137

CITY OF FRESNO
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City of Fresno

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Fresno, CA 93721-3603

FRESNO County Recorder
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CITY OF FRESNO

Planning and Development Department

DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF FRESNO AND FANCHER CREEK PROPERTIES, LLC AND SUBORDINATION

NOTICE: THIS RECORDED DOCUMENT IS A COPY OF THE ORIGINAL DEVELOPMENT AGREEMENT. AN ORIGINAL OF THE DEVELOPMENT AGREEMENT, INCLUDING ALL EXHIBITS, ATTACHMENTS AND FULL-COLORED MAPS AND DIAGRAMS IS FILED WITH THE CITY OF FRESNO CLERK'S OFFICE, LOCATED AT 2600 FRESNO STREET, ROOM 2133, FRESNO, CA 93721

DEVELOPMENT AGREEMENT
By and Between
THE CITY OF FRESNO
and
FANCHER CREEK PROPERTIES, LLC.

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is entered into this 21st day of July, 2010 (the "**Effective Date**") by and between the City of Fresno, a municipal corporation (the "**City**"), and Fancher Creek Properties, LLC ("**Developer**"), pursuant to the authority of Section 65864 et seq. of the Government Code of the State of California.

RECITALS

A. Legal Authority. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Sections 65864 et seq. of the Government Code ("**Development Agreement Law**") authorizing any city, county or city and county to enter into a binding development agreement with an applicant for a development project, establishing certain development rights in the property which is the subject of the development project application. As a charter city, while the City is not limited to the Development Agreement Law to enter into development agreements, the City has elected to enter this Agreement under the Development Agreement Law.

B. Project Description. On May 17, 2005, the City certified the Final Environmental Impact Report No. 10133 for the Fancher Creek Project (Resolution No. 2005-183). The Fancher Creek Project is located in the southeast area of the City and consists of approximately 476 acres controlled by Developer. The Fancher Creek Project is a mixed use, master-planned project that will include residential communities, a town center, retail, and a village center with senior housing, a business park, and park space. This Agreement governs only the town center portion of the Fancher Creek Project ("**Town Center**"). Attached hereto as **Exhibit B** and incorporated herein by this reference is a diagram showing the Town Center portion of the Fancher Creek Project that is governed by this Agreement.

C. Developer's Interest in Land. The Developer is a California limited liability company, the members of which are Kashian Enterprises, a California limited partnership, and Africal Development, LLC, a California limited liability company. The real property which is the subject of this Agreement ("**Subject Property**") is located in the City of Fresno and is owned in fee by the Developer. The Subject Property is described in **Exhibit A** (attached hereto and incorporated by reference). Developer seeks to develop the Subject Property consistent with the 2025 Fresno General Plan ("**General Plan**") adopted by the City on November 19, 2002 (Resolution No. 2002-379) and the Roosevelt Community Plan (as amended by the adoption of the General Plan).

D. Development Approvals. The following development approvals ("**Development Approvals**") affecting the Subject Property have been previously approved by the City or will be approved concurrently with this Agreement:

2

1. Certification of a Final Environmental Impact Report ("EIR"), including project-specific mitigation measures adopted by the City. (Resolution 2005-183).

2. General Plan text amendments approved by the City Council. (Resolution No. 2002-379).

3. Zoning Ordinance text and map amendments adopted by the City Council. (Ordinance No. 2005-51).

4. This Development Agreement approved by the City Council (**Ordinance No. 2010-08, adopted on March 25, 2010**).

5. Official Plan Line Amendment approved by the City Council (**Ordinance No. 2010-09, adopted on March 25, 2010**).

6. Vesting Tentative Parcel Map No. 2007-41 approved by the Planning and Development Director on **March 25, 2010** (" Vesting Tentative Parcel Map") (**Exhibit J**).

E. Certainty Desired. Developer desires to carry out the development of the Subject Property as a mixed use development consistent with the General Plan, the Development Approvals, and this Agreement. The complexity, magnitude and long term build-out of the Subject Property would be difficult for Developer to undertake if the City had not determined, through this Development Agreement, to inject a sufficient degree of certainty in the land use regulatory process to justify the substantial financial investment associated with development of the Subject Property. In order to obtain the housing, tax and other benefits the development of the Subject Property will provide and to assure that the impacts of the Town Center project will be adequately addressed, City desires certainty as to the scope of development, including the Town Center's design standards, and in particular that needed infrastructure, facilities and services related to the Town Center will be provided in a timely fashion. Developer desires certainty regarding the type and amount of development fees and exactions that it will be charged by the City and to define the design review and permitting process. Both Parties desire to determine which Party will be responsible for particular infrastructure improvements, including financing of the Town Center's public facilities and improvements, and the timeline for constructing these improvements. As a result of the execution of this Agreement, both Parties can be assured that the development of the Subject Property can proceed without disruption caused by a change in City planning and development policies and requirements.

F. Subsequent Development Approvals. In addition to the Development Approvals, the development of the Subject Property will require various additional future land use and construction approvals from the City to implement the Development Approvals ("**Subsequent Development Approvals**"). Subsequent Development Approvals may include but are not limited to: parcel maps (vesting or otherwise), conditional use permits, site plans and building permits.

3

G. Consistent with General Plan. The City hereby finds and determines that execution of this Agreement is in the best interests of the public health, safety and general welfare and is consistent with the General Plan and the Roosevelt Community Plan.

H. Voluntary Agreement. This Agreement is voluntarily entered into by the Developer in order to implement the General Plan and in consideration of the rights conferred and the procedures specified herein for the development of the Subject Property. This Agreement is voluntarily entered into by the City in the exercise of its legislative discretion in order to implement the General Plan and the Roosevelt Community Plan and in consideration of the agreements and undertakings of the Developer hereunder.

I. Project Provides Substantial Benefits. This Agreement furthers the public health, safety and general welfare, and the provisions of this Agreement are consistent with the General Plan. For the reasons recited herein, the City and Developer have determined that the Town Center is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Development Approvals and Subsequent Development Approvals, thereby encouraging planning for, investment in and commitment to use and develop the Subject Property. Continued use and development of the Subject Property is anticipated to, in turn, provide the following substantial benefits and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Law was enacted:

1. Provide for the development of unused agricultural land.

2. Provide increased tax revenues for the City.

3. Provide for jobs and economic development in the City.

4. Provide infrastructure improvements that can be utilized by regional users and future users.

5. Meet the goals of the General Plan to put activity centers in areas that will reduce vehicle trips and serve all segments of the City.

J. CEQA. The City Council, in its independent judgment, at a public hearing on **March 25, 2010**, after consideration of the EIR and an addendum to the EIR, found that no subsequent or supplemental environmental impact report or environmental document in addition to the previously certified EIR (as identified in Paragraph D) is necessary for the approval of this Agreement. The City Council found that there have been no changes proposed to the development of the Subject Property by the adoption of this Agreement which relate to new significant environmental impacts not previously considered. No subsequent changes are anticipated to occur with respect to circumstances under which the project will be undertaken, and no information has become, or is anticipated to become available which will relate to significant effects not previously discussed, nor will any significant effect previously analyzed in the EIR become more severe, nor will mitigation measures or alternatives not found to be feasible or not previously considered have any significant effect.

4

K. This Agreement was reviewed at a duly noticed public hearing before the Planning Commission of the City.

L. The City Council, after a duly noticed public hearing, found that the provisions of this Agreement are consistent with the City's General Plan, the Roosevelt Community Plan, and other applicable plans and policies of the City.

M. On **March 25, 2010**, the City Council adopted **Ordinance No. 2010-08** approving this Agreement. A copy of the Ordinance is attached hereto as **Exhibit I** and incorporated herein by this reference.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Developer (each herein sometimes called a "**Party**" and jointly the "**Parties**") hereby agree as follows:

AGREEMENT

ARTICLE 1
GENERAL PROVISIONS

100. Property Description and Binding Covenants. The Subject Property is that property described in **Exhibit A**. The Developer represents that it has a legal or equitable interest in the Subject Property and that all other persons holding legal or equitable interests in the Subject Property (excepting owners or claimants in easements) are bound by this Agreement. It is intended and determined that the provisions of this Agreement shall constitute covenants which shall run with the Subject Property, and the burdens and benefits hereof shall bind and inure to all successors in interest to the Parties. The Developer hereby warrants that any and all parties having record title interest at the time of execution of this Agreement in the Subject Property which may ripen into a fee have subordinated to this Agreement and that all such instruments of subordination, if any, are attached hereto and made a part of this Agreement. To the extent there exists any area of the Subject Property that has not yet been annexed to the City, said property shall be so annexed prior to expiration of the term of this Agreement as the same may be amended and the duration extended pursuant to the terms of Section 700.

101. Vested Rights. Developer shall have a vested right to develop the Subject Property for the period this Agreement is in effect in accordance with the Development Approvals, Subsequent Development Approvals, the provisions of this Agreement and Applicable Rules (as defined in Section 102.1). The Parties have negotiated and agreed upon the development impact fees, permit processing fees, dedications, and exactions that will be required in connection with the development of the Subject Property. The off-site improvements, dedications, and exactions applicable to the Subject Property are set forth in **Exhibit F**. The Parties intend that these shall be the only off-site improvements, dedications, and exactions applicable to the development of the Subject Property during the period this Agreement is in effect. The development impact fees applicable to the development of the Subject Property during the first eight (8) years the Agreement is in effect are also set forth in **Exhibit F.** Except for the "Transit Fee," the Master Fee Schedule in effect as of the Effective Date of this Agreement shall provide the amount of the

5

fees to be paid during the first eight (8) years this Agreement is in effect. After the first eight (8) years of this Agreement, the development impact fees applicable to the development of the Subject Property shall be **all** applicable fees, as reasonably determined by the City, adopted by the City and in effect at the time payment of the fees is required, including any new fees the City adopted at any time the Agreement is in effect. The amount of the fees applicable to the development of the Subject Property after the first eight (8) years the agreement is in effect shall be as set forth in the most current adopted Master Fee Schedule at the time payment is required. The amounts of permit processing fees shall be those provided in **Exhibit C**. Nothing provided in this Agreement shall limit the Developer from exercising vesting rights obtained before or after execution of this Agreement through other means, including Vesting Parcel Map No. 2007-41.

To the extent not otherwise provided in this Agreement, the conditions of approval and mitigation measures in the Development Approvals related to dedications and reservation of easements are intended to meet the requirements of Government Code section 65865.2 related to a development agreement providing a provision for the reservation or dedication of land for a public purpose.

102. Rules, Regulations and Official Policies.

102.1 Applicable Rules, Regulations and Official Policies. For the term of this Agreement, the rules, regulations, ordinances and official policies governing the permitted uses of land, density, design, improvement and construction standards and specifications applicable to the development of the Subject Property shall be the Applicable Rules as defined in this Section 102.1. The Applicable Rules are defined as those rules, regulations, and official policies set forth in (i) the Development Approvals; (ii) this Agreement (including Exhibits); and (iii) with respect to matters not addressed by these documents, those rules regulations, official policies, standards and specifications in force on the date of this Agreement, to the extent not inconsistent with the Development Approvals and this Agreement. The Applicable Rules shall also include, any changes in the General Plan, City of Fresno Zoning Ordinance ("**Zoning Ordinance**") or any future rules, ordinances, regulations or policies adopted by the City which are made applicable by the provisions of Section 102.2.

Except as otherwise provided in this Agreement, to the extent any future changes in the General Plan, Zoning Ordinance or any future rules, ordinances, regulations or policies adopted by the City purport to be applicable to the development of the Subject Property but are inconsistent with the terms and conditions of this Agreement, the terms of this Agreement shall prevail, unless the parties mutually agree to amend or modify this Agreement pursuant to Section 700.

To the extent not otherwise provided in this Agreement, the requirements of the Applicable Rules shall fulfill the requirements of Government Code section 65865.2 related to the agreement specifying allowed uses, allowed density and intensity of uses and maximum height and size of proposed buildings.

102.2 Changes in State or Federal Law. This Section shall not preclude the application to the development of the Subject Property of changes in City laws, regulations, plans or policies, the terms of which are specifically mandated and required by changes in state

6

or federal laws or regulations. In the event state or federal laws or regulations enacted after the date of this Agreement, or action by any governmental jurisdiction other than the City required by state or federal laws, prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, then the Parties shall meet and confer in good faith to determine the feasibility of modifying, extending or suspending one or more provisions of this Agreement as may be necessary to comply with such state or federal laws or regulations or the regulations of such other governmental jurisdiction required by state or federal laws. The Developer shall provide a reasonable number of options to the City and demonstrate the feasibility of modifying, extending or suspending the Agreement in part. Developer is required to provide all engineering and analysis (which shall meet industry and City standards) to support its position.

