

AGENDA ITEM NO.	<u>1L</u>
COUNCIL MEETING	<u>5-15-07</u>
APPROVED BY _____	
DEPARTMENT DIRECTOR _____	
CITY MANAGER	

May 15, 2007

FROM: JON R. RUIZ, Interim Director
Public Works Department

BY: SCOTT L. MOZIER, PE, Assistant Director *sum*
Public Works Department, Engineering Division

SUBJECT: APPROVE THE ACQUISITION OF FOUR STREET EASEMENTS FOR THE
PLACEMENT OF CURB, GUTTER AND SIDEWALK ALONG WHITESBRIDGE
BETWEEN WEST AVENUE AND FREEWAY 99 FROM PROPERTY OWNERS:
DEMOS & CAROLYN J. GALLENDER, A. K. J. PROPERTIES AND WILLIAM &
BARBARA LARSEN

KEY RESULT AREA

Presented to City Council!
Date 5/15/07
Disposition Not Approved

Customer Satisfaction _____

RECOMMENDATIONS

1. Staff recommends that the City Council approve the acquisition of four (4) street easements from properties owned by: Demos & Carolyn J. Gallender (APN 458-230-13 & 18), A. K. J. Properties (APN 465-162-08), and William & Barbara Larsen (APN 458-220-26).
2. Authorize the Public Works Director to accept the street easements deeds from the properties owned by: Demos & Carolyn J. Gallender, A. K. J. Properties and William & Barbara Larsen.

EXECUTIVE SUMMARY

Street easements are required from seven parcels along Whitesbridge between West Avenue and Freeway 99 for the Whitesbridge Street Repair Project. It is expected that the funding of the project will come from the Public Works Capital Improvement Program, Federal funding and RDA funds. The values of the street easements were established by an independent, professional real estate appraiser and negotiations to acquire the easements were initiated on September 22, 2006.

The value of the land within the street easements is \$16,378.00. Owners of four parcels have agreed to the amount of compensation (See Exhibit B) offered by the City and signed the Street Easement Agreements for Purchase and Sale and the Street Easement Deeds. With City Council approval, payment will be made to the owners and the street easements will be recorded.

KEY OBJECTIVE BALANCE

The Key Objective of Customer Satisfaction will be accomplished with the additional property to develop curb, gutter and sidewalk along Whitesbridge between West Avenue and Freeway 99. Financial Management will be realized by the acquisition of the property at a funding level that is based on the appraised value of the property.

BACKGROUND

The design for this project started in the early part of 2005. The project has several sources of funding including Federal Regional Surface Transportation Program (RSTP) funding for overlay work, RDA funds, and State Highway 180 Relinquishment Funds. This project will resurface and improve the streets, provide missing curbs, sidewalks and wheelchair ramps in the Roeding Business Park area of southwest Fresno.

The value of the land within the street easements is \$16,378.00. The agreements for Purchase and Sale of Real Properties allow the possession as of July 1, 2007.

Demos & Carolyn J. Gallender, A. K. J. Properties and William & Barbara Larsen have signed the appropriate documents to provide the four street easements of 2,038 square feet on the attached Exhibit "A's" as Assessor's Parcel Nos.: 458-230-13 & 18, 465-162-08 and 458-220-26.

The documents signed by the property owners have been approved as to form by the City Attorney's office.

FISCAL IMPACT

Funds for this acquisition and the remaining acquisitions for the Whitesbridge Road Improvement project are funded by City of Fresno Project No. PW00347, Fund 20102, ORG 189901 and KRA 0101001000.

