

GROUND LEASE AGREEMENT

1
2 THIS GROUND LEASE AGREEMENT (hereinafter "Ground Lease") is made and
3 entered into this 6th day of June, 2017 ("Effective Date"), by and between
4 HIGHWAY CITY COMMUNITY DEVELOPMENT, INC., a California nonprofit public benefit
5 corporation, 4710 N. Polk, Fresno, CA 93722, ("LESSOR"), and the COUNTY OF FRESNO, a
6 political subdivision of the State of California, 333 W. Pontiac, Clovis, CA 93612 ("LESSEE").
7 LESSOR and LESSEE shall be referred to herein singularly as a "Party" and collectively as
8 "Parties".

9 WHEREAS, LESSOR is the owner of an approximately 15,075 square foot area of bare
10 land in the Highway City area of Fresno County ("the "Library Site"), which is part of a larger 2.11
11 acre parcel of bare land owned by LESSOR having an APN of 510-030-23 (the "Property"), all of
12 which is more particularly described in Exhibit "A", attached hereto and incorporated herein by
13 reference; and

14 WHEREAS, as set forth in Exhibit "B", attached hereto and incorporated by reference,
15 LESSOR proposes to build an approximately 5,560 square foot multi-purpose neighborhood
16 community resource center ("Community Center") on the Property (the "LESSOR's Site"),
17 adjacent to the Library Site portion of the Property, and is desirous of LESSEE leasing the Library
18 Site from LESSOR for purposes of LESSEE, in its discretion, building a Fresno County branch
19 library thereon, as provided herein below; and

20 WHEREAS, as part of its proposal, LESSOR proposes to install and maintain at least
21 sixty-five (65) paved parking spaces and related approach aprons, drive lanes, curbs, gutters,
22 sidewalks, ingress and egress to the Library Site, and lighting, as shown in Exhibit "A"
23 (collectively, the "Parking & Site Improvements"), as provided herein below; and

24 WHEREAS, LESSEE desires to lease the Library Site for the sole purpose of constructing
25 a Fresno County branch library thereon, in its discretion, provided that LESSOR first timely
26 constructs the Community Center on the LESSOR's Site, as provided herein below; and

27 WHEREAS, LESSEE has sufficient Measure B sales tax revenue to fund the rent of the
28 Library Site for the Initial Term (as defined below) upon the terms and conditions set forth herein

1 below.

2 NOW, THEREFORE, in consideration of the mutual obligations herein of the Parties, the
3 Parties agree as follows:

4 1. PROPERTY AND LEASED PREMISES – LESSOR hereby leases to LESSEE the
5 Library Site as identified in Exhibit “A”.

6 2. TERM – The term of this Ground Lease shall be ninety-nine (99) years beginning
7 on the Effective Date and ending ninety-nine (99) years thereafter (the “Initial Term”). Upon
8 expiration of the Initial Term, this Ground Lease shall renew automatically for another ninety-nine
9 (99) years upon the same terms and conditions specified herein (the “Renewal Term”), unless
10 LESSEE provides at least one (1) year’s advance written notice to LESSOR of its intention to not
11 renew this Ground Lease. If this Ground Lease is renewed as provided herein, then at least one
12 (1) year in advance of the termination of the Renewal Term, the Parties shall commence
13 negotiations, which negotiations shall result in either of the following prior to the expiration of the
14 Renewal Term: (a) further renewal of the term of this Ground Lease upon a reasonable rental
15 rate, and for a reasonable term, that is fair to each of the Parties and commensurate with allowing
16 the LESSEE to continue to use the Library Site for the purposes herein; or (2) the LESSOR’s
17 purchase of the Library Project from LESSEE for its then-current fair market value, which value
18 may be established by written appraisal, provided that the appraiser shall be selected by each
19 Party’s designated appraiser (who is not an employee of either Party) jointly selecting an
20 independent appraiser; the cost of such appraisal shall be shared equally by the Parties
21 regardless of whether such sale is consummated.

22 3. RENT – Subject to Section 17.A, herein, LESSEE shall pay to LESSOR within
23 ninety (90) days of the Effective Date, a one-time lease payment of one hundred fifty thousand
24 and no/100 (\$150,000) dollars. LESSEE shall pay no rent for the entirety of the Renewal Term.

25 4. DEVELOPMENT AND USE OF THE LIBRARY SITE – LESSEE shall use the
26 Library Site for the purposes of developing, constructing, and operating thereon a building to be
27 used as a County library, including services incidental to library use which are then customary of
28 the type of such library (the “Library Project”), at no cost to LESSOR; all of the foregoing to the

1 extent permitted by City of Fresno zoning; and for no other use without LESSOR's prior written
2 consent. LESSEE's use of the Library Site shall not interfere with LESSOR's use of the
3 LESSOR's Site. Notwithstanding the foregoing, LESSEE has the discretion of whether or when to
4 construct the Library Project on the Library Site.

5 5. DEVELOPMENT AND USE OF THE LESSOR'S SITE – LESSOR shall use the
6 LESSOR's Site for purpose of developing, constructing, and operating thereon the Community
7 Center and Parking & Site Improvements, at no cost to LESSEE, all of the foregoing to the extent
8 permitted by City of Fresno zoning; and for no other use without LESSEE's prior written consent.
9 LESSOR's use of the LESSOR's Site shall not interfere with LESSEE's use of the Library Site.
10 The Parking Site and Improvements shall be for the common use and benefit of the LESSOR's
11 Site and the Library Site, and to that end, the Parking & Site Improvements shall be shared
12 together, without segregated or restricted parking except for Accessible Spaces (as defined
13 herein below), with LESSEE's employees and invitees of the Library Site, including by way of
14 example, library patrons, and LESSOR's employees and invitees of the LESSOR's Site, all at no
15 cost to LESSEE or such LESSEE's invitees. LESSOR shall be responsible for maintaining,
16 repairing, and repaving (including re-striping parking stalls and globe replacement) the Parking
17 and Improvements, at no cost to LESSEE, during the term of this Ground Lease. "Accessible
18 Space" means a parking space restricted to use by vehicles displaying a valid California
19 Department of Motor Vehicles "disabled person" placard or license plate or a similar valid
20 placard or license plate issued by other states according to their respective laws, or to vehicles
21 otherwise complying with the accessible vehicle requirements of the California Building Code
22 (Title 24), and the Americans With Disabilities Act (42 United States Codes, secs. 12101, et
23 seq.), including all then-current guidelines, standards, and regulations adopted or enacted in
24 relation thereto.

25 6. LIBRARY PROJECT PARKING IMPROVEMENTS/LICENSE – At the time
26 LESSEE constructs any Library Project building, LESSEE shall be responsible at its own cost for
27 constructing any additional parking improvements ("Library Additional Parking Improvements")
28 sufficient to meet any zoning, building code or other legal requirement resulting from the

1 construction of the Library Project building in the area identified for additional parking in Phase
2 2 in Exhibit "B" to this Ground Lease. LESSOR agrees that LESSEE shall have a license to
3 enter into and construct said Library Additional Parking Improvements at the time of
4 construction of any Library Project building. Once constructed and approved for use, the
5 Library Additional Parking Improvements shall be for the common use and benefit of the
6 LESSOR's Site and the Library Site, and to that end, the Library Additional Parking Improvements
7 shall be shared together, without segregated or restricted parking except for Accessible Spaces
8 with LESSEE's employees and invitees of the Library Site, including by way of example, library
9 patrons, and LESSOR's employees and invitees of the LESSOR's Site, all at no cost to LESSEE
10 or such LESSEE's invitees. LESSOR shall be responsible for maintaining, repairing, and
11 repaving (including re-striping parking stalls and globe replacement) the improvements during the
12 term of this Ground Lease, however, LESSEE shall pay to LESSOR a pro-rata share of the
13 expenses incurred in the maintenance repair or repaving of the Library Additional Parking
14 Improvements.

15 7. QUIET ENJOYMENT – The LESSOR promises, covenants, and warrants, to
16 LESSEE that the LESSEE, including its assigns or sublessees, may quietly have, hold, and
17 enjoy all of the Library Site and any improvements thereto, during the Initial Term of this
18 Ground Lease, the Renewal Term, and any extended term thereof, without hindrance or
19 interruption by the LESSOR or by any other person or entity lawfully or equitably claiming by,
20 through or under the LESSOR, except as limited by the Permitted Encumbrances (as set forth
21 in Exhibit "C", attached hereto and incorporated herein by reference).

22 8. INFRASTRUCTURE – LESSOR shall be responsible, at its cost, for ensuring, prior
23 to LESSEE commencing construction of the Library Project on the Library Site, that the Library
24 Site has, in LESSEE's opinion, access to utilities necessary for the Library Project. Utilities and
25 infrastructure to serve the Library Project and the Library Site shall be extended by LESSOR to
26 the perimeter of the Library Site in an area that is anticipated to be at least ten (10) feet away
27 outside of the Library Project building and any foundations supporting the building and any
28 related structure(s). Utilities shall include, but not be limited to, electricity, gas, water (domestic

1 and fire suppression), wastewater, and storm water. Infrastructure shall include, but not be
2 limited to, conduit and pipeline pathways to the Library Site; sleeves shall be placed by LESSOR
3 under streets and paved areas to facilitate connections to and replacement of utilities; utility
4 boxes shall be placed by LESSOR to facilitate future installation and access to utilities. Sleeves
5 shall be at least twice the diameter of the anticipated size of the utility line passing through it,
6 which utility line shall be provided by the LESSEE. LESSEE shall provide information to
7 LESSOR regarding the sizing of all utility lines. Pathways of sleeves, utilities, and infrastructure
8 shall be clearly and permanently identified by LESSOR on the Library Site, and shown on a plan
9 of the Property to be provided by LESSOR, with sufficient information and benchmarks, to
10 LESSEE's satisfaction, to locate them in the future, all of the foregoing to be provided by
11 LESSOR, at LESSOR's sole cost and expense promptly after the placement of such sleeves,
12 utilities and infrastructure.

