (and identify costs in line-item format, consistent with the Project Budget); and 4) a request for a recorded Certificate of Completion. The Certificate of Completion will be provided subsequent to when Developer's work and Improvements have been completed, inspected and accepted by the City. Upon a determination by the City that the Developer is in compliance with all of the Developer's obligations, including completion of all Improvements as set forth in Exhibit "B" and as specified in this Agreement, the City shall furnish, within thirty calendar days of a written request by the Developer, a recordable Certificate of Completion for the Project in the form attached hereto as EXHIBIT "D". The City will not unreasonably withhold or delay furnishing the Certificate of Completion. If the City fails to provide the Certificate of Completion within the specified time, it shall provide the Developer a written statement indicating in what respects the Developer has failed to complete the Project in conformance with this Agreement or has otherwise failed to comply with the terms of this Agreement, and what measures the Developer will need to take or what standards it will need to meet in order to obtain the Certificate of Completion. Upon the Developer taking the specified measures and meeting the specified standards, the Developer will certify to the CITY in writing of such compliance and the City shall deliver the recordable Certificate of Completion to the Developer in accordance with the provisions of this section Conditions to Issuing the Certificate of Completion. The following are all conditions precedent to City issuing the Certificate of Completion for the Project, and each submission will be in a form and substance satisfactory to City:

4. The name of the Project on the cover page of the Amended and Restated DDA is deleted and replaced as "Kings Canyon Apartments".

5. Except as otherwise provided herein, the Amended and Restated Agreement entered into by CCF and the City remains in full force and effect.

6. In the event of any conflict between the body of this First Amendment and any Exhibit or Attachment hereto, the terms and conditions of the body of this First Amendment shall control and take precedence over the terms and

conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto, which purport to modify the allocation of risk between the Parties, provided for within the body of this First Amendment, shall be null and void.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, CCF and the City have signed this First Amendment on the dates and in the year set forth below.

CITY OF FRESNO, a municipal corporation

By: _____
WILMA QUAN-SCHETER
City Manager

Dated: _____, 2017

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: Tracy N. Parvanian
TRACY N. PARVANIAN
Deputy City Attorney

Dated: October 26, 2017

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

Dated: _____, 2017

CESAR CHAVEZ FOUNDATION, a California non-profit public benefit corporation

By: Paul S. Park
PAUL S. PARK
Secretary

Dated: Sept. 26, 2017

Exhibit B

Scope of Development and Basic Design

Improvements Completed and Maintained by Developer

- AHD (Affordable Housing Development)
 - 135-unit low-income development (one manager's unit included) of which 89 units will be for multi-family residents and 46 units will be for senior households
- HRI (Housing Related Infrastructure)
 - Preservation and relocation of existing historic CA Fan Palm trees per CoA
- TRA (Transportation Related Amenities)
 - Street Furniture – rest area seating etc. along N and S sides of E Kings Canyon Rd. from bus stops at Willow to bus stops at Peach per City approval

Improvements Completed by Developer but Accepted and Maintained by City

- TRA (Transportation Related Amenities)
 - Street Lighting Improvements – N and S sides of E Kings Canyon Rd. from bus stops at Willow to bus stops at Peach
- STI (Sustainable Transportation Infrastructure)
 - Bike Paths - N & S sides of E Kings Canyon Rd. from bus stops at Willow to bus stops at Peach
 - Vertical barriers, stripping, reflectors and signage
 - Walk Paths – Complete/improve all missing or substandard sidewalks on N & S side of E Kings Canyon Rd between new bus stops on Peach and Willow.
 - RR damaged curbs and gutters as needed.
 - ADA compliant curb ramps along sidewalks, driveways and crosswalks
 - Improved Crosswalks (12 total) – Highly visible decorative and ADA accessible crosswalks with striping, pavers and signage at:
 - Willow and Kings (4 way intersection)
 - Peach and Kings (4 way intersection)
 - Alder and Kings (T Intersection)
 - 3 additional crosswalks at Wal-Mart/retail/entrance – two crossing Kings and one crossing front of retail driveway
 - Countdown Heads to be installed at signalized intersections between Willow and Peach