JRR/SLM/PC/eam
Acq Esmnts Whitesbridge btwn West & Fwy 99 5-15-07

Attachment: Exhibits "A" and "B"

EXHIBIT "A"



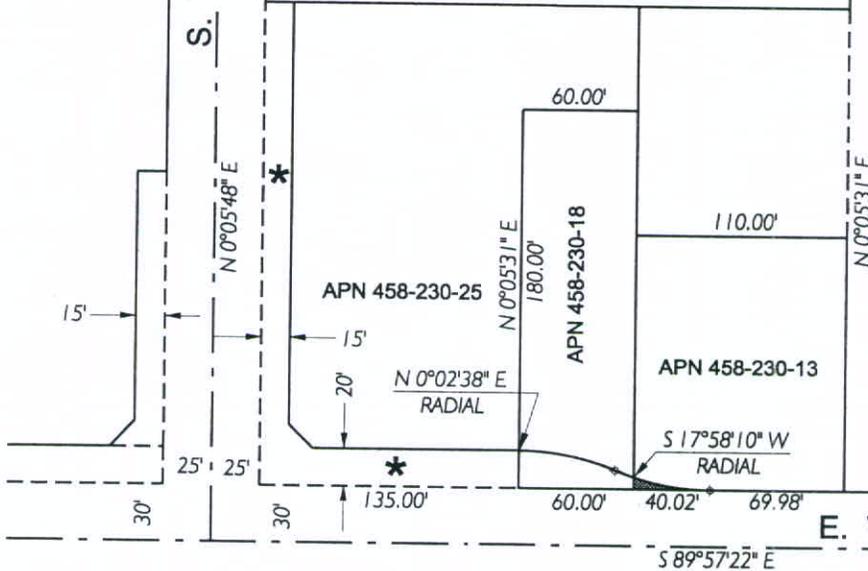
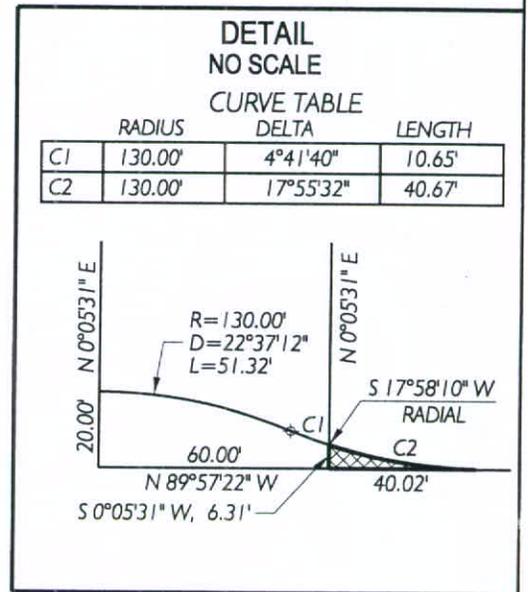
70

WEIHE HOME TRACT
R.S. 3, PG. 25

68

APN 458-230-06

S. TEILMAN AVENUE



E. WHITESBRIDGE AVENUE

* STREET EASEMENT ACQUIRED BY CITY OF FRESNO
BY DEED OF EASEMENT RECORDED NOV. 19, 1981
IN BOOK 7818 AT PAGES 797-799, O.R.F.C.

INDICATES AREA TO BE DEDICATED
83 S.F. ±

G.M. LEWIS
D:\DATA\Whitesbridge&Amador\APN 458-230-13.dcd

REF. & REV. 2006-226 PWF 10825 PLAT 2652	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS		PROJ. ID. <u>PW00309</u> KRA <u>0101001000</u> FUND NO. <u>20102</u> RES TYPE <u>N/A</u> ORG. NO. <u>189901</u>
	PARCEL TO BE DEDICATED TO THE CITY OF FRESNO AS AN EASEMENT AND RIGHT-OF-WAY FOR PUBLIC STREET PURPOSES		DR. BY <u>DHC</u> SHEET NO. <u>1</u> CH. BY <u>AJ.</u> OF <u>1</u> SHEETS DATE <u>SEPT. 12, 2006</u> SCALE <u>NO SCALE</u>

15-A-8116

EXHIBIT "A"