13 9. MAINTENANCE OF PROPERTY – LESSOR shall maintain the Property and the
14 surrounding area, including weed abatement and abatement of any nuisances as per Fresno City
15 Code, beginning on the Effective Date and continuing (a) for the Library Site, until LESSEE
16 commences construction of the Library Project, and (b) for the LESSOR's Site, at all times during
17 the term of this Ground Lease.

18 10. UTILITIES – LESSEE shall pay directly those metered costs for its use of natural
19 gas and electricity, water, garbage, sewer and all cost associated with its use of telephone
20 service to the Library Project.

21 11. TAXES – From the Effective Date of this Ground Lease and continuing until
22 LESSEE commences construction of the Library Project building, LESSOR shall be responsible
23 for all property taxes and assessments and property-related fees and charges for the Property,
24 including the Library Site, and shall pay all such taxes, assessments, and property-related fees
25 and charges directly to the appropriate authority or authorities. After the date the LESSEE
26 commences construction of the Library Project building, LESSEE shall pay to LESSOR a pro-rata
27 share of any property taxes and assessments and property-related fees and charges resulting
28 from the LESSEE's use or occupancy of the Library site and/or Library Additional Parking

1 Improvements. Provided however, the provisions of this Section 11 with respect to property
2 related fees and charges shall not apply to the costs of utilities under Section 10, herein.

3 12. LIENS – Except for Permitted Encumbrances as identified in Exhibit “C”, or as
4 provided in Section 29 herein, LESSOR shall at all times keep the Property, including the Library
5 Site, free and clear of any and all liens and claims for services, labor or materials supplied or
6 claimed to have been supplied to LESSOR or to or in connection with the Property, and free and
7 clear of all encumbrances, attachments, executions, pledges, hypothecations, levies, mortgages,
8 conditional sale agreements, or chattel mortgages, and LESSEE shall not suffer any other matter
9 or thing whereby the estate, rights, and/or interest of the LESSEE in the Library Site and/or the
10 Library Project, or any part thereof, might be impaired.

11 13. RIGHTS TO PURCHASE:

12 A. LESSEE’S RIGHT OF FIRST REFUSAL– If, at any time during the term of this
13 Ground Lease, LESSOR intends to offer to sell, assign, or transfer the Property or any portion
14 thereof, including the Library Site, or any interest therein (in any such case, the “Offered
15 Property”), to a third party (other than an entity controlling, controlled by or under common control
16 with LESSOR), the LESSOR shall, prior to any such action, deliver to LESSEE written notice of
17 the terms and conditions, upon which LESSOR intends to offer the Offered Property for sale,
18 assignment, or transfer (the “LESSOR’s Notice”). Provided that no event of default has occurred
19 and is continuing hereunder, LESSEE shall have the right to purchase the Offered Property on
20 the terms and conditions set forth in LESSOR’s Notice by giving written notice to the LESSOR
21 within ninety (90) days after receiving LESSOR’s Notice of LESSEE’s intention to purchase on
22 the terms contained in such LESSOR’s Notice.

23 In the event LESSEE fails to notify LESSOR within said ninety (90) day period of
24 LESSEE’s election to exercise its right to purchase hereunder, or in the event LESSEE notifies
25 LESSOR within said period that LESSEE will not exercise its right to purchase hereunder,
26 LESSOR may proceed to sell the Offered Property, stated in such LESSOR’s Notice, to any third
27 party after the expiration of such ninety (90) day period, but only on substantially the same terms
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1 and conditions as were set forth in the LESSOR's Notice, and any material change in such terms
2 and conditions shall be deemed a new offer and LESSOR shall in such event not consummate
3 any sale, assignment, or transfer to any third party without first submitting to LESSEE a written
4 notice containing all of the changed terms and conditions (and not just those which have changed
5 substantially or materially) for determination by LESSEE in the manner provided above, except
6 that LESSEE shall then have sixty (60) days after receipt of said notice in which to elect to
7 exercise its right to purchase on the basis of the changed terms and conditions. For these
8 purposes, the LESSOR's offer shall be deemed to have been changed substantially or materially
9 only if the purchase, assignment, or transfer price at which the Offered Property is offered differs
10 by more than three percent (3%) from the purchase, assignment, or transfer price previously
11 offered by LESSOR.

12 B. LESSOR's RIGHT OF FIRST REFUSAL– If, at any time during the term of this
13 Ground Lease, LESSEE intends to offer to sell, assign, or transfer the Library Project, or any
14 interest therein (in any such case, the "Offered Library"), to a third party, the LESSEE shall, prior
15 to any such action, deliver to LESSOR written notice of the terms and conditions, upon which
16 LESSEE intends to offer the Offered Library for sale, assignment, or transfer (the "LESSEE's
17 Notice"). Provided that no event of default has occurred and is continuing hereunder, LESSOR
18 shall have the right to purchase the Offered Library the terms and conditions set forth in
19 LESSEE's Notice by giving written notice to the LESSEE within ninety (90) days after receiving
20 LESSEE's Notice of LESSOR's intention to purchase on the terms contained in such LESSEE's
21 Notice.

22 In the event LESSOR fails to notify LESSEE within said ninety (90) day period of
23 LESSOR's election to exercise its right to purchase hereunder, or in the event LESSOR notifies
24 LESSEE within said period that LESSOR will not exercise its right to purchase hereunder,
25 LESSEE may proceed to sell the Offered Library, stated in such LESSEE's Notice, to any third
26 party after the expiration of such ninety (90) day period, but only on substantially the same terms
27 and conditions as were set forth in the LESSEE's Notice, and any material change in such terms
28 and conditions shall be deemed a new offer and LESSEE shall in such event not consummate

1 any sale, assignment, or transfer to any third party without first submitting to LESSOR a written
2 notice containing all of the changed terms and conditions (and not just those which have changed
3 substantially or materially) for determination by LESSOR in the manner provided above, except
4 that LESSOR shall then have sixty (60) days after receipt of said notice in which to elect to
5 exercise its right to purchase on the basis of the changed terms and conditions. For these
6 purposes, the LESSEE's offer shall be deemed to have been changed substantially or materially
7 only if the purchase, assignment, or transfer price at which the Offered Library is offered differs by
8 more than three percent (3%) from the purchase, assignment, or transfer price previously offered
9 by LESSEE. Notwithstanding any of the foregoing, LESSEE shall not sell, assign or transfer
10 LESSEE's interest in this Ground Lease to any third party, without LESSOR's written consent,
11 which consent shall not be unreasonable withheld, delayed, or denied.

12 14. COMPLIANCE WITH ALL LAWS – As to the entirety of the Property, including the
13 Library Site, LESSOR shall comply with any and all applicable Federal, State, County, City of
14 Fresno and/or local agency statutes, laws, codes (including, but not limited to, building codes,
15 such as the California Building Code (Title 24 of the CCR)), ordinances (including, but not
16 limited to, building and construction ordinances (including grading or excavation requirements
17 thereunder), zoning ordinances or development standards (including setbacks, height, fencing
18 requirements thereunder), rules, requirements, regulations, guidelines to the extent that such
19 guidelines have the legal effect of being mandatory, throughout the term of this Ground Lease.

20 15. WASTE – LESSEE shall not knowingly commit, suffer or permit any waste or
21 nuisance on or about the Library Site or knowingly allow any acts to be done thereon in
22 violation of any laws or ordinances. LESSOR shall not knowingly commit, suffer or permit any
23 waste or nuisance on or about Lessor's Site or knowingly allow any acts to be done thereon in
24 violation of any laws or ordinances.

25 16. REPRESENTATIONS, WARRANTIES AND COVENANTS -

26 A. Representations and Warranties of the LESSEE. In addition to any agreements
27 of LESSEE herein, LESSEE makes the following representations and warranties to LESSOR
28 as of the Effective Date:

1 (1) The LESSEE is a political subdivision of the State of California created in
2 accordance with the provisions of the Constitution of the State of California, with full legal right,
3 power and authority to enter into and perform its obligations under this Ground Lease.

4 (2) The LESSEE has full legal right, power and authority to enter into this Ground
5 Lease as LESSEE and to carry out and consummate all transactions contemplated by this
6 Ground Lease and by proper action has duly authorized the execution and delivery of this
7 Ground Lease.

8 (3) The officer(s) of the LESSEE executing this Ground Lease are duly and
9 properly holding their respective offices and are fully authorized to execute this Ground Lease.

10 (4) This Ground Lease has been duly authorized, executed and delivered by the
11 LESSEE, and will constitute a legal, valid and binding agreement of the LESSEE, enforceable
12 against the LESSEE in accordance with its terms on the Effective Date.