To the extent that any actions of federal or state agencies (or actions of regional and local agencies, including the City, required by federal or state laws) have the effect of preventing, delaying or modifying development of the Subject Property, the City shall not in any manner be liable for any such prevention, delay or modification of said development. The Developer is required, at its cost and without cost to or obligation on the part of the City, to participate in such regional or local programs and to be subject to such development restrictions as may be necessary or appropriate by reason of such actions of federal or state agencies required by federal or state laws (or such actions of regional and local agencies, including the City, required by federal or state laws).

103. City's Reservation of Authority. The Parties acknowledge that the intent of the Parties is that this Agreement be construed in a manner that protects the vested rights granted to Developer herein to the maximum extent allowed by law. The Parties further acknowledge and agree, however, that the City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions contained in this Agreement are intended to reserve to the City all of its police power and/or statutory or other legal powers or responsibilities that cannot be so limited. This Agreement shall be construed to reserve to the City all such power and authority which cannot be restricted by contract, including compliance with the California Environmental Quality Act (CEQA). Nor shall this Agreement be construed to limit the authority or obligation of the City to hold necessary public hearings, to limit the discretion of the City or any of its officers or officials with regard to rules, regulations, ordinances, laws, and entitlement of use which require the exercise of discretion by the City or any of its officers or officials.

104. Term; Recordation. The term of this Agreement shall commence upon the recordation of this Agreement with the County Recorder and shall extend for a period of twenty (20) years. Thereafter, unless said term is modified or extended by mutual consent of the Parties, subject to the provisions of Section 700 hereof, upon expiration of said term, this Agreement shall be deemed terminated and of no further force and effect and the Parties shall, upon request of the City, execute an appropriate certificate of termination which shall be recorded in the official records of the County, subject, however, to the provisions of Section 307 hereof. The Director of Planning and Development shall record the Agreement within 10 days of final approval by Council.

7

105. Sale or Assignment; Release. This Agreement, its rights, duties or obligations may be assigned, sold, exchanged or transferred, in whole or in part, in connection with a transfer by Developer of all or a portion of its interests in the Subject Property, subject to the terms of this Section.

105.1 A sale, transfer or assignment of all or a portion of Developer's interest in this Agreement shall not require the approval of the City if:

a. The Developer has paid all impact fees then due as required in **Exhibit F** and all processing fees then due as required in **Exhibit C** by the terms of this Agreement and all public improvements and facilities required to be constructed or installed by Developer in connection with the development of the Subject Property, or applicable portion thereof, have been constructed and installed, or Developer or the proposed assignee have provided security adequate, in the reasonable discretion of the City, to assure construction and installation of such public improvements and facilities and the City receives a copy of the assignment that meets the requirements of Section 105.3; or

b. The sale, transfer or assignment is to an entity controlled by or in common control with Developer; or

c. The transfer or assignments results from the death or mental or physical incapacity of an individual who is a controlling member of the Developer limited liability company; or

d. The transfer or assignment is in trust for the benefit of a spouse, children, grandchildren or other family members of a controlling member of the Developer limited liability company; or

e. The transfer or assignment consists of the granting of a security interest in this Agreement and the enforcement or use of such security interest in accordance with the remedies available thereunder.

105.2 Any other sale, transfer or assignment of all or a portion of Developer's interest in this Agreement shall require the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed.

105.3 Any proposed assignee or transferee shall agree to assume and be bound by all applicable duties, obligations and covenants of the Developer under this Agreement. The assumption must be set forth in an assumption agreement in a form reasonably acceptable to and approved in writing by the City. Any assumption agreement shall include a Notice to the assignee that they may be subject to fees for development of the property, as limited by the terms of this Agreement.

105.4 If the Developer transfers the Subject Property and assigns this Agreement in violation of the terms of this Section, the City may terminate the Agreement at its discretion with fifteen (15) days written notice.

8

106. City Costs of Agreement. Developer shall pay a one time processing fee as established in **Exhibit C** for the City's costs to prepare and administer this Agreement. Developer shall remit payment to the City within thirty (30) days after approval of this Agreement.

ARTICLE 2
DEVELOPMENT OF THE SUBJECT PROPERTY

200. Permitted Uses and Development Standards. In accordance with and subject to the terms and conditions of this Agreement, the Developer may develop the Subject Property for the uses and in accordance with the Applicable Rules, including the standards, uses and processes contained in the "Permitted Uses and Development Standards," and the Site Plan, both of which are attached as **Exhibit D**.

201. Approvals.

201.1. Processing Subsequent Development Approvals.

201.1.1 Timely Submittals By Developer. Developer acknowledges that City cannot begin processing Subsequent Development Approvals until Developer submits complete applications. Developer shall use its best efforts to (i) provide to City in a timely manner any and all documents, applications, plans, and other information necessary for City to carry out its obligations hereunder; and (ii) cause Developer's planners, engineers, and all other consultants to provide to City in a timely manner all such documents, applications, plans and other required materials as set forth in the Applicable Rules. Developer shall use all reasonable efforts to submit or cause to be submitted documents, applications, plans and other information necessary for City to carry out its obligations hereunder that are in a final form, not subject to unreasonable changes by the Developer and that comply with this Agreement and all Applicable Rules. Plan changes made after submittal pursuant to this Section will be subject to such additional charges as provided in **Exhibit C**. The City reserves the right to reject any incomplete or non-conforming submittals.

201.1.2 Timely Processing By City. Upon submission by Developer of all appropriate applications and applicable processing fees for any Subsequent Development Approval, City shall promptly and diligently, subject to the reasonable availability of City resources and City's procedural requirements, commence and complete all steps necessary to act on Developer's Subsequent Development Approval applications. Upon Developer's request and at the City's discretion, the City may provide, at Developer's expense, additional staff and/or staff consultants for concurrent, expedited planning and processing of each Subsequent Development Approval application.

201.1.3 Effect of Legal Proceedings. Notwithstanding any pending administrative or judicial proceedings, initiative or referendum concerning the Development Approvals or Subsequent Development Approvals, and provided that such actions by City or Developer are not proscribed by law or court order, City shall process the Developer's applications for Subsequent Development Approvals as provided for herein to the fullest extent allowed by law and Developer may proceed with development pursuant to the Development Approvals or Subsequent Development Approvals to the fullest extent allowed by law.

9

201.2. Certificates of Occupancy. Subject to any requirements in this Agreement for issuance of certificates of occupancy, the City shall use all reasonable efforts to diligently and promptly provide a certificate of occupancy for any portion of the Subject Property when applied for by the Developer and upon completion of all necessary requirements to obtain a certificate of occupancy.

201.3. Non-Development Entitlement Plan Review. Nothing provided in this Section 201 is intended to include the submission and review by the City of plans for off-site improvement (as required under **Exhibit F**), including but not limited to, construction plans for streets, sewer lines and traffic signals. Procedures to be used for review of off-site improvements shall be pursuant to then existing City policies, ordinances and standards. Plan submittals for off-site improvements will not be given priority status over any other submittals but will be reviewed on a "first in first out" basis.

202. Public Facilities.

202.1. Financing and Construction. Developer is responsible for financing and constructing the following public facilities in conjunction with the development of the Subject Property, all as set forth in the mitigation measures of the EIR for the Project (Exhibit D of Resolution No. 2005-18) and the Development Approvals:

202.1.1 On-Site Improvements. Developer shall construct the On-Site Improvements as provided in **Exhibit E**. All On-Site Improvements will be the responsibility of the Developer without any right to reimbursement or credits from the City except as follows: (a), Developer shall construct the Transit Station, as described in **Exhibit L,** for which it shall receive credits for the cost of said construction from the Transit Fee (as described at Item A.10 of **Exhibit F**) if said fee is adopted by the City and Developer pays the fee in accordance with Item A.10 of **Exhibit F;** and (b) The Transit Station shall be constructed either on the Subject Property or Off-Site but contiguous to the Subject Property, at a location approved by the City in its sole and reasonable discretion. Developer shall maintain those certain on-site streets, Fancher Creek Drive and Tulare Avenue, as the same are depicted in **Exhibit E,** pursuant to the terms and conditions set forth in that certain Easement for Public Access Over Internal Roads at **Exhibit K** (attached hereto and incorporated by reference) as the same shall be recorded against the Subject Property concurrently with the recording of this Agreement.

202.1.2 Off-Site Improvements. Developer will construct all Off-Site Improvements as provided in **Exhibit F** pursuant to the description and timing provided in that exhibit.

202.1.3 Financing of Off-Site Improvements. Developer is responsible for financing the construction of the Off-Site Improvements described in **Exhibit F** (including the Transit Station, as described in **Exhibit L,** if built Off-Site and contiguous to the Subject Property, as opposed to on the Subject Property. The Developer will only receive reimbursements and credits from the City for off-site improvements to the extent that they are expressly provided for in **Exhibit F,** it being understood that Developer shall receive credits for the cost of construction of the Transit Station from the Transit Fee (as described at Item A.10 of

10

Exhibit F) if said fee is adopted by the City and Developer pays the fee in accordance with Item A.10 of **Exhibit F**.

202.2. Community Facilities District.

202.2.1 Funding of Improvements. Developer may request and City shall use its good faith efforts to form a community facilities district(s) ("**CFD**"), for the purpose of funding all or a portion of the On-Site or Off-Site Improvements, including without limitation, design, acquisition and construction costs, and public facility maintenance costs or public services. Upon request from the Developer, City shall diligently and expeditiously initiate CFD proceedings utilizing the special tax mechanisms authorized under the law of the State of California or the Fresno Municipal Code where the property subject to special taxes provides primary security for payment of the special taxes, provided, however, any such CFD shall be in conformance with City policies regarding land-based financing. City's obligations under this section are contingent upon the Developer providing adequate security to cover the costs of formation of the district and issuance of the bonds and upon the Developer providing the information or documents within the Developer's control which are necessary to form the district and issue the bonds (e.g., the list of infrastructure intended to be funded by the District and the area to be included in the District). Developer may recover costs of formation and issuance from bond proceeds to the extent permitted by law. Nothing provided herein is intended to create a legal duty of the City to form a CFD.

202.2.2 Funding of Maintenance Costs. Developer shall agree to have the Subject Property either annexed into an existing CFD or included in a special CFD for the overall Fancher Creek Project, the creation of which shall be subject to City approval, for the purpose of covering maintenance costs as set forth in **Exhibit F**. The Subject Property shall be included in the applicable CFD only with respect to maintenance of the median island landscaping in Clovis Avenue along the frontage of the Subject Property as said maintenance obligations are more particularly described in **Exhibit F**. To the extent the Subject Property is included in a CFD together with other assessed entities and properties, Developer and City agree to cooperate to obtain an apportionment of any assessments payable pursuant to inclusion in said CFD and attributable to the Subject Property specifically. As set forth in **Exhibit F**, Developer shall be entitled to reimbursement of costs related to annexation into or formation of the applicable CFD to the extent permitted by law.

202.3. Public Works Development Standards; Specifications. In completing the construction of the On-Site and Off-Site Improvements described in **Exhibits E and F**, Developer shall comply with (a) the conditions and terms of the Development Approvals and Subsequent Development Approvals, (b) all approved construction plans, (c) all applicable laws, ordinances, and resolutions in effect at the time of construction not inconsistent with this Agreement, and (d) the construction standards contained in the City's Standard Specifications in effect at the time of construction. If the City does not have standard specifications for any construction to be performed, the Developer will complete construction in accordance with the standards and specification of the State of California, Department of Transportation. Developer will complete all construction to the satisfaction of, and use materials satisfactory to, the City Engineer. The City Engineer may inspect all construction and materials.

11

202.4. Acceptance and Warranty of Public Facilities. The City's final written acceptance of any Off-Site Improvements will constitute a finding that it complies with the plans and specifications required above. The City may not unreasonably condition, delay or withhold acceptance of Off-Site Improvements. The Off-Site Improvements shall be owned by the City upon their completion and acceptance. Developer shall provide a warranty for any defects (whether latent or patent) in work or material or design in the Off-Site Improvements that occur or appear within one year after the date of written acceptance. The warranty shall provide that the City may give written notice to repair or correct any defect within (7) seven calendar days of notice, occurring or appearing within one year, and Developer and/or its warrantor will repair or correct the defect without additional cost to the City. After a failure of the Off-Site Improvements requiring an emergency repair by City crews, the Developer or its warrantor shall reimburse all reasonable costs for labor and materials within forty-five (45) days of invoice. Failure to repair or correct any defect may result in an offset to, or suspension of, reimbursements, if any, or may be considered a default of this Agreement, until the repair or correction is completed to the reasonable satisfaction of the City. Developer shall include the City as a named beneficiary to any subcontract for or warranty of the public facilities. This subsection will survive termination of this Agreement.

202.5. Prevailing Wages. As the Off-Site Improvements identified in **Exhibit F** as being subject to Prevailing Wages constitute public works, under State law Developer is required to pay and to cause its contractor and subcontractors to pay prevailing wages for the construction of the Off-Site Improvements as those wages are determined pursuant to Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations and comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations. Developer shall or shall cause its contractor and subcontractors to keep and retain such records as are necessary to determine that prevailing wages have been paid as required by law. During the construction of the Off-Site Improvements, Developer shall or shall cause its contractor to post at the Town Center the applicable prevailing rates of per diem wages. Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the City) the City against any claim for damages, compensation, fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractors and subcontractors) to pay prevailing wages as required by law or to comply with the other applicable provisions of Labor Code Sections 1720 et seq. and implementing regulations of the Department of Industrial Relations in connection with construction of the Off-Site Improvements identified in **Exhibit F** as being subject to Prevailing Wages.