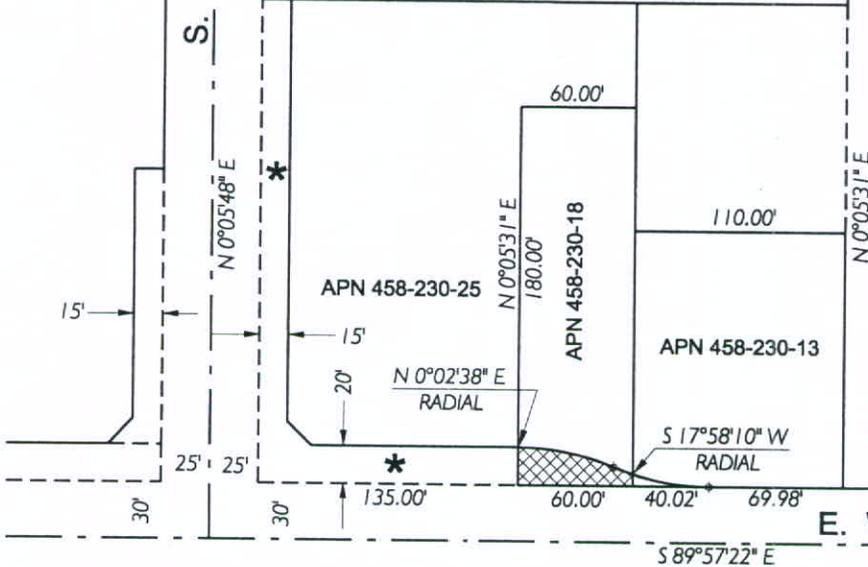
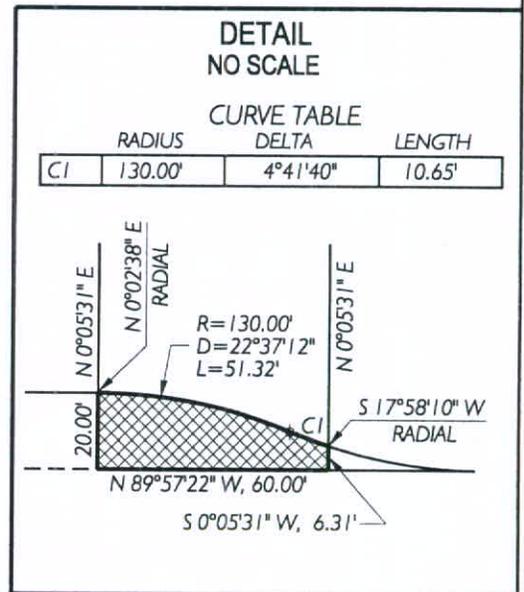
70

S. TEILMAN AVENUE

WEIHE HOME TRACT
R.S. 3, PG. 25
69

68

APN 458-230-06



E. WHITESBRIDGE AVENUE

* STREET EASEMENT ACQUIRED BY CITY OF FRESNO
BY DEED OF EASEMENT RECORDED NOV. 19, 1981
IN BOOK 7818 AT PAGES 797-799, O.R.F.C.