13 (5) No representation, warranty or statement of the LESSEE in this Ground Lease
14 contains any untrue statement of a material fact or omits or will omit to state a material fact
15 necessary to make the statements or facts contained therein not misleading.

16 (6) The LESSEE represents with respect to the Library Site that neither the
17 LESSEE nor any other person or entity under the control of, or with the knowledge of the
18 LESSEE will cause or permit the use generation, storage, release, discharge, or disposal of
19 any Hazardous Materials on, under, in, or about the Library Site or transported to or from the
20 Library Site.

21 B. Representations, Warranties and Covenants of the LESSOR. In addition to any
22 agreements of LESSOR herein, the LESSOR makes the following representations, warranties
23 and covenants to the LESSEE as of the Effective Date:

24 (1) The LESSOR is a valid 501(c)(3) public benefit corporation of the State of
25 California, in good standing, created in accordance with the provisions of the laws of the State
26 of California, with full legal right, power and authority to enter into and perform its obligations
27 under this Ground Lease.

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1 (2) The LESSOR has full legal right, power and authority to enter into this Ground
2 Lease as LESSOR to transfer and convey the leasehold interest in the Library Site to the
3 LESSEE under this Ground Lease, and to carry out and consummate all transactions
4 contemplated by this Ground Lease and by proper action has duly authorized the execution
5 and delivery of this Ground Lease.

6 (3) Each individual executing this Ground Lease on behalf of LESSOR represents
7 and warrants that such individual is duly authorized to execute and deliver this Ground Lease on
8 behalf of HIGHWAY CITY COMMUNITY DEVELOPMENT, a 501(c)(3) public benefit
9 corporation, and that this Ground Lease is binding upon HIGHWAY CITY COMMUNITY
10 DEVELOPMENT, a 501(c)3 public benefit corporation, in accordance with its terms.

11 (4) This Ground Lease has been duly authorized, executed and delivered by
12 LESSOR, and will constitute a legal, valid and binding agreement of LESSOR, enforceable
13 against the LESSOR in accordance with its terms upon the Effective Date.

14 (5) The LESSOR is the sole owner in fee simple of the Property and has
15 marketable and insurable fee simple title to the Property, there is no suit, action, arbitration,
16 legal, administrative, or other proceeding or inquiry pending against the Property or pending
17 against the LESSOR which could affect the LESSEE's title to the proposed Library Project
18 and/or its possessory interest in the Library Site, affect the value of the Library Project or
19 Library Site, or subject an owner of the Property to liability and there are no outstanding
20 mortgages, deeds of trust, bond indebtedness, leaseholds, pledges, conditions or restrictions,
21 liens or encumbrances against the Property, or any portion thereof including the Library Site,
22 except as identified in Exhibit "C", collectively, as the "Permitted Encumbrances".

23 (6) No consent, permission, authorization, order, license, or registration with any
24 governmental authority is necessary in connection with the execution and delivery of this
25 Ground Lease, except as have been obtained.

26 (7) There exists no litigation or other proceeding pending or threatened against the
27 LESSOR, that, if determined adversely, would materially and adversely affect the ability of the
28 LESSOR to perform its obligations under this Ground Lease.

1 (8) Neither the execution and delivery of this Ground Lease and documents
2 referenced herein, nor the incurrence of the obligations set forth herein, nor the consummation
3 of the transactions herein contemplated, nor compliance with the terms of this Ground Lease
4 and the documents referenced herein conflict with or result in the material breach of any terms,
5 conditions or provisions of, or constitute a default under, any agreements or instruments to
6 which the LESSOR is a party or affecting the Property or any portion thereof including the
7 Library Site.

8 (9) There are no attachments, execution proceedings, or assignments for the
9 benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings pending or
10 threatened against the LESSOR or the Property or any portion thereof including the Library
11 Site.

12 (10) There are no and have been no:

13 (i) actual or pending improvements which will result in the creation of any liens,
14 encumbrances or assessments or charges upon the Property, including public
15 assessments or mechanics liens, other than the Permitted Encumbrances, and
16 the LESSOR agrees to indemnify, defend and hold the LESSEE, including its
17 officers, agents, and employees, free and harmless from and against any
18 claims, liabilities, losses, costs, damages, expenses and attorneys' fees and
19 costs arising from any liens, encumbrances or assessments or charges that
20 have been, or may be, imposed upon the Property as a consequence of actual
21 or impending improvements at or after the Effective Date, including any
22 obligations to pay a fee or assessment or charge for infrastructure to the extent
23 such liability survives or continues at or after the Effective Date but excluding
24 utilities under Section 9 herein.

25 (ii) uncured notices from any governmental agency notifying the LESSOR of
26 any conditions or circumstances occurring, or that has occurred, on or about
27 the Property that would be a violation of Section [13] of this Ground Lease.

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1 (iii) notices of any condemnation, zoning or other land-use regulation
2 proceedings, either instituted or planned to be instituted, which would
3 detrimentally affect the use, operation or value of the Property or any portion
4 thereof, including the Library Site.

5 (11) The LESSOR hereby agrees that it will not enter into any new leases,
6 licenses, or any other obligations or agreements that will affect the Property at or after the
7 Effective Date, without the express prior written consent of the LESSEE.

8 (12) The LESSOR will not subject the Property to any additional liens,
9 encumbrances, covenants, conditions, easements, licenses, rights of way, or similar matters
10 after the Effective Date without the express prior written consent of the LESSEE.

11 (13) The LESSOR shall promptly notify the LESSEE of any event or circumstance
12 that makes any representation or warranty of the LESSOR under this Ground Lease untrue or
13 misleading, or of any covenant of the LESSOR under this Ground Lease incapable or less
14 likely of being performed. The LESSOR's obligation to provide the notice described in the
15 preceding sentence to the LESSEE shall in no way relieve the LESSOR of any liability for a
16 breach by the LESSOR of any of its representations, warranties or covenants under this
17 Ground Lease.

18 (14) No representation, warranty or statement of the LESSOR in this Ground
19 Lease contains any untrue statement of a material fact or omits or will omit to state a material
20 fact necessary to make the statements or facts contained therein not misleading.

21 (15) To the LESSOR's best knowledge, after having examined its documents,
22 public records and other instruments and having made inquiry of appropriate departments and
23 agencies with respect to the Property and, except as expressly provided in this Ground Lease,
24 no Hazardous Materials were used, generated, stored, released, discharged or disposed of on,
25 under, in, or about the Property or transported to or from the Property prior to the Effective
26 Date. "Hazardous Materials" as used in this Ground Lease mean any substance, material, or
27 waste which is or becomes, regulated by any local governmental authority, the State, or the
28 United States Government, including, but not limited to, any material or substance which is (i)

1 defined as a “hazardous waste”, “extremely hazardous waste”, or “restricted hazardous waste”
2 under Section 25115, 25117 or 25122.7 of the California Health and Safety Code, or listed
3 pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5
4 (Hazardous Waste Control Law), (ii) defined as “hazardous substance” under Section 25316 of
5 the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Talmer
6 Hazardous Substance Account Act), (iii) defined as a “hazardous material”, “hazardous
7 substance”, or “hazardous waste” under Section 25501 of the California Health and Safety
8 Code.

9 (16) LESSOR has given careful consideration, and has undertaken diligent
10 investigation, in consultation with appropriate professionals and persons experienced in
11 developing and constructing projects similar to the Community Center, as to the expected cost
12 of undertaking its obligations under this Ground Lease, and LESSOR believes it will obtain
13 sufficient funds and resources to construct the Community Center and Parking & Site
14 Improvements, plus all infrastructure necessary to construction of LESSEE’s Library Project
15 under Section 8, herein, not later than September 30, 2019.

16 (17) The LESSOR represents with respect to the Property that neither the
17 LESSOR nor any other person or entity under the control of, or with the knowledge of the
18 LESSOR will cause or permit the use generation, storage, release, discharge, or disposal of
19 any Hazardous Materials on, under, in, or about the Property or transported to or from the
20 Property.

21 17. PRE-CONDITIONS AND REMEDIES – Except as expressly provided in
22 subdivision A, B, or D of this Section 17, the Parties agree that any breach of or default under
23 this Ground Lease, or any other condition or circumstance, will not allow either Party to
24 terminate this Ground Lease or otherwise allow LESSOR to interfere with the LESSEE’s quiet
25 enjoyment and beneficial use of the Library Site and the Library Project under this Ground
26 Lease.

27 A. COMPLETION OF COMMUNITY CENTER and Parking & Site Improvements –
28 This Ground Lease is contingent upon LESSOR’s satisfactory completion of its

1 planned Community Center and Parking & Site Improvements, at no cost to
2 LESSEE, as described in Exhibit B and pursuant to the terms and conditions of this
3 Ground Lease. In the event that the Community Center and Parking & Site
4 Improvements, plus all infrastructure necessary to construction of LESSEE's
5 Library Project under Section 7 herein, are not completed by September 30, 2019,
6 LESSOR shall fully and immediately refund LESSEE's advance rental payment of
7 one hundred fifty thousand and no/100 (\$150,000) dollars for the Initial Term, and
8 upon the LESSEE's receipt of such funds, this Ground Lease shall terminate.