202.6. Grant Funds. As the Developer's State grant requires location of a transit station (as described in Exhibit L) at the Town Center, City shall ensure that a Transit Station as defined in Exhibit L that meets at least the level of a Bus Hub (as specifically described in the grant program guidelines attached as Exhibit L) and is consistent with any findings of the Transit Study prepared pursuant to the Fancher Creek settlement agreement by and among Medical Advocates for Healthy Air, the City, the Developer and Centex Homes, dated April 1, 2006, is located on the Subject Property or immediately contiguous thereto at a location approved by the City in its sole and reasonable discretion. City shall cooperate with Developer to ensure that all permits necessary to Developer's infrastructure construction are processed in a timely manner.

202.7. Parking Structure(s). Notwithstanding any other requirement in this Agreement, including the Exhibits (and specifically, without limitation **Exhibit F,** which expressly requires Off-Site improvements before building permits), the City may issue grading and building permits for the construction of parking structure(s) and various Off-Site Improvements as necessary prior to completion of any Off-Site Improvements under **Exhibit F**, provided (1) the Directors of Public Utilities and Public Works Departments find that construction of the parking structure(s) will not interfere with the Developer performing its obligations to construct Off-Site Improvements under **Exhibit F**, (2) Developer is in compliance with the terms of the Agreement, and (3) at the time Developer or its appropriate subcontractor applies for the required building permits, or at such other time as may be required in connection with the recording of the final Parcel Map, and the Developer, or its appropriate subcontractor, submits payment and performance bonds (consistent with the requirements under FMC Section 12-1016) for the Clovis Avenue improvements required in Condition B.1 of **Exhibit F.** The bonds required under this section shall only be released upon the City acceptance of the improvements required under Condition B.1 of **Exhibit F.** Developer and City agree that construction of any improvements on-site, including parking structure(s), prior to completion of the Off-Site Improvements in **Exhibit F** may result in increased difficulties, complexities and costs to construct the Off-Site Improvements. Developer agrees that Off-Site Improvements in **Exhibit F** will be constructed to meet all City standards regardless of costs, and specifically, regardless if costs are increased because the Developer constructed parking structure(s) or any other improvement on-site before completing the Off-Site Improvements described in **Exhibit F**.

203. Dedications and Other Exactions. Developer shall be responsible for only those dedications and other exactions provided in **Exhibit F**.

204. Reimbursements and Credits. For the first eight (8) years this Agreement is in effect, Developer shall be responsible for paying only those fees provided in **Exhibits C and F**. The Developer shall be entitled to only those reimbursements and credits for the Off-Site Improvements required under Section 202.1.3 as provided in **Exhibit F**. Notwithstanding the above, Developer shall be responsible for paying any fees the City collects for other agencies pursuant to (i) state or federal law or (ii) any City agreement or City ordinance adopted or entered into to comply with state or federal law or judgment of a court of law, provided that Developer does not hereby waive any right it may have to contest the validity or amount of any such fee.

205. Conditions to and Formula for Reimbursement for Off-Site Improvements. Reimbursement and/or credits that the Developer is expressly allowed under **Exhibit F**, shall be given from appropriate fee programs as provided in the Fresno Municipal Code and/or adopted City policies for those fee programs in effect at the time this Agreement is executed unless the Parties mutually agree to use the Fresno Municipal Code and/or City policies for the applicable fee programs as they exist at the time reimbursement is sought, Developer being under no obligation to consider any such alternative reimbursement formula.

206. Books and Records. Developer shall establish and maintain throughout the term of this Agreement, and for a four (4) year period following the date of the last reimbursement, records and accounts on the Subject Property and its development, in accordance with normal business

practices, any reasonable request of the City, and applicable laws, rules and regulations. At the times and in the forms as the City may reasonably request, Developer shall furnish City with statements, records, reports, data and information related to the costs to be reimbursed. The City at its cost, has the right during reasonable business hours to inspect and copy Developer's records, books, and documents related to the reimbursable costs. Not more frequently than annually, the City at its cost has the right, but not the obligation, to audit the Developer's books and records.

207. Project Timing. The Parties acknowledge that Developer cannot at this time predict when, or the order in which, individual buildings on the Subject Property will be developed. Such decisions with respect to phasing of development of the Subject Property will depend upon a number of circumstances not within the control of Developer, including, without limitation, market conditions and demand for the use or uses of the Subject Property, the condition of capital markets and availability of appropriate financing for the development of the Subject Property (such as construction or interim and permanent loans, and/or equity capital) and other similar factors. In order to retain the flexibility necessary to respond to such market conditions, Developer shall have the right to develop the Subject Property in phases, in such order, and at such times as Developer deems appropriate within the exercise of its subjective business analysis of those factors determining, in Developer's judgment, the appropriate course of development of the Subject Property. However, in connection with each phase, Developer shall be required to: (i) comply with the Development Standards set forth in **Exhibit D**; (ii) pay all applicable processing fees provided in **Exhibit C**; (iii) pay all applicable development impact fees and provide all applicable exactions provided in **Exhibit F**; and (iv) construct applicable Off-Site Improvements as provided in **Exhibit F**.

208. Amendments to Development Approvals. Given the long-term build-out of the Town Center, the Parties acknowledge that development of the Subject Property may require amendments to Development Approvals or Subsequent Development Approvals. Amendments to the Development Approvals or Subsequent Development Approvals shall be processed as follows:

208.1. Administrative Amendments. Upon the written request of Developer for an amendment or modification to a Development Approval or Subsequent Development Approval, the Planning Director or his/her designee shall determine: (i) whether the requested amendment or modification is minor; and (ii) whether the requested amendment or modification is consistent with the Applicable Rules. If the Planning Director or his/her designee finds that the proposed amendment or modification is minor, consistent with the Applicable Rules, and is not subject to further environmental review under CEQA (See CEQA Guidelines §§ 15162, 15163), the amendment shall be determined to be an "**Administrative Amendment**" and the Planning Director or his/her designee may approve, or may approve with appropriate conditions, the Administrative Amendment consistent with the procedures described in **Exhibit D**. The determination of whether a requested amendment or modification is an Administrative Amendment shall be within the reasonable discretion of the Planning Director.

Examples of amendments or modifications which may, depending on particular circumstances, be treated as Administrative Amendments, include, but are not limited to, the following: (1) lot line adjustments that do not alter the concepts of the project design; (2) alterations in vehicle

14

circulation patterns or vehicle access points which do not adversely affect capacity or service levels; (3) changes in trail alignments; (4) substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan; (5) variations in the location of structures that do not substantially alter the design concepts of the project; (6) variations in the location or installation of utilities and other infrastructure connections or facilities that do not substantially alter the design concepts of the project; (7) minor alterations in design or configuration of buildings that are consistent with the Development Standards set forth in **Exhibit D**; and (8) minor adjustments to the Subject Property legal description. Administrative Amendments are subject to a processing fee as provided in **Exhibit C**. Administrative Amendments that would be a Minor DOP as defined in **Exhibit C** will pay the Minor DOP fee. Administrative Amendments that are not a Minor DOP will pay the applicable fee provided for in **Exhibit C**. In no event shall an Administrative Amendment be deemed a new entitlement or otherwise subject the development of the Subject Property to any new or increased fees or exactions, any provisions of the Fresno Municipal Code or City policies or procedures to the contrary notwithstanding.

208.2 Material Amendments. Any request of Developer for an amendment or modification to a Development Approval or Subsequent Development Approval that is reasonably determined by the Planning Director or his/her designee to be a material amendment (**"Material Amendment"**), as opposed to an Administrative Amendment, shall be subject to review, consideration and action pursuant to the laws in effect at the time the Material Amendment is considered for approval. Notwithstanding any provision in the Agreement to the contrary, the City may impose mitigation measures necessary to comply with CEQA for Material Amendments. Material Amendments are subject to processing fees as provided in **Exhibit C**.

208.3 Future Amendments. Any future amendment or modification to a Development Approval or Subsequent Development Approval shall be incorporated in this Agreement without the need to amend this Agreement.

209. Encumbrances and Lender's Rights.

209.1 Permitted Encumbrances. This Agreement shall be superior and senior to any lien placed upon the Subject Property. The Parties agree that this Agreement shall not prevent or limit any owner of an interest in the Subject Property from encumbering the Subject Property with any deed of trust or other security device securing financing with respect to the Subject Property.

209.2 Lender's Rights. The holder of any mortgage, deed of trust, or other security arrangement (**"Lender"**) with respect to the Subject Property, or any portion thereof, that has requested, in writing, receipt of notice of any event of default under this Agreement shall be entitled to receive a copy of any notice of default and shall be allowed an opportunity to cure such default. The Lender shall receive a second default notice thirty (30) days before the City institutes legal proceedings and the Lender shall again be allowed an opportunity to cure such default.

The holder of any mortgage, deed of trust, or other security arrangement with respect to the Subject Property, or any portion thereof, shall not be obligated under this Agreement to construct

15

or complete improvements or to guarantee such construction or completion, but shall otherwise be bound by all the terms and conditions of this Agreement. Nothing in this Agreement shall be deemed to construe, permit or authorize any such holder to devote the Subject Property, or any portion thereof, to any uses, or to construct any improvements thereon, other than those uses and improvements provided for or authorized by this Agreement, subject to all of the terms and conditions of this Agreement.

ARTICLE 3
DEFAULT, REMEDIES, TERMINATION

300. General Provisions. Subject to extensions of time by mutual consent in writing, failure or unreasonable delay by either Party to perform any term or provision of this Agreement shall constitute a default. In the event of default or breach of any terms or conditions of this Agreement, the Party alleging such default or breach shall give the other Party not less than thirty (30) days notice in writing specifying the nature of the alleged default and the manner in which said default may be satisfactorily cured. During any such thirty (30) day period, the Party charged with being in default shall not be considered in default for purposes of termination or institution of legal proceedings.

After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other Party to this Agreement may at its option:

1. Terminate this Agreement, in which event neither Party shall have any further rights against or liability to the other with respect to this Agreement or the Subject Property; provided, however, if portions of the Subject Property are held in separate ownership at the time such event of default occurs and such event of default is related only to one portion, this Agreement may be terminated only as to such portion and no such termination shall impair the continuing applicability of this Agreement to the remainder of the Subject Property; or

2. Institute legal or equitable action to cure, correct or remedy any default, including, but not limited to, an action for specific performance of the terms of this Agreement; provided, however, that in no event shall either party be liable to the other for money damages for any default or breach of this Agreement.

301. Developer Default; Enforcement. No building permit shall be issued or building permit application accepted for the building shell of any structure on any portion of the Subject Property if the permit applicant owns or controls such portion of the Subject Property and if such applicant or any entity or person controlling such applicant has been found to be in default as to such portion of the Subject Property by the City Council of the City of Fresno under the terms and conditions of this Agreement, unless such default is cured or this Agreement is terminated. A default as to an owner of any portion of the Subject Property shall have no impact on any portion of the Subject Property not owned by such defaulting owner. The Developer shall cause to be placed in any covenants, conditions and restrictions applicable to the Subject Property, or in any ground lease or conveyance thereof, an express provision for an owner of the Subject Property, lessee or City, acting separately or jointly, to enforce the provisions of this Agreement and to recover attorneys' fees and costs for such enforcement.

302. Annual Review. The City Manager shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by the Developer with the terms and conditions of this Agreement. Such periodic review shall be limited in scope to compliance with the terms and conditions of this Agreement pursuant to California Government Code Section 65865.1. Notice of such annual review shall include the statement that any review may result in amendment or termination of this Agreement. The costs of notice and related costs incurred by the City for the annual review conducted by the City pursuant to this Section 302 shall be borne by the Developer.

The City Manager shall provide thirty (30) days prior written notice of such periodic review to the Developer. Such notice shall require the Developer to demonstrate good faith compliance with the terms and conditions of this Agreement and to provide such other information as may be reasonably requested by the City Manager and deemed by him to be required in order to ascertain compliance with this Agreement. If, following such review, the City Manager is not satisfied that the Developer has demonstrated good faith compliance with all the terms and conditions of this Agreement, the City Manager may refer the matter, along with his recommendations, to the City Council.

Failure of the City to conduct an annual review shall not constitute a waiver by the City of its rights to otherwise enforce the provisions of this Agreement; nor shall the Developer have or assert any defense to such enforcement by reason of any such failure to conduct an annual review.

303. Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Agreement, either Party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, walkouts, riots, floods, earthquakes, fires, casualties, acts of God, governmental entities' enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulations, litigation or similar grounds for excused performance. If written notice of such delay is given within thirty (30) days of the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon.