INDICATES AREA TO BE DEDICATED
917 S.F. ±

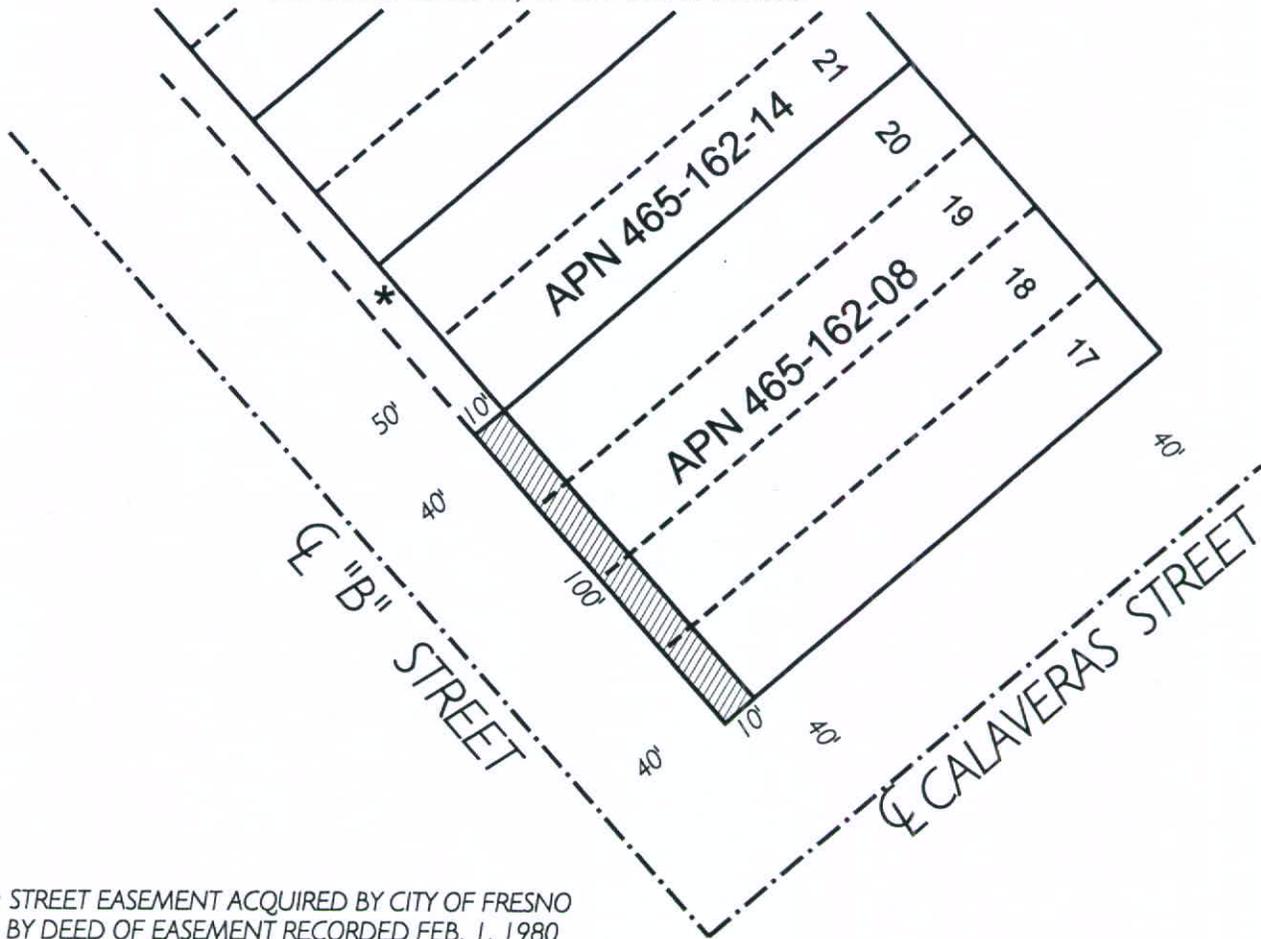
GALLENDER
D:\DATA\Whitesbridge&Amador\APN 458-230-18.dcd

REF. & REV. 2006-225 PWF 10825 PLAT 2652	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS		PROJ. ID. PV00309 FUND NO. 20102 ORG. NO. 189901	KRA 0101001000 RES TYPE N/A
	PARCEL TO BE DEDICATED TO THE CITY OF FRESNO AS AN EASEMENT AND RIGHT-OF-WAY FOR PUBLIC STREET PURPOSES		DR. BY DHC CH. BY AJ. DATE SEPT. 12, 2006 SCALE NO SCALE	SHEET NO. 1 OF 1 SHEETS 15-A-8115

EXHIBIT "A"



CITY OF FRESNO
 BLOCK 330
 R.O.S. BK. 3, PG. 50 F.C.R.



* STREET EASEMENT ACQUIRED BY CITY OF FRESNO
 BY DEED OF EASEMENT RECORDED FEB. 1, 1980
 IN BOOK 7460 AT PAGES 323-325, O.R.F.C.