9 B. NON FUNDING TERMINATION – Notwithstanding anything to the contrary herein,
10 LESSEE is not under any duty to construct the Library Project. This Ground Lease
11 is contingent on the allocation of funds by a governmental agency. Should funds
12 not be allocated with respect to any of the LESSEE's obligations under this Ground
13 Lease, this Ground Lease may be terminated by the Board of Supervisors at any
14 time by LESSEE giving at least thirty (30) days prior written notice to LESSOR.

15 C. BREACH -

16 (1) Default Notice. Upon the occurrence of a breach of, or default in the
17 performance, by either Party of any of its material obligations under this Ground
18 Lease, the Party not in breach or default may give written notice to the breaching
19 or defaulting Party of such breach or default (in either such case, hereinafter a
20 "Default Notice"). Upon receipt of the Default Notice, the breaching or defaulting
21 Party will have fifteen (15) days to cure any monetary breach or default, or thirty
22 (30) days to cure any non-monetary breach or default, described in the Default
23 Notice; provided however, that if a non-monetary breach or default, (i) concerns
24 an imminent threat to the health or safety of any person who may be in or about
25 the LESSOR's Site or the Library Site, such breach or default shall be immediately
26 cured by the LESSOR or LESSEE, respectively, (ii) does not concern an imminent
27 threat to the health or safety of any person who may be in or about the LESSOR's
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1 Site or the Library Site, and is not reasonably capable of cure within that thirty (30)
2 day period, then no breach or default shall be deemed to have occurred by reason
3 of such failure so long as the Party receiving the Default Notice gives the Party
4 that provided the Default Notice a written notice describing, with reasonable
5 particularity, the reason why such Party receiving the Default Notice cannot
6 reasonably cure such breach within such thirty (30) day period, the steps that such
7 Party receiving the Default Notice will take to cure the breach or default, and
8 promptly commences, and diligently and continuously prosecutes, the cure to
9 completion within a reasonable period not to exceed the earlier of either: (i) ninety
10 (90) days, or (ii) any time allowed by law, or order of any court or a governmental
11 authority or public agency having regulatory or oversight jurisdiction over the
12 subject matter thereof (in either such case, respectively, hereinafter the "Cure
13 Period").

14
15 (2) Event of Default: If the breaching or defaulting Party does not cure the
16 breach or default within the applicable Cure Period (to the extent that a Cure Period
17 is allowed for such breach or default in this Ground Lease), then the breaching or
18 defaulting Party shall be deemed to have committed an "Event of Default"
19 hereunder, and the party giving the Default Notice shall have the right, but not the
20 obligation, to pursue its legal and equitable rights and remedies against the
21 breaching or defaulting Party in respect of such Event of Default set forth in this
22 Section 17-C.

23 (3) Additional Events of Default: In addition to the provisions set forth in this
24 Section 17 hereinabove, LESSOR will be deemed to have committed an Event of
25 Default under this Ground Lease if LESSOR commits a breach of, or default in the
26 performance of, any of its material obligations under any loan agreement(s) or
27 promissory note(s) related to any deed of trust under Section 29, herein, that
28

1 encumbers, the Property, including the Library Site, or any portion thereof (each
2 hereinafter a "Financing Agreement," and collectively "Financing Agreements"),
3 and fails to cure that breach or default within the applicable time period for cure
4 set forth thereunder; provided that LESSOR will be entitled to all affirmative
5 defenses in this Ground Lease that LESSOR would have against the beneficiary,
6 or other lender, with respect to such breach or default under any of the Financing
7 Agreements. LESSOR shall timely give, and require the beneficiary or lender
8 under any of the Financing Agreements to timely give, LESSEE a copy of any
9 written notice of breach or default by LESSOR under any of the Financing
10 Agreements where such beneficiary or lender is required to give such written
11 notice thereof to LESSOR. Notwithstanding anything to the contrary in this Section
12 17, LESSEE shall not be required to provide LESSOR with a Default Notice, or
13 any opportunity to cure, any Event of Default of LESSOR described in this Section
14 17-C, but all LESSOR cure rights, if any, shall be as set forth in the Financing
15 Agreements.
16

17 (4) Exercise of Remedies: Upon an uncured Event of Default by a Party, the
18 Party that provided the Default Notice to the breaching or defaulting Party will have
19 the rights and remedies set forth in this Section 17-C against the breaching or
20 defaulting Party in addition to any other rights or remedies permitted at law. As
21 provided in this Section 17-C, the Party that provided the Default Notice shall have
22 the option to do any of the following, but in any event such exercise of remedies
23 shall not permit such Party to terminate this Ground Lease:

- 24 i. To undertake or assert, without terminating this Ground Lease, an action in
25 specific performance, or other equitable remedy, to require the breaching or
26 defaulting Party's performance of its obligations under this Ground Lease.
27 ii. To recover from the breaching or defaulting Party damages suffered by reason
28

1 of an Event of Default by the breaching or defaulting Party.

2 (5) Where LESSEE's right to possess, occupy, or use the Library Site
3 (including the Library Project) under this Ground Lease is or may be impaired
4 such that LESSEE is or may be compelled to vacate (or partially vacate) the
5 Library Site as a result of an Event of Default by LESSOR with respect to this
6 Section 17-C, then, notwithstanding any provision contained herein to the
7 contrary, to the extent that LESSEE is or may be compelled to vacate (or partially
8 vacate) the Library Site, LESSEE may seek and obtain the remedy of "non-
9 disturbance and attornment" under Section 29 herein.

10 D. EMINENT DOMAIN - If the whole or any portion of the Library Site or the Library
11 Project shall be taken in eminent domain proceedings, or by sale in lieu of such
12 taking by a governmental entity threatening to use the power of eminent domain,
13 and which taking renders the Library Site and/or the Library Project unsuitable for
14 the continued use by the LESSEE, as reasonably determined by LESSEE, then
15 this Ground Lease shall terminate when possession is taken by the condemning
16 entity. If this Ground Lease is terminated because of such taking, then the
17 proceeds shall be distributed to the LESSEE for the value of its interest in the
18 Library Project and the Library Site, and the remainder, if any, of such proceeds
19 shall be distributed to the LESSOR. LESSOR and LESSEE shall each have the
20 right to represent its own interest, at its own cost and expense, in any
21 proceedings arising out of such taking, and each of the LESSOR and the
22 LESSEE shall reasonably cooperate with the other, including without limitation,
23 settling with the condemning authority only with the other Party's reasonable
24 consent if such settlement would affect the other Party's rights. If this Ground
25 Lease is not terminated because of such taking, then it shall remain in full force
26 and effect with respect to the remainder of the Library Site and the Library
27 Project. The LESSOR and the LESSEE each waives the provisions of the
28 California Code of Civil Procedure, Section 1265.130, or any similar law that

1 permits a Party to petition a court to terminate this Ground Lease upon a taking
2 affecting the Library Site or the Library Project, the Parties agreeing that any
3 such termination rights shall be only as expressly set forth in this Ground Lease.

4 18. HOLD HARMLESS - LESSOR agrees to indemnify, save, hold harmless, and at
5 LESSEE'S request, defend the LESSEE, its officers, agents, and employees from any and all
6 attorney's fees, costs and expenses, damages, liabilities, claims, and losses occurring or resulting
7 to LESSEE in connection with the performance, or failure to perform, by LESSOR, its officers,
8 agents, or employees under this Ground Lease, and from any and all attorney's fees, costs and
9 expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, or
10 corporation who may be injured or damaged by the performance, or failure to perform of
11 LESSOR, its officers, agents, or employees under this Ground Lease. The parties acknowledge
12 that as between LESSOR and LESSEE, each is responsible for the negligence of its own
13 employees and invitees. The provisions of this Section 18 shall survive the termination of this
14 Ground Lease.

15 19. INSURANCE - Without limiting the LESSEE'S right to obtain indemnification from
16 LESSOR or any third parties, LESSOR, at its sole expense, shall maintain in full force and effect,
17 the following insurance policies or a program of self-insurance throughout the term of this Ground
18 Lease:

19 A. Commercial General Liability - Commercial General Liability Insurance with limits of
20 not less than One Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Two
21 Million Dollars (\$2,000,000). This policy shall be issued on a per occurrence basis. LESSEE may
22 require specific coverages including completed operations, products liability, contractual liability,
23 Explosion-Collapse-Underground, fire legal liability, or any other liability insurance deemed
24 necessary because of the nature of this contract.

25 B. Worker's Compensation - A policy of Worker's Compensation insurance as may be
26 required by the California Labor Code.

27 LESSOR shall obtain endorsements to the Commercial General Liability insurance naming
28 the County of Fresno (hereinafter "County"), its officers, agents, and employees, individually and

1 collectively, as additional insured, but only insofar as the operations under this Ground Lease are
2 concerned. Such coverage for additional insured shall apply as primary insurance and any other
3 insurance or self-insurance maintained by its officers, agents, and employees shall be excess
4 only and not contributing with insurance provided under LESSOR'S policies herein. This
5 insurance shall not be cancelled or changed without a minimum of thirty (30) days advance
6 written notice given to County.