304. Limitation of Legal Acts. In no event shall the City, or its officers, agents or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed that the Developer's sole legal remedy for a breach or violation of this Agreement by the City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

305. Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Developer acknowledges and agrees that the City has approved and entered into this Agreement in the sole exercise of its legislative discretion and that the standard of review of the validity or meaning of this Agreement shall be that accorded legislative acts of the City. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the Court.

306. Invalidity of Agreement.

306.1 If this Agreement is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment.

306.2 If any provision of this Agreement is determined by a court to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any law which becomes effective after the date of this Agreement and either party in good faith determines that such provision is material to its entering into this Agreement, either party may elect to terminate this Agreement as to all obligations then remaining unperformed in accordance with the procedures set forth in Section 300, subject, however, to the provisions of Section 307 hereof.

307. Effect of Termination on Developer's Obligations. Termination of this Agreement shall not affect the Developer's obligations to comply with the General Plan and the terms and conditions of any and all land use entitlements approved with respect to the Subject Property prior to such termination, nor shall it affect any other covenants of the Developer specified in this Agreement to continue after the termination of this Agreement. If portions of the Subject Property are held in separate ownership at the time of such termination, this Agreement may be terminated only as to such portion and no such termination shall impair the continuing applicability of this Agreement to the remainder of the Subject Property.

ARTICLE 4
INDEMNITY; INSURANCE

400. Indemnity/Insurance.

400.1. Indemnification. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Developer or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement or the performance of any or all work to be done on on-site or off site public or private improvements pursuant to this Agreement (including, but not limited to design, construction and/or ongoing operation and maintenance unless and until the facility is dedicated to and officially accepted by the City). Developer's obligations under the preceding sentence shall apply regardless of whether Developer or any of its officers, officials, employees or agents are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

If Developer should subcontract all or any portion of the services to be performed under this Agreement, Developer shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph. The Developer further agrees that the use for any purpose and

by any person of any and all of the streets and improvements required under this Agreement, shall be at the sole and exclusive risk of the Developer at all times prior to final acceptance by the City of the completed street and other improvements. This section shall survive termination or expiration of this Agreement.

400.2. Insurance. Throughout the life of this Agreement, Developer shall pay for and maintain in full force and effect all policies of insurance described in this section with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by CITY'S Risk Manager. The following policies of insurance are required:

a. COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and shall include insurance for bodily injury, property damage and personal injury with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, contractual liability (including indemnity obligations under this Agreement),with limits of liability of not less than $5,000,000 per occurrence for bodily injury and property damage, $1,000,000 per occurrence for personal injury and $5,000,000 aggregate for products and completed operations.

b. COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Business Auto Coverage Form CA 00 01 and shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 B Any Auto), with combined single limits of liability of not less than $5,000,000 per accident for bodily injury and property damage.

c. WORKERS' COMPENSATION insurance as required under the California Labor Code. Developer shall file with the City pursuant to Section 3800 of the Labor Code, a Certificate of Workers' Compensation.

d. EMPLOYERS' LIABILITY with minimum limits of liability of not less than $1,000,000 each accident, $1,000,000 disease policy limit and $1,000,000 disease each employee.

Developer shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Developer shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of City of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a 10 calendar day written notice of such cancellation of coverage. In the event any policies are due to expire during the term of this Agreement, Developer shall provide a new certificate evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, Developer shall file with City a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Developer's insurance shall be primary and no contribution shall be required of City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers. Developer shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance prior to start of construction of any phase of development. Developer shall furnish City with copies of the actual policies upon the request of City's Risk Manager at any time during the life of the Agreement or any extension, and this requirement shall survive termination or expiration of this Agreement.

If at any time during the life of the Agreement or any extension, Developer fails to maintain the required insurance in full force and effect, the Director of Public Works, or his/her designee, may order that the Developer, or its contractors or subcontractors, immediately discontinue any further work under this Agreement and take all necessary actions to secure the work site to insure that public health and safety is protected. All payments due or that become due to Developer shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement.

If Developer should subcontract all or any portion of the services to be performed under this Agreement, Developer shall require each subcontractor to provide insurance protection in favor of City, its officers, officials, employees, volunteers and agents in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Developer and City prior to the commencement of any work by the subcontractor.

401. Notice to Developer. The City shall promptly give notice to Developer in accordance with Section 600 of this Agreement of any case, action or proceeding brought against the City concerning this Agreement or the Subject Property.

ARTICLE 5
PROJECT AS A PRIVATE UNDERTAKING

500. Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the development of the Subject Property is a separately undertaken private development and that the contractual relationship created hereunder between the City and Developer is such that Developer is an independent contractor and is not an agent of the City. None of the terms or provisions of this Agreement shall be deemed to create a partnership or joint venture between the City and Developer or to provide third party beneficiary rights to any person or entity not a Party hereto. The only relationship between the City and the Developer is that of a governmental entity regulating the development of private property and the owner of such private property.

ARTICLE 6
NOTICES

600. Notices. All formal notices required by this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid, to the principal offices of the City and the Developer with copies sent as set forth below. The addresses of the parties as of the date hereof are as set forth below. Such written notices, demands, correspondence and communication may be directed in the same manner to such other persons and addresses as either party may from time to time designate in writing. The Developer shall give written notice to the City, within ten (10) days after the close of escrow, of any sale or transfer of any portion of the Subject Property and any assignment or partial assignment of this Agreement, specifying the name or names of the transferee, the transferee's mailing address, the legal description of the land sold or transferred, and the name and address of any person or entity to whom any notice relating to this Agreement shall be given with respect to such transferred portion of the Subject Property.

Notices required to be given to the City shall be addressed as follows:

City of Fresno
Planning and Development Department
2600 Fresno Street
Fresno, California 93721
Attention: Planning Director

Notices required to be given to the Developer shall be addressed as follows:

Ed Kashian
Fancher Creek Properties, LLC
8365 Fresno Street, Suite 150
Fresno, California 93720

with a copy to:

McDonough, Holland & Allen PC
500 Capitol Mall, 18th Floor
Sacramento, California 95814
Attention: T. Brent Hawkins

ARTICLE 7
MISCELLANEOUS

700. Amendment of Agreement. This Agreement may be amended from time to time with respect to any portion of the Subject Property by mutual consent of the City and the Developer (to the extent that it continues to own any portion of the Subject Property) and of the then-current owner(s) of the portions of the Subject Property affected by such amendment, with City costs payable by the amendment applicant, in accordance with the provisions of Government Code Sections 65867 and 65868.

701. Waiver of Provisions. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought. No waiver of any right or remedy with respect to any occurrence or event shall be deemed a waiver of any other occurrence or event.

702. Time of Essence. Time is of the essence for each provision of this Agreement of which time is an element.

703. Entire Agreement. This Agreement is executed in two (2) duplicate originals, each of which is deemed to be an original. This Agreement consists of twenty-one (21) pages and **Exhibits A through L**, which constitute the entire understanding and agreement of the Parties. Said exhibits are identified as follows:

Exhibit A: Legal Description of the Subject Property

Exhibit B: Diagram of Area Subject to Agreement

Exhibit C: Processing Fees

Exhibit D: Permitted Uses and Development Standards

Exhibit E: On-Site Improvements

Exhibit F: Exactions: Off-Site Improvements, Development Impact Fees, Dedications

Exhibit G: Intentionally Omitted

Exhibit H: Intentionally Omitted

Exhibit I: Ordinance Adopting Development Agreement

Exhibit J: Parcel Map

Exhibit K: Easement for Public Access over Internal Roads

Exhibit L: Transit Station Definition.

Exhibits A through L are incorporated into the Agreement. In the event of inconsistency between the Recitals and the provisions of Articles 1 through 7, the provisions of Articles 1 through 7 shall prevail.

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement as of the date first set forth above.

[Signatures continue on next page]

CITY:

CITY OF FRESNO,
a Municipal Corporation.

By: Mark Scott
~~Bruce Rudd, Interim City Manager~~
Mark Scott, City Manager

ATTEST:

REBECCA E. KLISCH
City Clerk

By: Sherri L. Bedertscher
Deputy 7/21/10

APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

By: John W. Fox
John W. Fox, Senior Deputy

Date: 7/14/2010

DEVELOPER:

FANCHER CREEK PROPERTIES, LLC,
a California limited liability company

By: KASHIAN ENTERPRISES,
a California limited partnership

By: Edward M. Kashian
Edward M. Kashian
General Partner

By: AFRICAL DEVELOPMENT, LLC,
a California limited liability company

By:
Thomas G. Richards
Managing Member

KCP:bfs [48465KCP_bfs Fancher Creek Development Agreement] 041509

23

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Fresno

On May 7, 2010 (Date) before me, Cynthia C Letson Notary Public (Here Insert Name and Title of the Officer),
personally appeared Thomas G. Richards (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

CYNTHIA C. LETSON
Commission # 1842871
Notary Public - California
Fresno County
My Comm. Expires Apr 28, 2013

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Cynthia C Letson (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Development Agreement by ~~&~~ Between the City of Fresno and Fancher Creek Properties, LLC and Subordination

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Fresno

On May 6, 2010 (Date) before me, Steven M. Young, Notary Public (Here Insert Name and Title of the Officer),

personally appeared Edward M. Kashian (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

STEVEN M. YOUNG
COMM. #1803670
NOTARY PUBLIC-CALIFORNIA
FRESNO COUNTY
My Comm. Exp. June 24, 2012
SRS4

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Steven M. Young (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Dev Agmt between City of Fresno & Fowler Creek Properties and Subordination

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
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SUBORDINATION

The undersigned is holder of the beneficial interest in and under that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated May 1, 2006, in, by and among:
FANCHER CREEK PROPERTIES, LLC, a California limited liability company, as "**Trustor**" or "**Borrower**,"
FINANCIAL TITLE COMPANY, as "**Trustee**,"
and **CENTRAL PACIFIC BANK, a Hawaii banking corporation**, as "**Beneficiary**," recorded on May 12, 2006 as Document No. 2006-0101297 of the official records of the office of the Fresno County Recorder (together with any and all amendments thereto or modifications thereof (the "**Deed of Trust**"). The undersigned hereby expressly subordinates said Deed of Trust and its beneficial interest thereto to the attached **DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF FRESNO AND FANCHER CREEK PROPERTIES, LLC**.

DATED: July 12, 2010

BENEFICIARY

By: Kelly M Chaney SVP
SENIOR VICE PRESIDENT
CENTRAL PACIFIC BANK

By: ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

(Beneficiary to print/type Name and Title; and attach Notary Acknowledgment)

ACKNOWLEDGMENT

State of California
County of San Diego)

On July 12, 2010 before me, Meagan Pomeroy - Notary Public
(insert name and title of the officer)

personally appeared Reilly Shaughnessy,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

ESI1 MEAGAN POMEROY COMM. #1856261 Notary Public-California SAN DIEGO COUNTY My Comm. Exp. JUNE 29, 2013 ESI1

Signature _____ (Seal)

21

EXHIBIT A

DESCRIPTION OF THE SUBJECT PROPERTY OWNED IN FEE

The portion of the Northwest Quarter and the Southwest Quarter of Section 4, Township 14 South, Range 21 East, Mount Diablo Base and Meridian, described as follows:

Beginning at the Northwest corner of said Section 4; thence South 0°04'33" East, along the West line of said Northwest Quarter, a distance of 910.00 feet; thence South 89°41'21" East, a distance of 83.50 feet to the TRUE POINT OF BEGINNING; thence South 89°41'21" East, a distance of 155.84 feet; thence North 0°04'33" West, a distance of 207.77 feet to the intersection with the Southerly line of the 25 foot wide Pacific Gas & Electric Company easement, recorded October 18, 1957 in Book 3982, page 624, Fresno County Records; thence South 72°31'57" East, along said Southerly line, a distance of 172.66 feet; thence South 17°31'56" West, along the boundary of the property deeded to the City of Fresno, recorded September 19, 1994 as Document No. 94146329 and recorded October 12, 1994, as Document No. 94159187, Fresno County Records, a distance of 89.94 feet; thence South 72°29'59" East along said boundary, a distance of 130.00 feet; thence North 17°31'56" East along said boundary, a distance of 90.01 feet to the intersection with the South boundary of Tract No. 2784, Legacy Homes No. 1, recorded in Volume 31, pages 54 and 55 of Plats, Fresno County Records; thence South 72°31'57" East, a distance of 983.00 feet to the Southeast corner of said Tract No. 2784; thence South 72°29'26" East along the South boundary of Tract 1681, Fancher Creek Ranchos NO. 2, recorded in Volume 19, page 25 of Plats, Fresno County Records, a distance of 374.37 feet to the intersection with the West boundary of Tract No. 1589, Fancher Creek Ranchos No. 1, recorded in Volume 19, pages 23 and 24 Plats, Fresno County Records, said West boundary also being the centerline of North Manila Avenue; thence Southerly along a non-tangent curve, along said West boundary and centerline, whose radius point bears South 80°00'43" East, having a radius of 477.46 feet, through a central angle of 18°28'44", a distance of 153.99 feet; thence South 8°29'21" East along said West boundary and centerline, a distance of 224.76 feet; thence Southwesterly along a tangent curve, along said West boundary and centerline, concave to the Northwest, having a radius of 65.11 feet, through a central angle of 78°00'00", a distance of 88.64 feet; thence South 69°30'39" West, along said West boundary and centerline, a distance of 100.00 feet; thence Southwesterly along a tangent curve, along said West boundary and centerline, concave to the Southeast, having a radius of 358.10 feet, through a central angle of 44°33'25", a distance of 278.48 feet; thence South 22°28'59" West, along said West boundary and centerline, a distance of 10.00 feet; thence South 22°28'59" West, a distance of 177.20 feet; thence South 57°45'35" East, a distance of 252.08 feet to the centerline of Fancher Creek; thence South 8°57'14" West along said centerline, a distance of 32.66 feet; thence South 0°48'58" West along said centerline, a distance of 421.74 feet to the intersection with a line parallel with and 174.20 feet South of the North line of the South Half of said Section 4; thence North 89°55'16" West along said line a distance of 15.96 feet; thence along the centerline of Fancher Creek the following described courses; (1) South 0°10'09" East, a distance of 33.34 feet; (2) South 3°54'28" East, a distance of 230.14 feet; (3) Southwest along a tangent curve, concave to the Northwest, having a radius of 284.60 feet, through a central angle of 37°28'46", a