 INDICATES AREA TO BE DEDICATED
 1,000 S.F. ±

AKT PROPERTILES
 D:\DATA\Whitesbridge&Amador\APN 465-162-08.dcd

REF. & REV. 2006-229 PWF 10825 PLAT 2754	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS		PROJ. ID. <u>PW00309</u> KRA <u>0101001000</u> FUND NO. <u>20102</u> RES TYPE <u>N/A</u> ORG. NO. <u>189901</u>
	PARCEL TO BE DEDICATED TO THE CITY OF FRESNO AS AN EASEMENT AND RIGHT-OF-WAY FOR PUBLIC STREET PURPOSES		DR. BY <u>DHC</u> SHEET NO. <u>1</u> CH. BY <u>AJ</u> OF <u>1</u> SHEETS DATE <u>APRIL 13, 2006</u> SCALE <u>NO SCALE</u> 15-A-8119

EXHIBIT "A"



WEIHE
HOME
TRACT
R.S.3, PG. 25
66

EL DORADO
ACREAGE
R.S. 6, PG. 36

APN 458-230-10

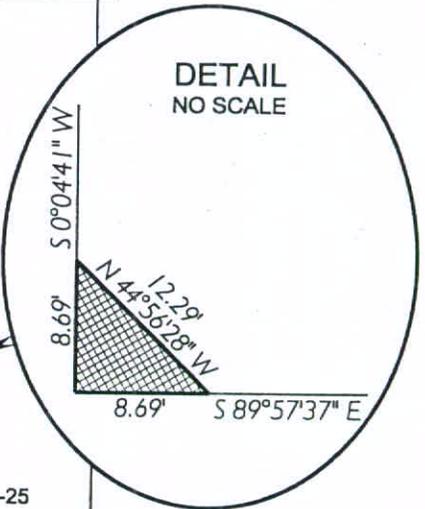
S. FRUIT AVENUE
S 0°04'41" W

11

APN 458-220-26

12

APN 458-220-25



S 89°57'22" E

E. WHITESBRIDGE AVENUE

S 89°57'37" E

SOUTH QUARTER CORNER
SECTION 5, T14S R20E



INDICATES AREA TO BE DEDICATED
38 S.F. ±

LARSEN

D:\DATA\Whitesbridge&Armador\APN 458-220-26.dcd

REF. & REV. 2006-228 PWF 10825 PLAT 2653	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS		PROJ. ID. PWF00309 FUND NO. 20102 ORG. NO. 189901	KRA 0101001000 RES TYPE N/A
	PARCEL TO BE DEDICATED TO THE CITY OF FRESNO AS AN EASEMENT AND RIGHT-OF-WAY FOR PUBLIC STREET PURPOSES		DR. BY DHC CH. BY AJ DATE SEPT. 12, 2006 SCALE NO SCALE	SHEET NO. 1 OF 1 SHEETS 15-A-8118

EXHIBIT B

WHITESBRIDGE - WEST AVENUE TO FREEWAY 99 STAFF REPORT

	Land Value	Total Per APN
APN 458-230-13 Demos & Carolyn J. Gallender	\$ 1,500.00	\$ 1,500.00
APN 458-230-18 Demos & Carolyn J. Gallender	\$ 6,878.00	\$ 6,878.00
APN 465-162-08 A. K. J. Properties, Inc	\$ 7,500.00	\$ 7,500.00
APN 458-220-26 William & Barbara Larsen	\$ 500.00	\$ 500.00
		\$ -

TOTALS \$ 16,378.00 \$ 16,378.00

**AGREEMENT FOR PURCHASE AND SALE OF STREET EASEMENT
AND ESCROW INSTRUCTIONS**

**Whites Bridge between West Avenue and Freeway 99
1612 B Street**

STPL 5060 (111)

City Project No. PW 00309

AKJ PROPERTIES, INC., A CALIFORNIA CORPORATION, hereinafter called the "Seller(s)," without regard to number or gender, hereby offers to sell to the CITY OF FRESNO, a municipal corporation, hereinafter called the "City," the hereinafter described street easement on the following terms and conditions:

1. The real property which is the subject of this Agreement is situated in the City of Fresno, County of Fresno, State of California and may hereinafter for convenience be referred to as the "subject property," being a street easement within Assessor's Parcel Number 465-162-08, and which is more particularly described as:

Exhibits "A" and "B" relative to a permanent street easement and Exhibits "C" and "D", and by reference made a part of hereof.