7 Within (30) days from the date LESSOR executes this Ground Lease, LESSOR shall
8 provide certificates of insurance and endorsement as stated above for all of the foregoing
9 policies, as required herein, to the County of Fresno, Attn: ISD Lease Services (L-322), 333 W.
10 Pontiac Way, Clovis, CA 93612, stating that such insurance coverages have been obtained and
11 are in full force; that the LESSEE, its officers, agents and employees will not be responsible for
12 any premiums on the policies; that such Commercial General Liability insurance names the
13 LESSEE, its officers, agents, and employees, individually and collectively, as additional insured,
14 but only insofar as the operations under this Ground Lease are concerned; that such coverage for
15 additional insured shall apply as primary insurance and any other insurance or self- insurance
16 shall not be cancelled or changed without a minimum of thirty (30) days advance written notice
17 given to LESSEE.

18 In the event LESSOR fails to keep in effect at all times insurance coverage as herein
19 provided, the LESSEE may, in addition to other remedies it may have, suspend or terminate this
20 Ground Lease upon the occurrence of such event.

21 All policies shall be with admitted insurers licensed to do business in the State of
22 California. Insurance purchased shall be purchased from companies possessing a current A.M
23 Best Company rating of A FSC VII or better.

24 LESSEE shall maintain during the term of this Ground Lease the following policies of
25 insurance, which coverages may be provided in whole or in part through one or more programs of
26 self-insurance:

27 a. Commercial General liability insurance with limits of not less than One Million
28 Dollars (\$1,000,000.00) per occurrence and an annual aggregate of not less than Two Million

1 Dollars (\$2,000,000.00). This policy shall be issued on an occurrence basis.

2 20. ASSIGNMENT – Except as otherwise provided herein, neither Party shall assign,
3 transfer or sub-let this Ground Lease, or the rights or duties of such Party under this Ground
4 Lease, without the prior written consent of the other Party, which consent shall not be
5 unreasonably, delayed, withheld or denied, provided however, nothing in this Section 20 shall
6 require LESSEE to obtain LESSOR’s consent for any occupants or users providing services
7 incidental to library use which are then customary of the type of such library, as provided in
8 Section 4, herein.

9 21. GOVERNING LAW – Venue for any action arising out of or relating to this Ground
10 Lease shall be in Fresno County, California. This Ground Lease shall be governed by the laws of
11 the State of California.

12 22. NOTICES – All notices to be given under this Ground Lease by either Party to the
13 other Party shall be in writing, and given by any one of the following methods:

14 A. Personal delivery; or

15 B. Sent by certified United States mail, first class postage prepaid, with return receipt
16 requested, to the applicable addresses as set forth below, in which case such
17 notice shall be deemed given three (3) business days if LESSOR is the recipient, or
18 three (3) LESSEE business days if LESSEE is the recipient, after such deposit and
19 postmark with the United States Postal Service; or

20 C. Sent by a reputable overnight commercial courier, in which case such notice shall
21 be deemed given one (1) business day if LESSOR is the recipient, or one (1)
22 LESSEE business day if LESSEE is the recipient, after such deposit with that
23 courier to the applicable addresses as set forth below; or

24 The addresses and telephone numbers of the Parties for the purposes of giving receiving notices
25 under this Ground Lease are as follows:

26
27 LESSEE:
28 County of Fresno (L-32)
Director of Internal

LESSOR:
President or Executive Director
Highway City Community Development

1 Services/Chief Information Officer 4710 N. Polk
2 333 W. Pontiac Fresno, CA 93722
3 Clovis, CA 93612

4 Provided however, such notices may be given to such person or at such other place as either of
5 the Parties may from time to time designate by giving written notice to the other Party, and
6 provided further however, in any event, notices of changes of address or termination of this
7 Ground Lease shall not be effective until actual delivery of such notice. Notices given hereunder
8 shall not be amendments or modifications to this Ground Lease.

9 23. INDEPENDENT CONTRACTOR – In performance of the work, duties and
10 obligations assumed by LESSOR under this Ground Lease, it is mutually understood and agreed
11 that LESSOR, including any and all of the LESSOR’S officers, agents, and employees will at all
12 times be acting and performing as an independent contractor, and shall act in an independent
13 capacity and not as an officer, agent, servant, employee, joint venture, partner, or associate of the
14 LESSEE. Furthermore, LESSEE shall have no right to control or supervise or direct the manner
15 or method by which LESSOR shall perform its work and function. However, LESSEE shall retain
16 the right to administer this Ground Lease so as to verify that LESSOR is performing its obligations
17 in accordance with the terms and conditions thereof.

18 LESSOR and LESSEE shall comply with all applicable provisions of law and the rules
19 and regulations, if any, of governmental authorities having jurisdiction over matters the subject
20 thereof. It is acknowledged that during the term of this Ground Lease, LESSOR may be
21 providing services to others unrelated to the LESSEE or to this Ground Lease.

22 24. NO THIRD PARTY BENEFICIARIES – Notwithstanding anything else to the
23 contrary herein, the Parties acknowledge and agree that no other person, firm, corporation, or
24 entity shall be deemed an intended third-party beneficiary of this Ground Lease.

25 25. PARTIAL INVALIDITY/SEVERABILITY – If any one or more of the terms,
26 provisions, covenants or conditions of this Ground Lease shall to any extent be declared
27 invalid, unenforceable, void or voidable for any reason by a court of competent jurisdiction and
28 the finding or order or decree of which becomes final, none of the remaining terms, provisions,

1 covenants or conditions of this Ground Lease shall be affected thereby, and each provision of
2 this Ground Lease shall be valid and enforceable to the fullest extent permitted by law.

3 26. COUNTERPARTS – This Ground Lease may be executed in any number of
4 counterparts, each of which shall be deemed to be an original, but all of which together shall
5 constitute one and the same Ground Lease. It is also agreed that separate counterparts of this
6 Ground Lease may separately be executed by the signatories to this Ground Lease, all with
7 the same force and effect as though the same counterpart had been executed by all of the
8 signatories.

9 27. DISCLOSURE OF SELF DEALING TRANSACTIONS – This provision is only
10 applicable if the LESSOR is operating as a corporation (a for-profit or non-profit corporation) or if
11 during the term of this Ground Lease, the LESSOR changes its status to operate as a
12 corporation.

13 Members of LESSOR’S Board of Directors shall disclose any self-dealing transactions that
14 they are a party to while LESSOR is providing goods or performing services under this Ground
15 Lease. A self-dealing transaction shall mean a transaction to which the LESSOR is a party and in
16 which one or more of its directors has a material financial interest. Members of the Board of
17 Directors shall disclose any self-dealing transactions that they are a party to by completing and
18 signing a Self-Dealing Transaction Disclosure Form Exhibit “ D ”, attached hereto and by this
19 reference incorporated herein, and submitting it to the County of Fresno prior to commencing with
20 the self-dealing transaction or immediately thereafter.

21 28. ESTOPPEL CERTIFICATE – LESSEE shall, at any time upon not less than thirty
22 (30) days prior written request by LESSOR, execute, acknowledge and deliver to LESSOR a
23 written estoppel certificate, in a form reasonably satisfactory to LESSOR, certifying that this
24 Ground Lease is unmodified and in full force and effect (or, if there have been modifications,
25 that the same is in full force and effect as modified and stating the modifications) and, if
26 applicable, the dates to which the rent and any other charges have been paid in advance. Any
27 such statement delivered pursuant to this Section 28 may be relied upon by third persons,
28 including a prospective purchaser or encumbrancer of the Property.

1 LESSEE'S failure to execute and deliver an estoppel certificate within thirty (30) days after
2 LESSEE'S receipt of LESSOR'S written request therefor shall be conclusive upon LESSEE
3 that this Ground Lease is in full force and effect, without modification except as may be
4 represented by LESSOR, that there are no uncured defaults in LESSOR'S performance, that
5 not more than rental amount stated in Section 3, herein, has been paid in advance, and that all
6 other statements required to be made in the estoppel certificate are conclusively made.

7 29. SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT – At LESSOR'S
8 option, this Ground Lease shall be subordinated to any mortgage or deed of trust which is now
9 or shall hereafter be placed upon the Property, and LESSEE agrees, with reasonable advance
10 notice thereof given to LESSEE as to the need therefor, to execute and deliver any instrument
11 which may be reasonably necessary to further effect the subordination of this Ground Lease to
12 any such mortgage or deed of trust; provided, however, that such instrument of subordination
13 shall expressly provide, or the mortgagee or beneficiary of such mortgage or deed of trust
14 otherwise shall expressly agree in writing in recordable form delivered to LESSEE, that the
15 mortgagee or beneficiary, including their successors and assigns, recognize LESSEE's
16 leasehold interest under this Ground Lease and that so long as LESSEE is not in default under
17 this Ground Lease, foreclosure of any such mortgage or deed of trust or sale pursuant to
18 exercise of any power of sale thereunder, or deed given in lieu thereof, shall not affect this
19 Ground Lease but such foreclosure or sale, or deed given in lieu thereof, shall be made subject
20 to this Ground Lease which shall continue in full force and effect, binding on LESSEE, as
21 lessee, and the transferee, as lessor (all of which is commonly referred to as the remedy of
22 "non-disturbance" by LESSOR). LESSEE shall attorn to the transferee as if said transferee
23 was LESSOR under this Ground Lease (which is commonly referred to as the remedy of
24 "attornment" by LESSEE). .