28

distance of 186.17 feet; (4) thence South 33°34'18" West, a distance of 59.81 feet; (5) thence Southwesterly along a tangent curve, concave to the Northwest, having a radius of 500.00 feet, through a central angle of 19°15'44", distance of 168.09 feet; (6) thence South 52°50'02" West, a distance of 119.90 feet; (7) thence South 58°43'21" West, a distance of 32.91 feet; (8) thence South 67°32'47" West, a distance of 79.19 feet; (9) thence South 70°47'25" West, a distance of 185.67 feet; (10) thence South 57°07'22" West, a distance of 187.40 feet; (11) thence South 69°26'18" West, a distance of 206.48 feet; (12) thence South 73°38'53" West, a distance of 80.38 feet; (13) thence South 84°21'26" West, a distance of 103.14 feet; (14) thence North 89°42'53" West, a distance of 104.99 feet; (15) thence North 89°34'43" West, a distance of 375.76 feet to the Southeast corner of the property described by the deed recorded July 22, 1966 in Book 5339, page 451, Fresno County Records; thence North 0°04'26" West, parallel with and 68.00 feet East of the West line of said Section 4, a distance of 291.87 feet to a point 881.13 feet South of the North line of said Southwest Quarter; thence North 0°14'31" East, a distance of 362.55 feet to a point 518.58 feet South of said North line; thence North 0°04'26" West, parallel with and 70.00 feet East of said West line, a distance of 329.81 feet; thence North 0°04'33" West, parallel with and 70.00 feet East of said West line, a distance of 1641.02 feet to a point which bears South 0°04'33" East, a distance of 1000.00 feet and North 89°55'27" East, a distance of 70.00 feet from the Northwest corner of said Section 4; thence North 8°30'31" East, a distance of 90.43 feet to the TRUE POINT OF BEGINNING.

29

EXHIBIT B

DIAGRAM OF AREA SUBJECT TO THIS AGREEMENT

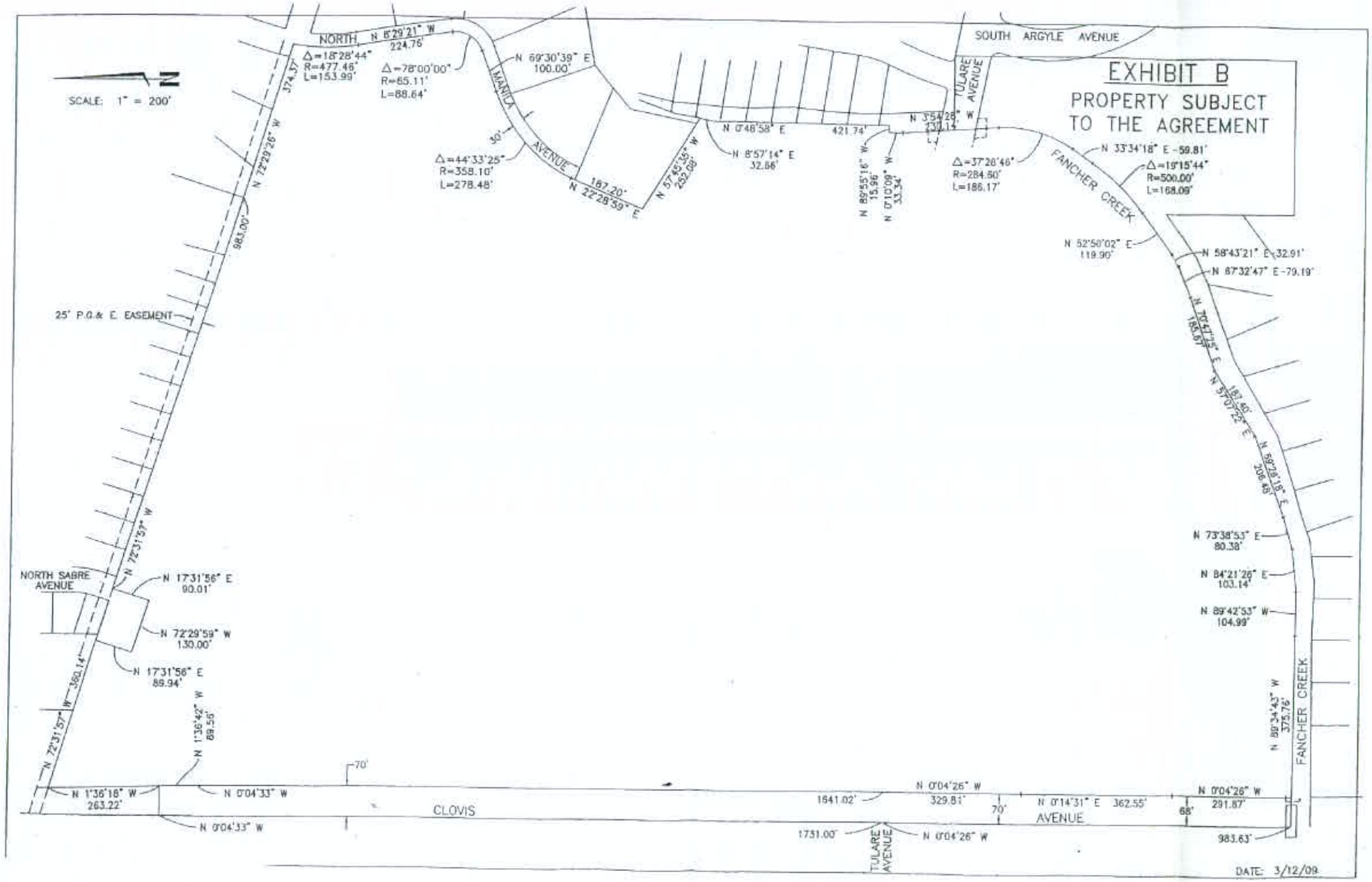
EXHIBIT B
PROPERTY SUBJECT TO THE AGREEMENT
SCALE: 1" = 200'
N
NORTH
N 6°29'21" W
224.76'
Δ=18°28'44"
R=477.46'
L=153.99'
Δ=78°00'00"
R=65.11'
L=88.64'
N 69°30'39" E
100.00'
MANITA AVENUE
30'
Δ=44°33'25"
R=358.10'
L=278.48'
187.20'
N 27°28'59" E
N 57°45'35" W
252.09'
N 0°48'58" E
421.74'
N 8°57'14" E
32.86'
N 89°55'16" W
15.96'
N 0°10'09" W
33.34'
N 3°54'28" W
TULARE AVENUE
SOUTH ARGYLE AVENUE
Δ=37°28'46"
R=284.60'
L=186.17'
FANCHER CREEK
N 33°34'18" E - 59.81'
Δ=19°15'44"
R=500.00'
L=168.09'
N 52°50'02" E
119.90'
N 58°43'21" E - 32.91'
N 67°32'47" E - 79.19'
N 70°47'15" E
188.67'
N 5°10'22" E
187.40'
N 59°28'18" E
206.45'
N 73°38'53" E
80.38'
N 84°21'26" E
103.14'
N 89°42'53" W
104.99'
N 89°34'43" W
375.76'
FANCHER CREEK
983.63'
N 0°04'26" W
291.87'
68'
N 0°14'31" E 362.55'
70'
AVENUE
N 0°04'26" W
329.81'
1641.02'
N 0°04'26" W
1731.00'
TULARE AVENUE
CLOVIS
70'
N 0°04'33" W
N 0°04'33" W
N 1°36'18" W
263.22'
N 1°36'42" W
89.56'
N 72°31'57" W
360.14'
N 72°31'57" W
N 17°31'56" E
90.01'
N 72°29'59" W
130.00'
N 17°31'56" E
89.94'
NORTH SABRE AVENUE
25' P.G.& E. EASEMENT
N 72°29'26" W
983.00'
374.37'
DATE: 3/12/09

EXHIBIT C

PROCESSING FEES

Processing of the Development Agreement and subsequent submittals shall be subject to the following fee schedule:

Development Agreement (DA)	$ 50,000 (one-time fee)
Operational Plan (DOP)[1]	$0.10 (per sq. ft. of building area)
Minor DOP[2]	$1,000
Alcohol Beverage Sales (ABS)[3]	$2,000 (paid by applicant)

All other applicable processing fees (e.g., building plans, building permits, public improvement plans, subdivisions and parcel maps) not listed above shall be subject to the Master Fee Schedule rate in effect at the time of application contingent upon a fee being in place for the same or similar process (whether renamed) at the time of execution of the Agreement.

All processing fees shall be paid at the time of submittal of the application for City review and processing unless otherwise permitted under the Fresno Municipal Code.

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[1] **Development Operation Plan (DOP)** shall mean a detailed scaled exhibit(s) that includes building layouts, elevations to include detailed architectural features and color schemes, landscaping plans, parking and operational statements as provided in Exhibit D.

[2] **Minor DOP** shall mean a revision to an element of a previously approved DOP whereby the proposed change falls within the scope of development included in the originally approved DOP and is consistent with the Development Standards set forth in Exhibit D and therefore renders the revision capable of being processed as an Administrative Amendment under Section 208.1 of the Agreement and as outlined in Exhibit D of this Development Agreement.

[3] **Alcohol Beverage Sales (ABS)**, commonly called ABCCUP, shall be subject to the provisions of Exhibit D of this Development Agreement.

32

EXHIBIT D

PERMITTED USES AND DEVELOPMENT STANDARDS

The following design guidelines, entitlement processing rules and property development standards shall be applicable to all development of the "Town Center" as provided in the Agreement and shall be incorporated to any Subsequent Development Approvals on the Subject Property.

I. Development of the Town Center

Development of the Town Center shall substantially comply with the requirements of this Exhibit and the approved Site Plan shown as Attachment No. 1 to this Exhibit D.

The Planning and Development Department Director shall have the discretion and flexibility to approve modifications within the building envelopes through an Administrative Amendment as described in Section 208.1 of the Agreement and the procedures described in this Exhibit provided they do not substantially change the Site Plan layout of the Town Center

A. Standards

Pursuant to **Section 200** of the Agreement, Development of the Town Center is subject to the following development standards:

Building areas

1. Retail and commercial floor space shall be limited to 1,200,000 square feet (EIR – letter 11, 'TPG Consulting' pg.2), which includes a movie theatre, civic uses, and up to 100,000 square feet of restaurant type uses (including coffee shops, yogurt and ice cream parlors, etc.).

2. Maximum of 740 residential units.

Ground floor pedestrian oriented uses required

3. The four Lifestyle Stores & Restaurants buildings that abut Fancher Creek Drive shall be designed for multiple tenants.

4. Clear, un-tinted windows shall be used for approximately 50 percent of the walls on the ground floor areas adjacent to Fancher Creek Drive, including those buildings to the north and south of the "Power Center Commercial Stores."

Building elevations

5. The four "Lifestyle Stores & Restaurants" buildings that abut Fancher Creek Drive shall be a maximum four stories in height not to exceed the height limitations described below.

6. Buildings shall have an attractive appearance on all sides, not just the front elevation. Implementation of design features such as the extension of the roof treatment around to the sides and the back of the building, provision of pedestrian overhangs, and the use of texture, relief and/or color are required to add interest to blank walls (e.g., some form of veneer, ornamental metalwork, ornamental wood trellises, canvas awnings, etc.) All building elevations (i.e., rears included) must provide elevation relief, indentations, various styles (i.e. several store fronts rather than one large one), canopies, massing, etc. In addition, roof lines must vary.