2. The purchase price for the subject property shall be the sum of SEVEN THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$7,500.00) as just compensation therefor,

3. Seller(s) acknowledge that the City has the power to acquire the subject property for public purposes by eminent domain. If title does not pass to the City within the time provided by this Agreement, the City may begin eminent domain proceedings to acquire such possession or title. The parties agree and stipulate that the net sum payable to Seller(s) hereunder shall be conclusively deemed to be the total just compensation payable in such proceedings, and this Agreement may be filed with the court as stipulation upon which judgment may be entered in the eminent domain proceeding as to the just compensation to be paid to Sellers. Seller(s) waive all other defenses in said proceeding.

4. It is understood and agreed by and between the parties hereto that the easement described on Exhibit "A" and depicted on Exhibit "B", is a permanent easement and right of way for public street purposes.

5. It is agreed and confirmed by the City and Seller(s) that, notwithstanding other provisions of this Agreement, the right of possession and

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5/15/07

use of the subject property by the City, including the right to remove and dispose of improvements within the permanent street easement, shall commence on July 1, 2007, or close of escrow controlling this transaction, whichever occurs first, and the amount shown in Paragraph 2 above includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.

6. Seller(s) represent and warrant that it has the authority to make the offer herein made, and that it holds fee title to said real property and can convey the subject property free and clear of all liens, encumbrances, and restrictions of record except for the title exceptions noted in 8.b below.

7. The sale shall be completed through an escrow to be opened at Financial Title Company, 7550 N. Palm Avenue, Suite 201, Fresno, California 93711 ("escrow holder"), under Escrow Number 44074465-762LMD. Said escrow shall be opened upon the following terms and conditions, and the Seller(s) and City by their signature to this Agreement make this paragraph their escrow instructions:

- a. The City shall deposit the sums specified in Paragraphs 2 of this Agreement and the closing costs in escrow upon receipt of a demand and statement from said title company therefor.
- b. Payment of said sums, less Seller('s) cost to clear title, if any, may be made to Seller(s) only when escrow holder possesses and is in a position to deliver to the City a fully executed and acknowledged and recorded grant deed to the subject property and when said escrow holder stands ready to issue to the City a standard title insurance policy guaranteeing a title to said property in the City free and clear of all liens, encumbrances, and restrictions of record, except for: Items 1, 5 and 6 of Exceptions contained in the Preliminary Title Report No. 44074465-762LMD dated April 7, 2006 from Financial Title Company.
- c. It is understood that Seller(s) shall be responsible for the payment of all taxes, penalties, redemptions, and costs allocable to the subject property. It is further Seller's responsibility to apply to the County Tax Collector for any refund or decrease in taxes which may be granted.

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- d. The escrow fee, cost of policy of title insurance, recording fees (if any), and all other closing costs shall be paid by the City. Seller(s) will pay any cost to convey the title to the subject property in the condition described in 7.b above.
- e. Disbursements of the purchase price to be in the amounts, at the times, and in all respects in accordance with the terms and conditions and subject to the limitations of this Agreement.
- 8. Miscellaneous Provisions:
 - a. Waiver . The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provision of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
 - b. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement any rights and duties hereunder shall be in Fresno, California.
 - c. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.
 - d. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability or any one provision in this Agreement shall not affect the other provisions.
 - e. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.
 - f. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or

condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

g. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment.

h. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

i. Exhibits and Attachments. Each Exhibit and Attachment referenced herein is by such reference incorporated into and made a part of this Agreement for all purposes.

j. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Sellers.

9. Time is of the essence of each and every term, condition, and covenant hereof.

10. It is understood and agreed that as a condition precedent hereto, this Agreement shall have no force and effect until approved by the Council for the City of Fresno. This Agreement is to remain open for one hundred and twenty (120 days) from the date hereof, and that upon its duly authorized execution within said time by the City, this Agreement shall become a contract for the purchase and sale of subject property binding upon Sellers and City, their heirs, executors, administrators, successors in interest, and assigns.