25 30. WAIVER – The waiver by either Party of a breach by the other of any provision of
26 this Ground Lease shall not constitute a continuing waiver of any subsequent breach of either
27 the same or a different provision of this Ground Lease.

28 No provision of this Ground Lease may be waived unless in writing signed by both Parties to

1 this Ground Lease. Waiver of any one provision herein shall not be deemed to be a waiver of
2 any other provision herein.

3 31. ENTIRE GROUND LEASE – This constitutes the entire Ground Lease between
4 the LESSOR and LESSEE with respect to the subject matter hereof and supersedes all prior
5 leases, negotiations, proposals, commitments, writings, advertisements, publications, and
6 understandings of any nature whatsoever unless expressly referenced in this Ground Lease.

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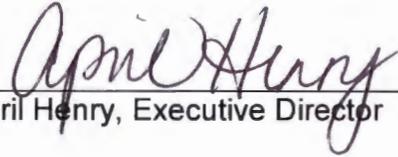
28 ///

1 IN WITNESS WHEREOF, the parties hereto have executed this Ground Lease as of the day and
2 year first hereinabove written.

3 LESSEE:
4 COUNTY OF FRESNO

LESSOR:
Highway City Community Development

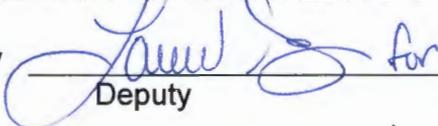
5 By 
6 Brian Pacheco, Chairman
Board of Supervisors

By 
April Henry, Executive Director

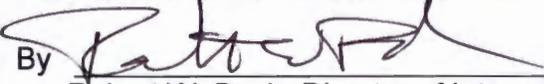
7 APPROVED AS TO LEGAL FORM:
8 DANIEL C. CEDERBORG, COUNTY
9 COUNSEL

10 By 
Deputy

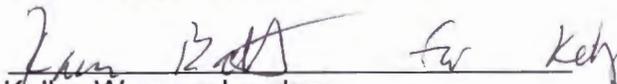
11 APPROVED AS TO ACCOUNTING FORM:
12 OSCAR J. GARCIA, CPA
13 AUDITOR-CONTROLLER/
14 TREASURER-TAX COLLECTOR

15 By  for
Deputy

16 RECOMMENDED FOR APPROVAL:

17 
18 Robert W. Bash, Director of Internal
19 Services/Chief Information Officer

20 RECOMMENDED FOR APPROVAL:

21 By  for 
22 Kelley Worman-Landano
23 County Librarian

24 Fund ~~0001~~ 0107 
25 Subclass 10000
26 Org No. 75110800
Acct. No. 7887

27 HighwayCity/L-322HCCD/Library

28 ATTEST:
BERNICE E. SEIDEL, Clerk
Board of Supervisors
By 
Deputy

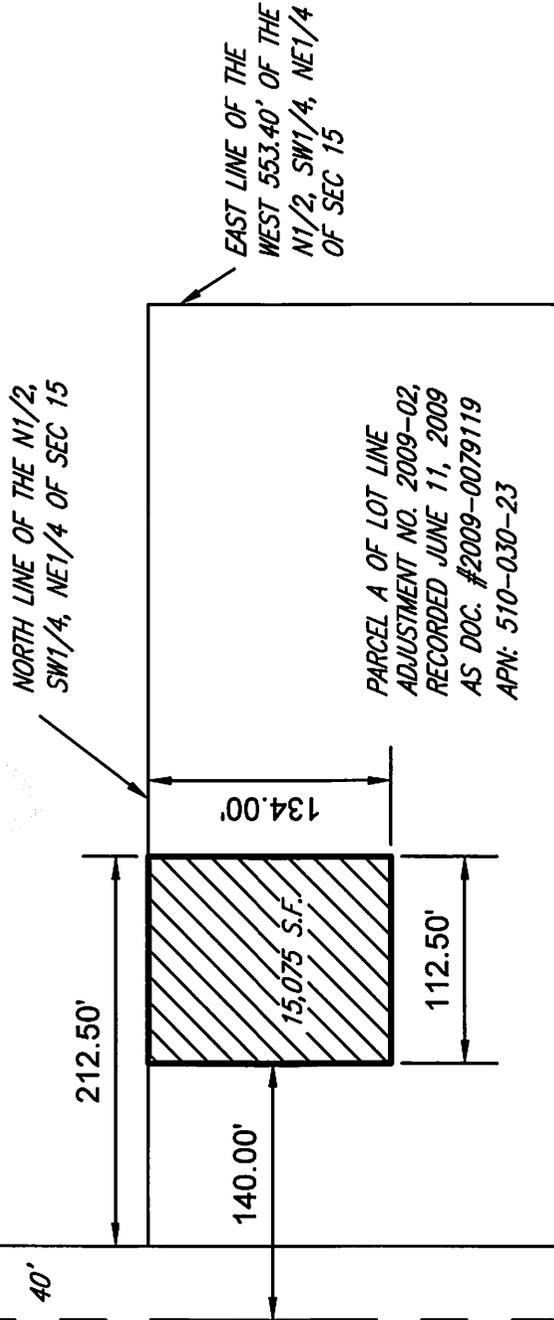
EXHIBIT A

EXHIBIT B

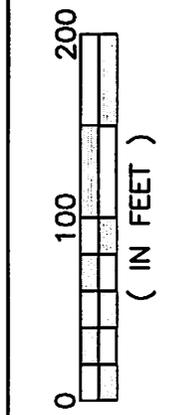


WEST LINE OF THE NE QUARTER OF SEC 15, 13/19

NORTH POLK AVENUE



NAME:	DATE:
DRAWN: GMEDINA	06/01/17
CK: KNEHRING	06/01/17



DEPARTMENT OF PUBLIC WORKS AND PLANNING
HIGHWAY CITY
LIBRARY PARCEL LEASE
#NO. SHEET NO. 1 OF 1

Property Description

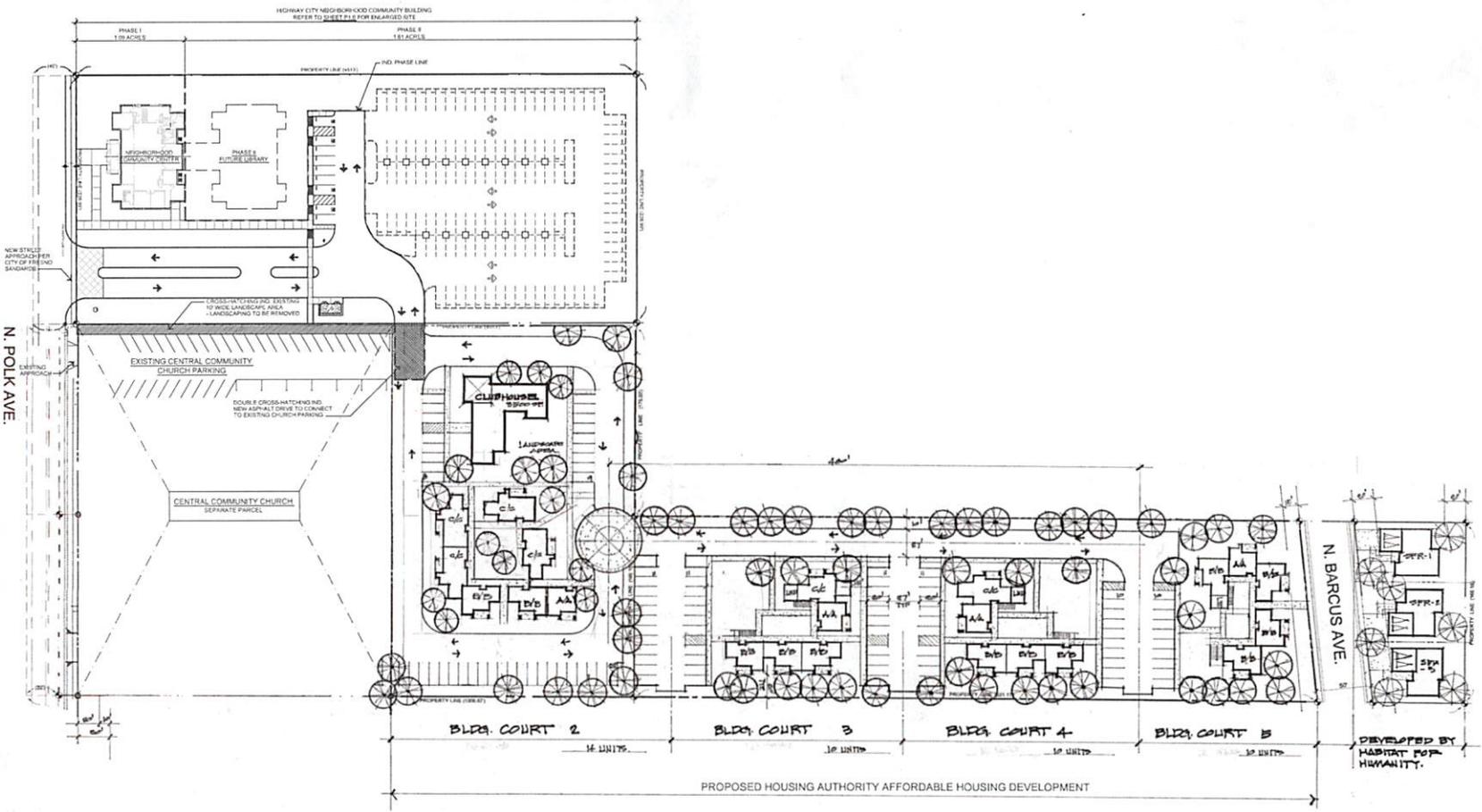
Proposed Highway City Library - Lease Parcel

The Easterly 112.50 feet of the Westerly 212.50 feet of the Northerly 134.00 feet of Parcel "A" of Lot Line Adjustment No. 2009-02, recorded June 11, 2009 as Document No. 2009-0079119, Official Records of Fresno County, more particularly described as follows:

That portion of the West 553.40 feet of the North half of the Southwest quarter of the Northeast quarter of Section 15, Township 13 South, Range 19 East, Mount Diablo Base and Meridian, lying South of the North 258.00 feet of said North half;

Excepting therefrom the South 175.00 feet thereof.