7. The Subject Property shall be developed with buildings in a manner which is suitable, harmonious, and in keeping with the general appearance, character, and/or style of the Subject Property. Exceptions may only be made for buildings affiliated with a tenant wherein a "corporate" identity, image, or appearance is required to be maintained, in which case the architectural character and defining features of a building shall be compatible with and complementary to the other structures located on the Subject Property excepting only those design modifications required to maintain said "corporate" identity.

8. Front facades, pedestrian walkways and protective overhangs shall be incorporated into the building designs.

9. All mechanical equipment, including HVAC units, downspouts, electrical and gas meters, etc., shall be screened from the public right of way.

Pedestrian walkways into the center

10. Provide minimum of a 10 foot wide pedestrian connection including landscaping from North Sabre Avenue to the shopping center. This walkway shall provide landscaping on both sides.

11. Provide minimum of a 10 foot wide pedestrian connection including landscaping from North Manila Avenue to the shopping center.

Building & landscaping setbacks, walls, and building height

12. Landscaping shall be an appropriate mix of drought tolerant deciduous and evergreen tree species (no redwoods).

13. Provide sufficient trees in the parking lot area to provide 50 percent shading of the parking area surface within 15 years. (This requirement may be reduced to 40 percent if it is demonstrated that the constraints of an existing site would make it impossible to meet the normal standards.) Trees shall also be planted in the required landscaped area along the periphery of the development in order to shade and enhance adjacent property and public rights-of-way. Parking spaces provided in a parking structure are not required to comply with this requirement.

14. Phased Landscaping must be in place before issuance of the certificate of occupancy. A Hold on Occupancy shall be placed on the proposed development until such time that the phased landscaping has been approved and verified for proper installation by the Planning Division.

15. Refer to the following table for building and landscaping setbacks, wall requirements and building height regulations.

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Property Line	Building Setback	Landscape Setback	Wall Requirements	Building Height Regulations[5]
North (1/A)	30 feet	Trees 35 feet apart within 10 feet of the property line	8 foot solid wall (to be located on the property line)	35 feet for the commercial buildings. Buildings in excess of 35 feet in height shall provide an additional setback of 1.5 feet for each 1 foot above 35 feet in height.
North (1/A–residential component)	5 feet for the first two stories For each story above the 2nd floor an additional 5 foot setback shall be provided for that floor (balconies may not encroach)	5 feet	8 foot solid wall (to be located on the property line	60 feet (refer to the Building Setbacks for additional info.)
East (2/A residential component) adjacent to North Manila Avenue	10 feet for the first two stories from the property line. For each story above the 2nd floor, an additional 5 foot setback shall be provided for that floor (balconies may not encroach)	10 feet (from property line) for a total of 20 feet from the edge of the street pavement	7 foot 4 inch masonry wall (to be located on property line)	60 feet (refer to the Building Setbacks for additional info.)
East (3/A)	60 feet	10 feet	8 foot masonry wall located on the property line	60 feet
East (4/A) adjacent to Fancher Creek	5 feet	5 feet from the property line	4 foot fence on the property line	60 feet
South (5/A) adjacent to Fancher Creek	10 feet from the required fence	None (Community Trail)		60 feet
West (6/A & 7/A)	20 feet from the property line	28 feet from the curb which includes the required 12 ft. trail (park strip-trail-landscaping)	None required	60 feet

[4] Refer to attached exhibit for property line references

[5] No building shall exceed 60 feet in height.

36

Property Line	Building Setback	Landscape Setback
Fancher Creek Drive (East-West south leg, Tulare alignment)	15 feet from Fancher Creek Drive curb face to building or 10 feet from Fancher Creek Drive curb face to parking lot curb face.	Trees approximately of 35 feet apart within 6 feet from curb except at drive openings.
Fancher Creek Drive (East-West north leg)	6 feet from Fancher Creek curb face to parking lot curb face.	Trees approximately of 35 feet apart within 6 feet from curb except at drive openings.
Fancher Creek Drive (North-South leg through the Lifestyle Stores and Restaurants)	15 feet from the face of the curb to accommodate vehicle overhangs, tree wells, street furniture, store front openings, and pedestrian access	Tree wells every 35 feet on center

15.1. All plants must be drought tolerant and landscaping must be designed to reduce standard water consumption by 20%. Landscape plans shall be reviewed by DPU to verify 20% reduction.

Parking (vehicle/bicycle)

16. A minimum parking requirement of 5.0 parking spaces per 1,000 square feet of retail commercial building area shall be maintained during all phases of the project.

17. One parking space shall be provided for each residential unit.

18. Office and civic uses shall have a minimum of 4.0 parking spaces per 1,000 square feet with shared parking with the movie theater.

19. Parking geometrics to be utilized within the Town Center shall be [those previously approved by the City's Traffic Engineer, as the same are set forth in Attachment No. 2 to this Exhibit D].

20. Each phase of the project shall provide bicycle parking spaces that are centrally located, accessible and in prominent locations, as determined by the Planning and Development Director. In relation to the residential development, a minimum of 100 bicycle parking spaces shall be distributed throughout the site as well as 1 bicycle locker for every 6 residential units. Number of bicycle parking spaces (and bicycle lockers, if applicable) attributable to the commercial development shall be per the requirements of the Fresno Municipal Code.

21. Bicycle parking spaces shall each consist of one slot in a bike rack and shall be dispersed throughout the site (i.e., stalls shall be placed proximate to each cluster of buildings). They shall be grouped in racks which allow four feet of clearance on all sides. There shall be adequate space between rack slots to park, lock, and remove bicycles. Bicycle parking spaces and

the required four-foot clearance shall be protected from motor vehicle encroachment by means of fixed barriers not less than six inches or more than three feet in height. Bicycle parking spaces shall not encroach into pedestrian ways, landscaped areas, or other required open spaces, and shall be located proximal to structures.

22. At least one bike locker or other approved storage space, as approved by the Planning and Development Director, shall be provided for every 6 residential units.

23. The number and location of handicap parking spaces shall be determined per the State of California Building Code.

Shopping cart collections areas,* outdoor *storage & trash enclosures

24. Shopping cart collection areas shall be provided for stores that provide shopping carts for patrons (i.e., home electronic stores, general stores, etc.). As part of the review, staff will require shopping cart collection areas at the entrance of these stores, unless said area is provided inside of the store. If located outdoors, this area must be screened by a four foot wall that shall be constructed of like material (to the store, not of aluminum tubing).

25. Clearly depict the shopping cart collection areas located in the parking area. Provide a minimum six inch concrete curb around all shopping cart collection areas.

26. The design of exterior trash pads if used within the project, and similar accessory site elements shall be compatible with the architectural style of the buildings.

27. All trash enclosures if used within the project, shall provide the minimum 10 foot visibility triangle to ensure that their location does not impede the flow of pedestrian and/or vehicle traffic.

28. Trash enclosures if used within the project, shall be constructed per Public Utilities, Solid Waste Division Standards.

Truck deliveries

29. Deliveries and loading shall only be done between the hours of 6:00 a.m. and 9:00 p.m.; unless the loading area is located not less than 150 feet from residential uses. However, when adequate design and operational mitigation measures are approved, the 150 foot requirement may be reduced, as determined appropriate by the Planning and Development

38

Director. Each future tenant or subsequent owner shall sign an agreement acknowledging this condition.

30. There shall be no idling of trucks or their trailers or parking of such trucks during non delivery hours as described above.

Outdoor dining areas

31. Outdoor dining is permitted; however, a minimum six foot clear sidewalk shall be maintained to allow for pedestrians to walk through the center. No additional parking shall be required whenever outdoor dining is proposed.

Drive-thru facilities

32. There shall be no more than four drive-thru facilities of any kind within the Town Center. Drive-thru facilities shall be screened from all public right-of-ways by a three foot landscape hedge, wall, or combination thereof as approved by the Director.

Signs

33. A Master Sign Program shall be submitted which will identify the design, height and location of all future signs, including free standing, monument, and/or directional signs.

B. Permitted Uses

The intent of the Development Agreement is to allow for flexible design standards, while also defining which uses are permitted. Furthermore, the purpose of the retail center is to allow for the sale of products commonly found in regional shopping centers, while also providing for services found in office complexes in a pedestrian oriented environment. All uses allowed by the City Zoning Ordinance in the C-3 zone district, multi-family residential uses, and mixed use development uses are permitted, unless listed below:

Uses not permitted:

Motorized Vehicles

1. Boat, service, storage, rental

2. Recreation/mobile home vehicle sales

3. Body and fender shops

4. Truck or freight terminal

5. Ambulance service/dispatch center

6. Windshield repair/installation or window tinting

Warehousing/Storage/Wholesaling and distribution

7. Storage yards/facilities

8. Tow-yards

Sales

9. Pawn shops

Animals

10. Retail poultry or rabbit sales (slaughtering or dressing)(Excluding Super Markets)

Areas of Congregation of People

11. Funeral home, mortuary, body viewing

12. Cemetery/mausoleum

Miscellaneous

13. Shooting ranges (including testing of firearms of a store that may sell such products)

14. Adult Only Bookstore, if not permitted by FMC section 12-306-N-30.

15. Automotive repair, unless affiliated with an automobile service station as defined in Section 12-105-A-25 of the Fresno municipal Code

16. Automotive parts, sales and service

Alcohol Sales

Alcohol sales are prohibited unless a ABC Conditional Use Permit is obtained in accordance with Section 12-304-B of the Fresno Municipal Code

C. Intentionally Deleted

40

D. Processing Subsequent Development Approvals

The Agreement Article 2, (Section 201) contemplates that the project may necessitate processing of Subsequent Development Approvals such as but not limited to Design and Operation Plans (DOP), (as described below), Tentative Tract and Parcel Maps, Lot Line Adjustments, Voluntary Parcel Mergers, and Building Permits. The Director of the Planning and Development Department shall decide what Subsequent Development Approvals are required pursuant to the Fresno Municipal Code, State law, and the terms of this Agreement.

E. Subsequent Development Approvals shall be processed as follows:

1. Acceptance by the City of Fresno Planning and Development Department of a complete application, which shall include the following:

    a. A detailed site plan of the proposed building(s) in relation to a specific phase of development as depicted on the approved Site Plan in **Attachment 1** of this agreement, including all proposed landscaping.

    b. Detailed elevation(s) (i.e., all four sides) that depict substantial conformity with the design elements of the Development Agreement as described in Section A of this **Exhibit D**.

    c. The proposed site plan shall depict the required parking and access ways and the access inter-relationship to the remainder of the development.

    d. The project applicant shall provide a detailed operational statement which shall indicate the number of employees and their respective designated parking areas. In addition, this plan shall include any proposed changes, deviations or amendments to the Applicable Rules of the Agreement.

    e. The appropriate entitlement filing fees as outlined in **Exhibit C** of this Development Agreement shall be paid upon submittal.

    f. The omission of any of the items a-e as listed above shall be cause for rejection of application submittal.

2. Distribution for review and comment/conditions of project approval of Subsequent Development Approvals shall be coordinated through the Development Partnership Center (DPC) or alternative staff as determined by the Planning and Development Department Director. This will ensure expedient and consistent processing and review of Subsequent Development Approvals pursuant to the terms of this Agreement.

41

3. Any action of the City resulting from Subsequent Development Approval is subject to appeal within 15 days of the action taken. The appeal shall be decided by the Planning and Development Director. The Developer may appeal the Director's decision to the Planning Commission within 15 days of the Director's decision. Upon properly filing an appeal with the Director, the matter shall be scheduled for hearing by the Planning Commission. The decision of the Planning Commission may be considered by the City Council if, within 15 days after the Planning Commission decision, Councilmember for the representative Council District or the Mayor requests the City Clerk to schedule the matter for City Council consideration. If the Councilmember of the representative Council District or the Mayor do not make such a request within 15 days of the Planning Commission's decision, the decision shall be final. If the matter is scheduled for consideration by the City Council, the Planning Commission's decision shall be set aside and the City Council may approve, modify or deny the requested application. This process is intended to be consistent with the process for appeals of special permits under Fresno Municipal Code section 12-406-F and 12-406-J. For any entitlement issued under Section E.18 or E.19, any appeal shall be handled pursuant to the Fresno Municipal Code for subdivisions and building permits, if allowed.

4. If a Subsequent Development Approval is requested for an element of the Project that is consistent with the permitted land uses, project scope and design guidelines set forth in this Exhibit D: (a) No further environmental review will be required by the City unless required by Section 15162 if the State CEQA Guidelines; (b) Except as specifically set forth in the Agreement, no additional mitigation measures shall be made a condition of approval of the Subsequent Development Approval; and (c) The City will not circulate the application for any such Subsequent Development Approvals to other non-City agencies (except for the Bakman Water District and ABCUP's, which may be routed to State Department of Alcohol and Beverage Control.)

5. Consistent projects and/or projects that would be an Administrative Amendment under Section 208.1 of the Agreement shall be processed using the Design and Operation (DOP) process provided below. The determination of whether an amendment is Administrative or Material shall be made by the Director of the Planning and Development Department.