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Signature Page

This Agreement is executed by the City of Fresno by and through the Assistant Public Works Director of said City pursuant to authority granted by the Council of the City of Fresno on MAY 15, 2007 21

RECOMMENDED FOR APPROVAL

BY J. A. Pete Caldwell
J. A. Pete Caldwell
Senior Real Estate Agent

SELLER(S):

Delores Hed
AKJ PROPERTIES, INC

Date 1/29/07

CITY OF FRESNO

Date Jon Ruiz for
Jon Ruiz, Interim Director
Department of Publics Works

Address of Sellers:

P. O. Box 5135
Fresno, CA 93755

Address of City:
City of Fresno
Public Works Department
2600 Fresno Street, Room 4019
Fresno, CA 93721-3623

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By Laurie Avedisian
Deputy
Laurie Avedisian

ATTEST:
REBECCA K. KLISCH
City Clerk

By Sherrie L. Badertscher
Deputy 5/31/07

APN # 465-162-08

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EXHIBIT "A"

APN 465-162-08 (portion)
Street easement

The southwesterly 10 feet of Lots 17, 18, 19 and 20 in Block 330 in the City of Fresno, according to the map thereof recorded in Book 3 of Record of Surveys at Page 50, Fresno County Records.

Contains an area of 1,000 square feet, more or less.

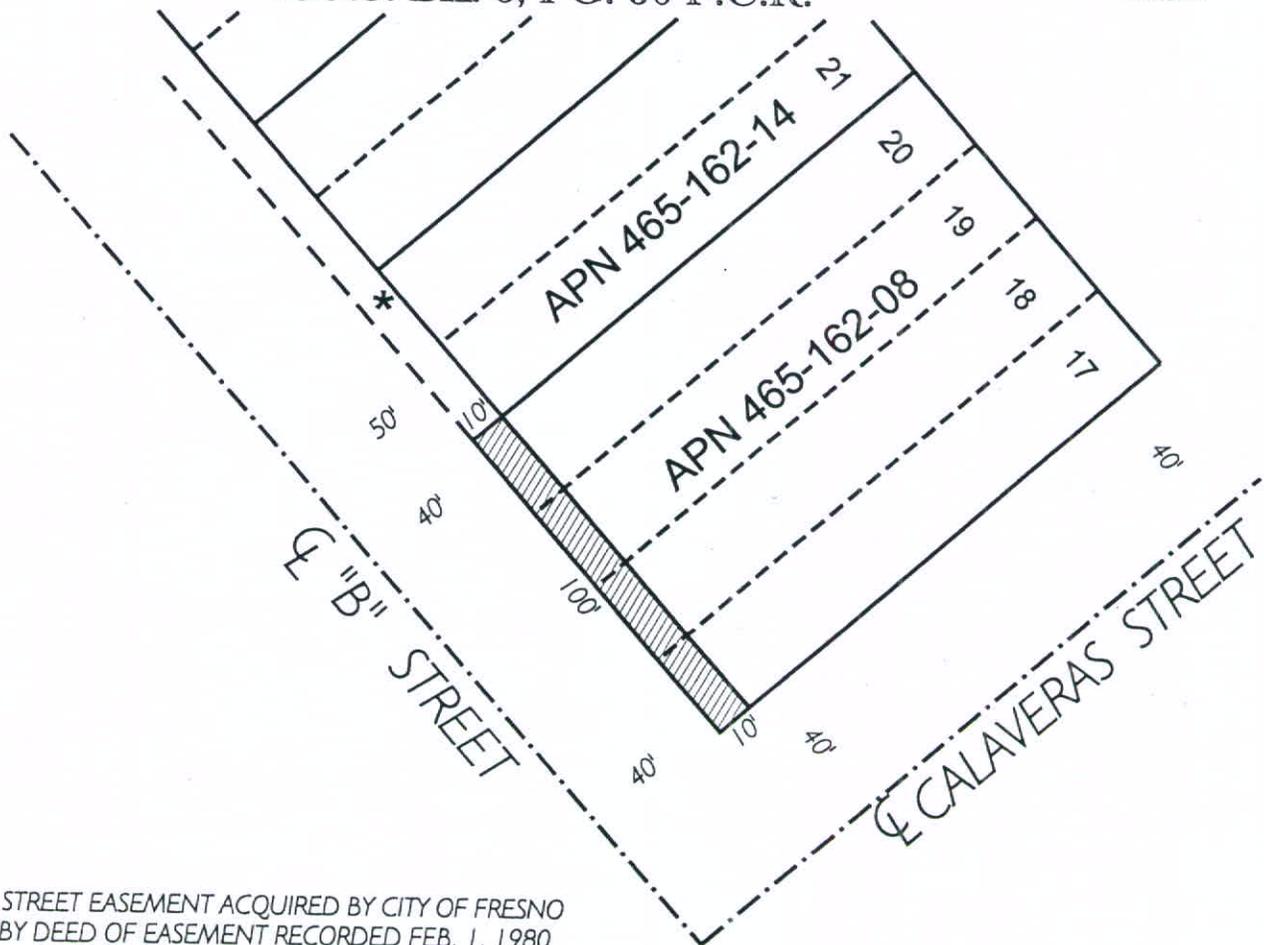
2006-229
15-A-8119
PW FILE 10825
D:\DATA\Whitesbridge&Amador\apn 465-162-08 Street.doc