Consisting of 15,075 square feet.



MASTER SITE PLAN

HIGHWAY CITY CENTERPOINT DEVELOPMENT

FRESNO, CA

DEVELOPED BY:
FRESNO HOUSING AUTHORITY



VICINITY MAP: FRESNO, CA
SCALE N.T.S.

EXHIBIT B



HIGHWAY CITY
CENTERPOINT DEVELOPMENT
N. POLK AVE.
FRESNO, CA
FOR:
FRESNO HOUSING AUTHORITY

NO.	DATE	REVISION
01	01/20/18	PRELIMINARY DESIGN
02	02/20/18	REVISED PRELIMINARY DESIGN
03	03/02/18	REVISED PRELIMINARY DESIGN

PROJECT TITLE:

MASTER SITE PLAN

SCALE: 1"=40'
SHEET NO.:

P-1.0a



PROJECT NO. 108

152014 PROJECTS 1008-10A - HIGHWAY CITY CENTERPOINT DEVELOPMENT MASTER SITE PLAN - 08/20/18 11:50 AM (DWG) 10/1/18 11:50 AM

EXHIBIT C

PERMITTED ENCUMBRANCES

Permitted Encumbrances shall be:

All items as set forth on Schedule "B" of the attached Preliminary Title Report for the Property, EXCEPTING Item No. 1 Real Estate Taxes.

CONDITION OF TITLE

Guarantee Number:

Issued By:



CHICAGO TITLE INSURANCE COMPANY

FWFM-TO17000805

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, AND THE GUARANTEE CONDITIONS ATTACHED HERETO AND MADE A PART OF THIS GUARANTEE,

CHICAGO TITLE INSURANCE COMPANY
a corporation, herein called the Company

GUARANTEES

the Assured named in Schedule A of this Guarantee

against loss or damage not exceeding the Amount of Liability stated in Schedule A sustained by the Assured by reason of any incorrectness in the Assurances set forth in Schedule A.

Chicago Title Company
2540 W. Shaw Lane, Suite 112
Fresno, CA 93711

Countersigned By:

Mark W. Barsoth

Authorized Officer or Agent



Chicago Title Insurance Company

By:

[Signature]

President

Attest:

[Signature]

Secretary

ISSUING OFFICE:
Title Officer: Bob Tully Chicago Title Company 2540 W. Shaw Lane, Suite 112 Fresno, CA 93711 Main Phone: (559)492-4208 Email: robert.tully@fnf.com

SCHEDULE A

Amount of Liability	Fee	Title Officer
\$5,000.00	\$500.00	Bob Tully

Date of Guarantee: May 15, 2017 at 12:00 AM

1. Name of Assured: The County of Fresno
2. The estate or interest in the Land which is covered by this Guarantee is:

A Fee

3. The Land referred to in this Guarantee is described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

4. ASSURANCES:

According to the Public Records as of the Date of Guarantee,

- a. Title to the estate or interest in the Land is vested in:
 - Highway City Community Development, Inc., a California Corporation
- b. Title to the estate or interest is subject to defects, liens or encumbrances shown in Schedule B which are not necessarily shown in the order of their priority.

END OF SCHEDULE A

EXHIBIT "A"
Legal Description

For APN/Parcel ID(s): 510-030-23

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA AND IS DESCRIBED AS FOLLOWS:

Parcel A of Lot Line Adjustment 2009-02, recorded as Document No. 2009-0079119 of Official Records of Fresno County, more particularly described as follows:

That portion of the West 553.40 feet of the North half of the Southwest quarter of the Northeast quarter of Section 15, Township 13 South, Range 19 East, Mount Diablo Base and Meridian, in the City of Fresno, County of Fresno, State of California, lying South of the North 258.00 feet of said North half.

Excepting therefrom the South 175.00 feet thereof.

SCHEDULE B**1. REAL ESTATE TAXES:**

- a. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2017-2018.
- b. Note: Property taxes for the fiscal year shown below are PAID. For proration purposes the amounts were:

Tax ID No.:	510-030-23
Fiscal Year:	2016-2017
1st Installment:	\$1,215.45
2nd Installment:	\$1,215.45
Exemption:	\$0.00
Land:	\$198,990.00
Improvements:	\$0.00
Personal Property:	\$0.00
Code Area:	005-095

- c. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A or as a result of changes in ownership or new construction occurring prior to Date of Policy.
- d. The herein described property lies within the boundaries of the Fresno Metropolitan Flood Control District and may be subject to assessment for drainage fees and/or requirements to construct planned local drainage facilities
- | | |
|-----------------|------------------------------|
| Disclosed by: | FMFCD Resolution No. 1816 |
| Recording Date: | July 31, 1995 |
| Recording No.: | 95092128 of Official Records |
- No assessments have been levied at this time.
- e. Taxes and assessments levied by the Fresno Irrigation District.
- f. Taxes and assessments levied by the Highway City Community Service District.

2. THE FOLLOWING DEFECTS, LIENS AND ENCUMBRANCES (WHICH ARE NOT NECESSARILY SHOWN IN THEIR ORDER OF PRIORITY) AGAINST THE INTEREST:

- a. Easement(s) for the purpose(s) shown below and rights incidental thereto as reserved in a document;
- | | |
|-----------------|---|
| Reserved by: | Calvin Richter, et al |
| Purpose: | open ditch and pipeline |
| Recording Date: | November 22, 1965 |
| Recording No.: | Book 5243, Page 147 as Document No. 94042 of Official Records |
| Affects: | said land, as set forth in said document |
- b. Rights of the public to any portion of the Land lying within the area commonly known as North Polk Avenue.

SCHEDULE B
(continued)

- c. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
- Granted to: City of Fresno
Purpose: public street
Recording Date: March 4, 1999
Recording No.: 1999-0033753 of Official Records
Affects: said land, as set forth in said document
- d. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
- Granted to: Fresno Irrigation District
Purpose: canals, pipes, pipelines and other conduits
Recording Date: April 5, 2012
Recording No.: 2012-0048130 of Official Records
Affects: said land, as set forth in said document
- e. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:
- Granted to: City of Fresno
Purpose: public street
Recording Date: July 29, 2013
Recording No.: 2013-0106120 of Official Records
Affects: said land, as set forth in said document
- f. The search did not disclose any open mortgages or deeds of trust of record, therefore the Company reserves the right to require further evidence to confirm that the property is unencumbered, and further reserves the right to make additional requirements or add additional items or exceptions upon receipt of the requested evidence.
- g. Any right, interest or claim that may exist, arise or be asserted against the Title under or pursuant to the Perishable Agricultural Commodities Act of 1930, as amended, 7 USC 499a et seq., the Packers and Stockyard Act of 1921, as amended, 7 USC 181 et seq., or any similar state laws.

3. **THE FOLLOWING MATTERS ARE DISCLOSED BY NAME ONLY AND THE COMPANY, WITHOUT ADDITIONAL INFORMATION, IS UNABLE TO DETERMINE WHETHER ANY OR ALL OF THESE MATTERS ARE DEFECTS, LIENS OR ENCUMBRANCES AGAINST THE INTEREST:**

none

END OF SCHEDULE B

EXCLUSIONS FROM COVERAGE

Except as expressly provided by the assurances in Schedule A, the Company assumes no liability for loss or damage by reason of the following:

- (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the Land.
- (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the Public Records (1) that are created, suffered, assumed or agreed to by one or more of the Assureds; or (2) that result in no loss to the Assured.
- (c) Defects, liens, encumbrances, adverse claims or other matters not shown by the Public Records.
- (d) The identity of any party shown or referred to in any of the schedules of this Guarantee.
- (e) The validity, legal effect or priority of any matter shown or referred to in any of the schedules of this Guarantee.
- (f) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or (2) proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the Public Records.
- (g) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the Public Records.

GUARANTEE CONDITIONS**1. DEFINITION OF TERMS**

The following terms when used in the Guarantee mean:

- (a) the "Assured": the party or parties named as the Assured in Schedule A, or on a supplemental writing executed by the Company.
- (b) "Land": the Land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "Land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (c) "Mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (d) "Public Records": those records established under California statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (e) "Date of Guarantee": the Date of Guarantee set forth in Schedule A.
- (f) "Amount of Liability": the Amount of Liability as stated in Schedule A.