6. Project submittals that amount to Material Amendments shall be subject to Section 208.2 of this Agreement (that is processed outside of this Agreement under current City codes, standards and policies).

42

Design and Operation Plan (DOP) process

The Design and Operation Plan (DOP) includes all requirements set forth in Section E.1 above. The DOP process is intended to accommodate in an expedient and efficient manner the Subsequent Development Approvals under the Development Agreement. As noted above, the process will be coordinated through the DPC or alternative staff as determined by the Planning and Development Director in order to maintain a consistent review procedure.

7. Each proposed use and construction in the Town Center shall be subject to the DOP process, except for applications proposing alcohol sales for either on or off-site sales which shall be processed as provided below.

8. A Design Review Committee (DRC) shall be established and shall consist of three members two of which will be professional planning staff as appointed by the Planning and Development Director and one member appointed by the Developer.

9. Each DOP shall be reviewed and approved (with conditions if necessary) by the DRC for conformance to this Agreement and the DRC shall unanimously agree that the DOP is in conformance with this Agreement.

10. In the event that the DRC cannot agree in a unanimous manner, the determination of DOP conformance shall be referred to the Planning and Development Director for final resolution.

11. Any action of the DRC or the Director, is subject to appeal within 15 days of the action taken. The appeal shall be to the Planning Commission. The decision of the Planning Commission may be considered by the City Council if, within 15 days after the Planning Commission decision, the Councilmember for the representative Council District or the Mayor requests the City Clerk to schedule the matter for City Council consideration. If the Councilmember of representative Council District or the Mayor do not make such a request within fifteen days of the Planning Commission's decision, the decision shall be final. If the matter is scheduled for consideration by the City Council, the Planning Commission's decision shall be set aside and the City Council may approve, modify or deny the requested application. This process is intended to be consistent with the process for appeals of special permits under Fresno Municipal Code section 12-406-F and 12-406-J. For any entitlement issued under Section E.18 or E.19, any appeal shall be handled pursuant to the Fresno Municipal Code for subdivisions and building permits, if allowed.

12. In the event of an appeal, a public hearing notice is not required.

Alcoholic Beverage Sales (ABS)

All ABS permits shall be subject to the following procedures:

13. Each permit shall be subject to review and approval by the Fresno Police Department.

14. The Planning and Development Director is responsible for review of all ABS permit requests.

15. Notification of the Director's regarding ABS permit requests shall be noticed to all property owner's within 350 feet of the proposed sales location commencing a 15 day appeal period.

16. Any appeal as a result of the public notice of the Director's action shall be referred to the Planning and Development Department Director for final resolution. The Director's determination shall be final and appropriate notice of this action shall be given to all interested parties.

17. All ABS permits shall be subject to all pertinent State laws as related to ABS.

Parcel Creation and Configuration (PCC)

18. All proposed Tentative Tract and Tentative Parcel Maps, Lot Line Adjustments and Voluntary Parcel Mergers, or any other parcel creation or configuration (PCC) that is regulated under the Subdivision Map Act, shall be subject to the appropriate procedures as contained in the State of California Government Code (Subdivision Map Act) and the Fresno Municipal Code, except that any PCC that is consistent with the Approved Site Plan (Attachment No. 1 to this Exhibit D) and the approved parking geometrics (Attachment No. 2 to this Exhibit D) or which may be considered only an Administrative Amendment (under Section 208.1 of the Agreement) shall be considered conforming to the Agreement and not subject to new or additional conditions inconsistent with the Agreement. Entitlements processed under this paragraph 18., that are in compliance with the Agreement, shall be found to meet all City improvement requirements and shall only be conditioned on providing the necessary dedications to meet the requirements of the Agreement (including Exhibits).

    EXAMPLE: A tentative parcel map that is a Subsequent Development Approval shall not be conditioned on construction of Off-Sites required in Exhibit F, but the map must dedicate the necessary right of way required under Exhibit F, if not already dedicated to the City, and as the

construction of the Off-Site Improvements are not conditions of the vesting parcel map, a subdivision agreement and security for construction of the Off-Site Improvements would not be required as a condition to approve the final map.

Process Decision Making Authority	Design Review Committee (DRC)	Planning Director	Planning Commission	Public Notice
Design & Operation Plan (DOP)	Required[6]	Required only if the DRC cannot resolve[7]	Appeal to PC with right to pull up PC decision by representative Councilmember and/or Mayor.	N/A
Alcohol Beverage Sales (ABS)	N/A	Required and decision final.[8] If appealed, Director arbitrates and decision on appeal is final		Yes (limited to 350 ft. from the proposed location)
Parcel Creation & Configuration (PCC)	Required	As required by the Fresno Municipal Code and the State of CA Government Code (Subdivision Map Act)	As required by the Fresno Municipal Code and the State of CA Government Code (Subdivision Map Act)	As required by the Fresno Municipal Code and the State of CA Government Code (Subdivision Map Act)

Technical Permits

19. All technical permits, including but not limited to, demolition, grading, electrical, mechanical, plumbing, building, tenant improvement, etc. shall be subject to review as required by the Fresno Municipal Code and California Building Code, as adopted and amended by the Fresno Building Code, as of the date of this Agreement.

---

[6] Subject to a 15 day appeal period

[7] Subject to a 15 day appeal period

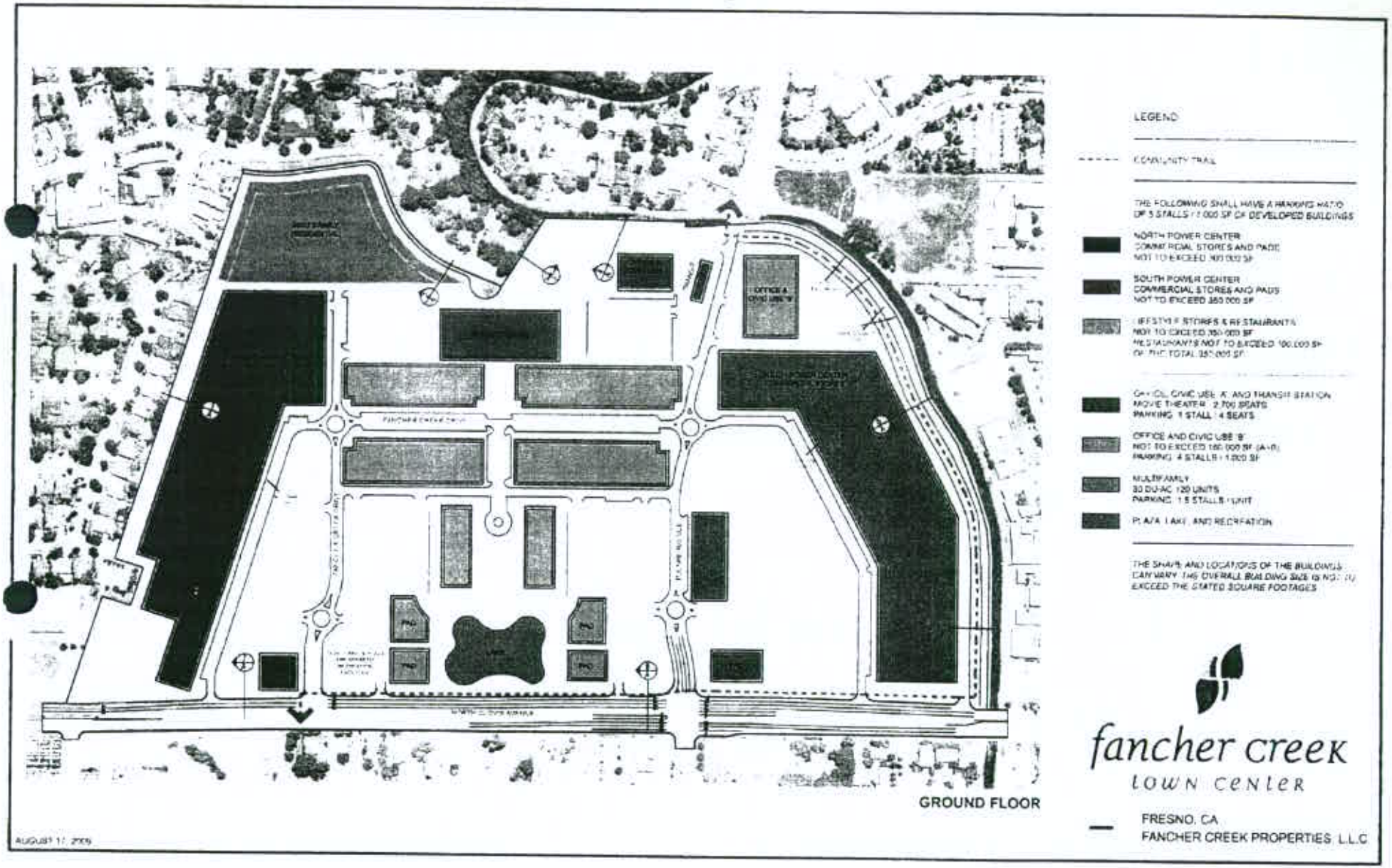
[8] Subject to review and approval by the Fresno Police Dept.

45

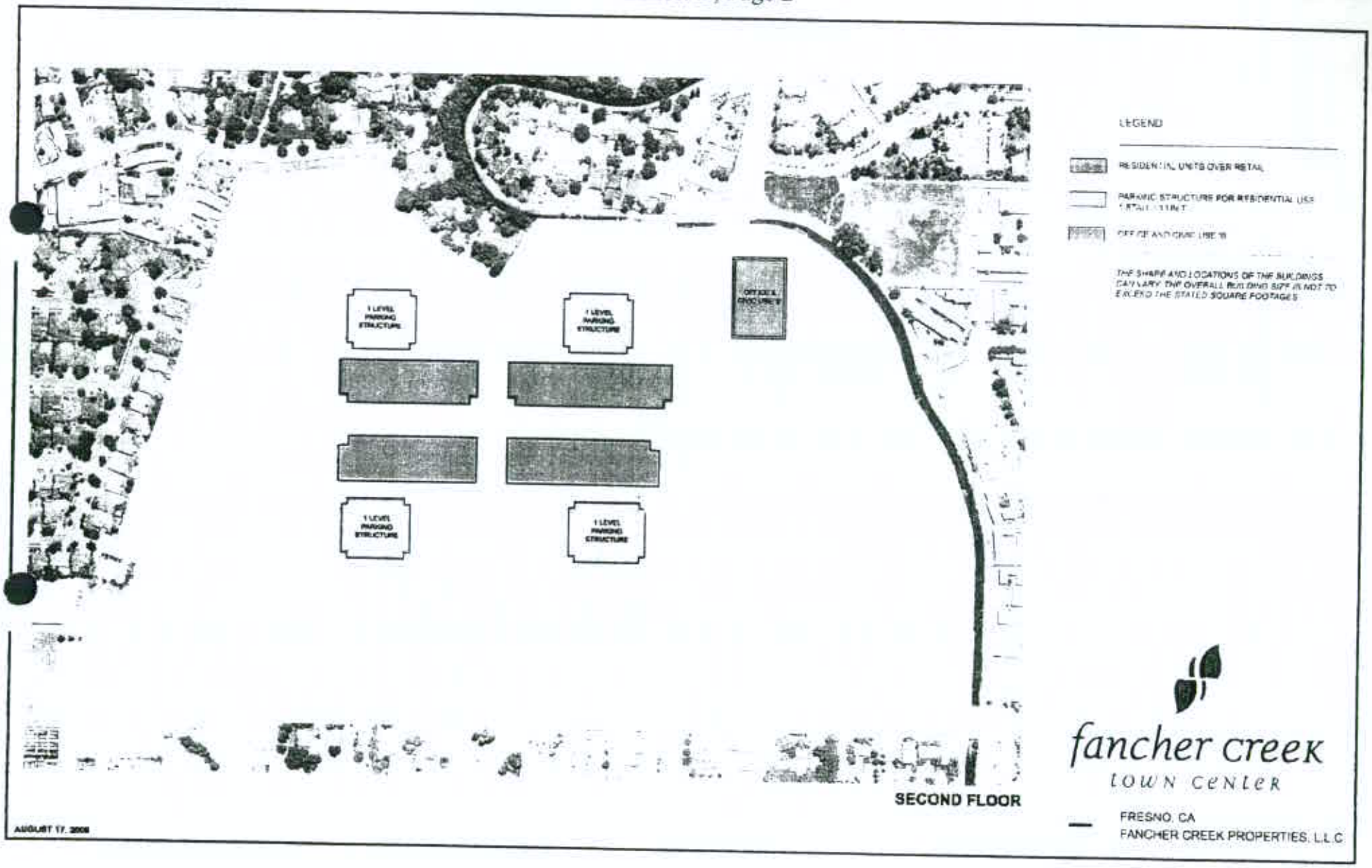
ATTACHMENT NO. 1 TO EXHIBIT D
Approved Conceptual Site Plan