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EXHIBIT "B"



CITY OF FRESNO
 BLOCK 330
 R.O.S. BK. 3, PG. 50 F.C.R.



* STREET EASEMENT ACQUIRED BY CITY OF FRESNO
 BY DEED OF EASEMENT RECORDED FEB. 1, 1980
 IN BOOK 7460 AT PAGES 323-325, O.R.F.C.

 INDICATES AREA TO BE DEDICATED
 1,000 S.F. ±

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REF. & REV. 2006-229 PWF 10825 PLAT 2754	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS	PROJ. ID. PWD0309 KRA 0101001000 FUND NO. 20102 RES TYPE N/A ORG. NO. 189901
	PARCEL TO BE DEDICATED TO THE CITY OF FRESNO AS AN EASEMENT AND RIGHT-OF-WAY FOR PUBLIC STREET PURPOSES	DR. BY DHC CH. BY AJ DATE APRIL 13, 2006 SCALE NO SCALE

May 16, 2007

Council Adoption: 5//07
Mayor Approval:
Mayor Veto:
Override Request:

TO: MAYOR ALAN AUTRY

RECEIVED

FROM: REBECCA E. KLISCH, CMC
City Clerk

MAY 29 PM 3: 05
CITY CLERK, FRESNO CA

SUBJECT: TRANSMITTAL OF COUNCIL ACTION FOR APPROVAL OR VETO

At the Council meeting of 5/15/07, Council took legislative action entitled **Appv acquisition of 4 street esmnts for curb, gutter & sidewalk, Whitesbridge bet. West and Freeway 99**, Item No. 1L, by the following vote:

Ayes : Calhoun, Dages, Duncan, Sterling, Westerlund, Xiong, Perea
Noes : None
Absent : None
Abstain : None

Please indicate either your formal approval or veto by completing the following sections and executing and dating your action. Please file the completed memo with the Clerk's office on or before May 29, 2007. In computing the ten day period required by Charter, the first day has been excluded and the tenth day has been included unless the 10th day is a Saturday, Sunday, or holiday, in which case it has also been excluded. Failure to file this memo with the Clerk's office within the required time limit shall constitute approval of the ordinance, resolution or action, and it shall take effect without the Mayor's signed approval.

Thank you.

APPROVED:

VETOED for the following reasons: (Written objections are required by Charter; attach additional sheets if necessary.)


Alan Autry, Mayor

Date: 5/29/07

COUNCIL OVERRIDE ACTION:

Date: _____

Ayes :
Noes :
Absent :
Abstain :