2. NOTICE OF CLAIM TO BE GIVEN BY ASSURED

The Assured shall notify the Company promptly in writing in case knowledge shall come to the Assured of any assertion of facts, or claim of title or interest that is contrary to the assurances set forth in Schedule A and that might cause loss or damage for which the Company may be liable under this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of the Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

3. NO DUTY TO DEFEND OR PROSECUTE

The Company shall have no duty to defend or prosecute any action or proceeding to which the Assured is a party, notwithstanding the nature of any allegation in such action or proceeding.

4. COMPANY'S OPTION TO DEFEND OR PROSECUTE ACTIONS; DUTY OF ASSURED TO COOPERATE

Even though the Company has no duty to defend or prosecute as set forth in Paragraph 3 above:

- (a) The Company shall have the right, at its sole option and cost, to institute and prosecute any action or proceeding, interpose a defense, as limited in Paragraph 4 (b), or to do any other act which in its opinion may be necessary or desirable to establish the correctness of the assurances set forth in Schedule A or to prevent or reduce loss or damage to the Assured. The Company may take any appropriate action under the terms of this Guarantee, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this Guarantee. If the Company shall exercise its rights under this paragraph, it shall do so diligently.
- (b) If the Company elects to exercise its options as stated in Paragraph 4 (a) the Company shall have the right to select counsel of its choice (subject to the right of the Assured to object for reasonable cause) to represent the Assured and shall not be liable for and will not pay the fees of any other counsel, nor will the Company pay any fees, costs or expenses incurred by an Assured in the defense of those causes of action which allege matters not covered by this Guarantee.
- (c) Whenever the Company shall have brought an action or interposed a defense as permitted by the provisions of this Guarantee, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from an adverse judgment or order.
- (d) In all cases where this Guarantee permits the Company to prosecute or provide for the defense of any action or proceeding, the Assured shall secure to the Company the right to so prosecute or provide for the defense of any action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the Assured for this purpose. Whenever requested by the Company, the Assured, at the Company's expense, shall give the Company all reasonable aid in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or lawful act which in the opinion of the Company may be necessary or desirable to establish the correctness of the assurances set forth in Schedule A or to prevent or reduce loss or damage to the Assured. If the Company is prejudiced by the failure of the Assured to furnish the required cooperation, the Company's obligations to the Assured under the Guarantee shall terminate.

(continued)

5. PROOF OF LOSS OR DAMAGE

- (a) In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Assured furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.
- (b) In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this paragraph shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS: TERMINATION OF LIABILITY

In case of a claim under this Guarantee, the Company shall have the following additional options:

- (a) To pay or tender payment of the Amount of Liability together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.
- (b) To pay or otherwise settle with the Assured any claim assured against under this Guarantee. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay; or
- (c) To pay or otherwise settle with other parties for the loss or damage provided for under this Guarantee, together with any costs, attorneys' fees, and expenses incurred by the Assured that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in 6 (a), (b) or (c) of this paragraph the Company's obligations to the Assured under this Guarantee for the claimed loss or damage, other than the payments required to be made, shall terminate, including any duty to continue any and all litigation initiated by the Company pursuant to Paragraph 4.

7. LIMITATION OF LIABILITY

- (a) This Guarantee is a contract of Indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in Schedule A and only to the extent herein described, and subject to the Exclusions From Coverage of this Guarantee.
- (b) If the Company, or the Assured under the direction of the Company at the Company's expense, removes the alleged defect, lien, or encumbrance or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.
- (c) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom.
- (d) The Company shall not be liable for loss or damage to the Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

8. REDUCTION OF LIABILITY OR TERMINATION OF LIABILITY

All payments under this Guarantee, except payments made for costs, attorneys' fees and expenses pursuant to Paragraph 4 shall reduce the Amount of Liability under this Guarantee pro tanto.

9. PAYMENT OF LOSS

- (a) No payment shall be made without producing this Guarantee for endorsement of the payment unless the Guarantee has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.
- (b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions, the loss or damage shall be payable within thirty (30) days thereafter.

10. SUBROGATION UPON PAYMENT OR SETTLEMENT

Whenever the Company shall have settled and paid a claim under this Guarantee, all right of subrogation shall vest in the Company unaffected by any act of the Assured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies which the Assured would have had against any person or property in respect to the claim had this Guarantee not been issued. If requested by the Company, the Assured shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The Assured shall permit the Company to sue, compromise or settle in the name of the Assured and to use the name of the Assured in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the Assured the Company shall be subrogated to all rights and remedies of the Assured after the Assured shall have recovered its principal, interest, and costs of collection.

(continued)

11. ARBITRATION

Either the Company or the Assured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision, or to any other controversy or claim arising out of the transaction giving rise to this Guarantee. All arbitrable matters when the amount of liability is Two Million And No/100 Dollars (\$2,000,000) or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of Two Million And No/100 Dollars (\$2,000,000) shall be arbitrated only when agreed to by both the Company and the Assured. Arbitration pursuant to this Guarantee and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

12. LIABILITY LIMITED TO THIS GUARANTEE; GUARANTEE ENTIRE CONTRACT

- (a) This Guarantee together with all endorsements, if any, attached hereto by the Company is the entire Guarantee and contract between the Assured and the Company. In interpreting any provision of this Guarantee, this Guarantee shall be construed as a whole.
- (b) Any claim of loss or damage, whether or not based on negligence, or any action asserting such claim, shall be restricted to this Guarantee.
- (c) No amendment of or endorsement to this Guarantee can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company.

13. SEVERABILITY

In the event any provision of this Guarantee, in whole or in part, is held invalid or unenforceable under applicable law, the Guarantee shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

14. CHOICE OF LAW; FORUM

- (a) Choice of Law: The Assured acknowledges the Company has underwritten the risks covered by this Guarantee and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of Guaranties of the jurisdiction where the Land is located.
Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims that are adverse to the Assured and to interpret and enforce the terms of this Guarantee. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.
- (b) Choice of Forum: Any litigation or other proceeding brought by the Assured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

15. NOTICES, WHERE SENT

All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this Guarantee and shall be addressed to the Company at:

Chicago Title Insurance Company
P.O. Box 45023
Jacksonville, FL 32232-5023
Attn: Claims Department

END OF CONDITIONS

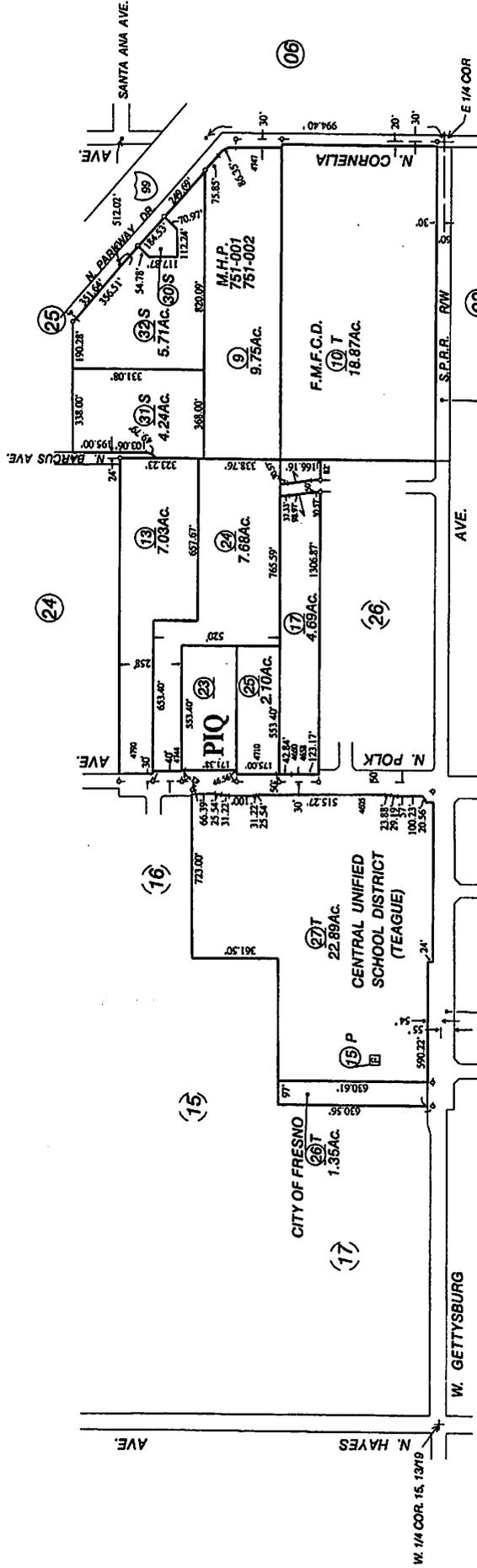
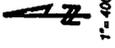
This map/plot is being furnished as an aid in locating the herein described Land in relation to adjoining streets, natural boundaries and other land, and is not a survey of the land depicted. Except to the extent a policy of title insurance is expressly modified by endorsement, if any, the Company does not insure dimensions, distances, location of easements, acreage or other matters shown thereon.

POR. SEC. 15, T.13 S., R.19 E., M.D.B.&M.

Tax Rate Area

5-085
5-570
5-611

510-03



Assessor's Map Bk 510 - Pg. 03
County of Fresno, Calif.

NOTE - Assessor's Block Numbers Shown in Ellipses.
Assessor's Parcel Numbers Shown in Circles.