44

Attachment No. 1
to Exhibit D, Page 1



Attachment No. 1
to Exhibit D, Page 2



Attachment No. 1
to Exhibit D, Page 3

LEGEND

RESIDENTIAL UNITS OVER RETAIL

OFFICE AND CIVIC USE B

THE SHAPE AND LOCATIONS OF THE BUILDINGS CAN VARY. THE OVERALL BUILDING SIZE IS NOT TO EXCEED THE STATED SQUARE FOOTAGES

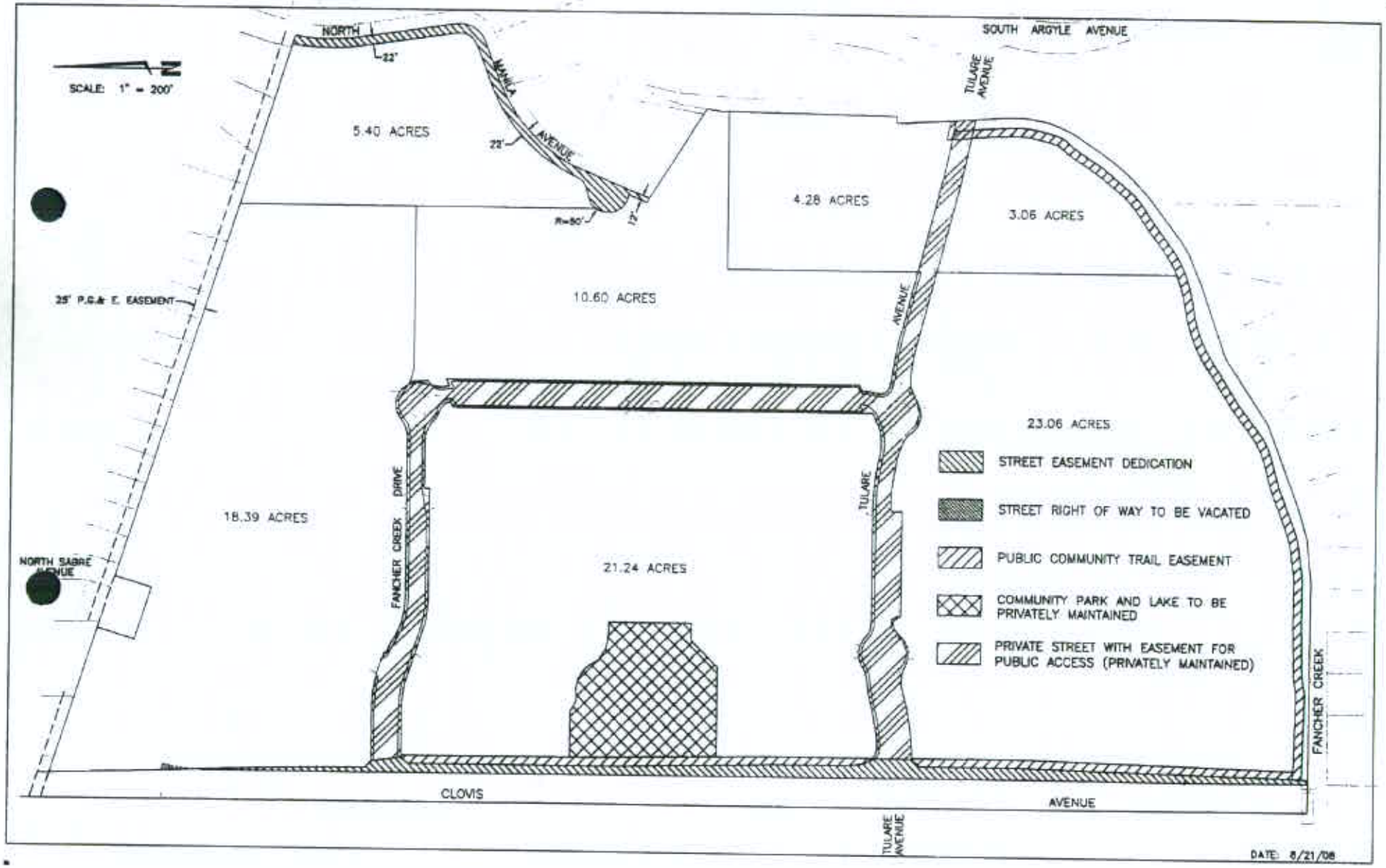
THIRD & FOURTH FLOORS

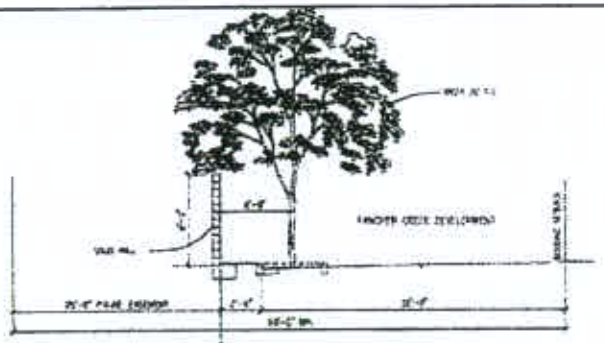
fancher creek
town center

FRESNO, CA
FANCHER CREEK PROPERTIES, L.L.C.

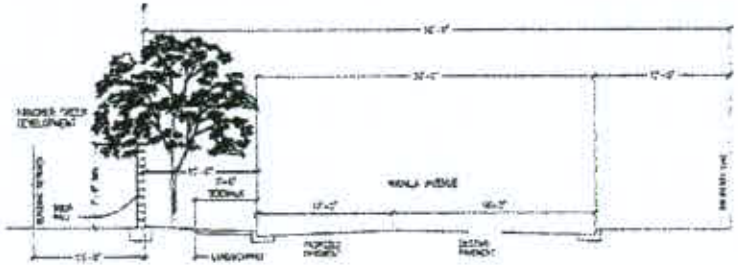
AUGUST 17, 2006

Attachment No. 1
to Exhibit D, Page 4

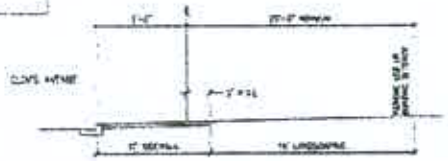




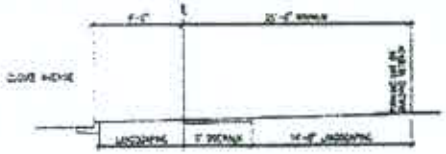
NORTH PROPERTY LINE - COMMERCIAL ADJACENT TO EXISTING RESIDENTIAL LOTS



EAST PROPERTY LINE - ADJACENT TO MANILA AVENUE

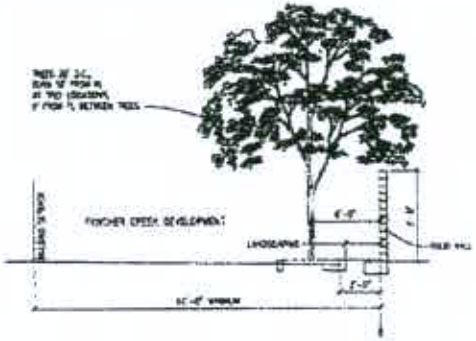


ALTERNATE A

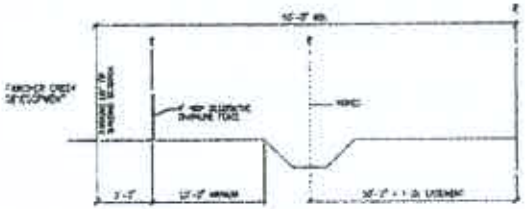


ALTERNATE B

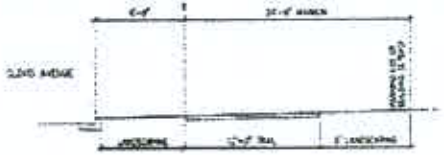
WEST PROPERTY LINE - CLOVIS AVENUE NORTH OF FANCHER CREEK DRIVE



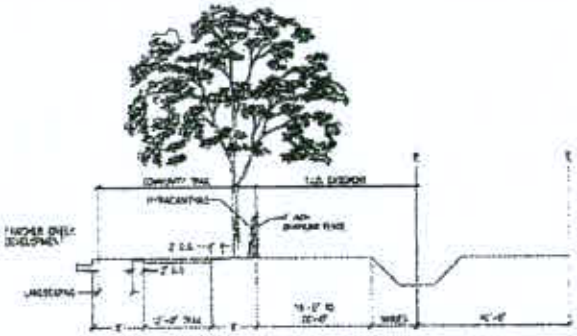
EAST PROPERTY LINE - ADJACENT TO RESIDENTIAL LOTS



EAST PROPERTY LINE - ADJACENT TO FANCHER CREEK NORTH OF FANCHER CREEK DRIVE



WEST PROPERTY LINE - CLOVIS AVENUE SOUTH OF FANCHER CREEK DRIVE



SOUTH & EAST PROPERTY LINE - ADJACENT TO FANCHER CREEK SOUTH OF FANCHER CREEK DRIVE

fancher creek
town center

FRESNO, CA
FANCHER CREEK PROPERTIES, L.L.C.

ATTACHMENT NO. 2 TO EXHIBIT D
Parking Geometrics

52

TJKM
Vision That Moves Your Community
Transportation Consultants

October 8, 2007

Project 032-272

Mr. Bryan Jones, P.E.
Traffic Engineering Manager
City of Fresno
2600 Fresno Street, Rm. 4067
Fresno, CA 93721-3616

Subject: Revised Proposed Parking Standards for the Fancher Creek Commercial Development Project to be located at North Clovis Avenue and East Tulare Avenue in the City of Fresno

Dear Bryan;

This revised letter report includes supporting data from five California Municipalities that currently utilize parking standards similar to those proposed by the Fancher Creek Commercial Development project. The City of Fresno specifically requested to see parking standards that utilized the same aisle width of 24 feet as proposed by the Fancher Creek Commercial Development project. For this reason the parking standards for Menlo Park, Glendale, San Luis Obispo, Roseville and Modesto have been included in Appendix B in support of parking geometric standards proposed for this project. This is specially the case since this project proposes to utilize a one size fits all stall width and length. Pursuant to the City of Fresno Mixed Use Ordinance No. 2005-154 Section 35, subsection 51 of Section 12-306-N *"all property development standards set forth as specific standards within each district, and as general standards in Section 12-306 of this Code, shall be determined and set by the review, analysis and approval of the project application."* Additionally this section of the Code requires that *"Supporting evidence for the modification of general standards of Section 12-306 shall be submitted with the project application. Nothing herein is intended to limit the Director's authority to modify development standards to fulfill the purpose of this subsection."* As a result of several meetings with City staff from various departments and information compiled from several municipalities within the state of California, TJKM has prepared the following parking standards to be used by the Fancher Creek Town Center to be located at North Clovis Avenue and East Tulare Avenue in the City of Fresno.

Parking Geometrics:

Guidelines for 60 Degree Diagonal Parking:

At locations where diagonal parking within the project is designed at 60 degrees the following should be considered:

1. Minimum one-way parking aisle width should be 14' 6"
2. The minimum two-way parking aisle width should be 22'
3. Stalls should be 8' 9" wide (compact and employee only parking stalls should be avoided)
4. At locations where the parking stall(s) faces a continuous concrete curb, an allowable overhang length of 2' 6" should be allowed.
5. Stalls should be 18' in length minus any allowable overhang length
6. Directional signing and pavement markings as appropriate should be installed to control the direction of traffic flow through the project

Pleasanton
5960 Inglewood Drive
Suite 100
Pleasanton, CA
94588-8535
925.463.0611
925.463.3690 fax

Fresno
516 W. Shaw Avenue
Suite 200
Fresno, CA
93704-2515
559.325.7550
559.221.4940 fax

Sacramento
980 Ninth Street
16th Floor
Sacramento, CA
95814-2736
916.449.9095

Santa Rosa
141 Stony Circle
Suite 280
Santa Rosa, CA
95401-4110
707.575.5800
707.575.5888 fax

tjkm@tjkm.com
www.tjkm.com

7. The base interlock module length for two-way double loaded parking aisles shall be 57' 7". This length does not include any reductions for the allowable overhang length
8. At locations where a single loaded parking aisle fronts on a sidewalk and/or concrete median island it is recommended that any trees and/or street furniture within 3' feet from the front edge of the diagonal parking stall be offset to the right of a parking stall by 2'6"
9. At locations where parking aisles front on both sides of a concrete median island it is recommended that any trees and/or furniture above aground be centered between a set of four stalls
10. The parking stalls should be double striped to encourage patrons to center their vehicles in their respective parking stall (see Figure 1).
    a. The double striping should be 4" wide white lines
    b. An 8" inside clearance between the two 4" wide white lines should be provided
    c. The end of all parking stall striping should be rounded
11. Figure 1 illustrates the proposed parking geometrics for 60 degree diagonal parking without continuous concrete curbs.

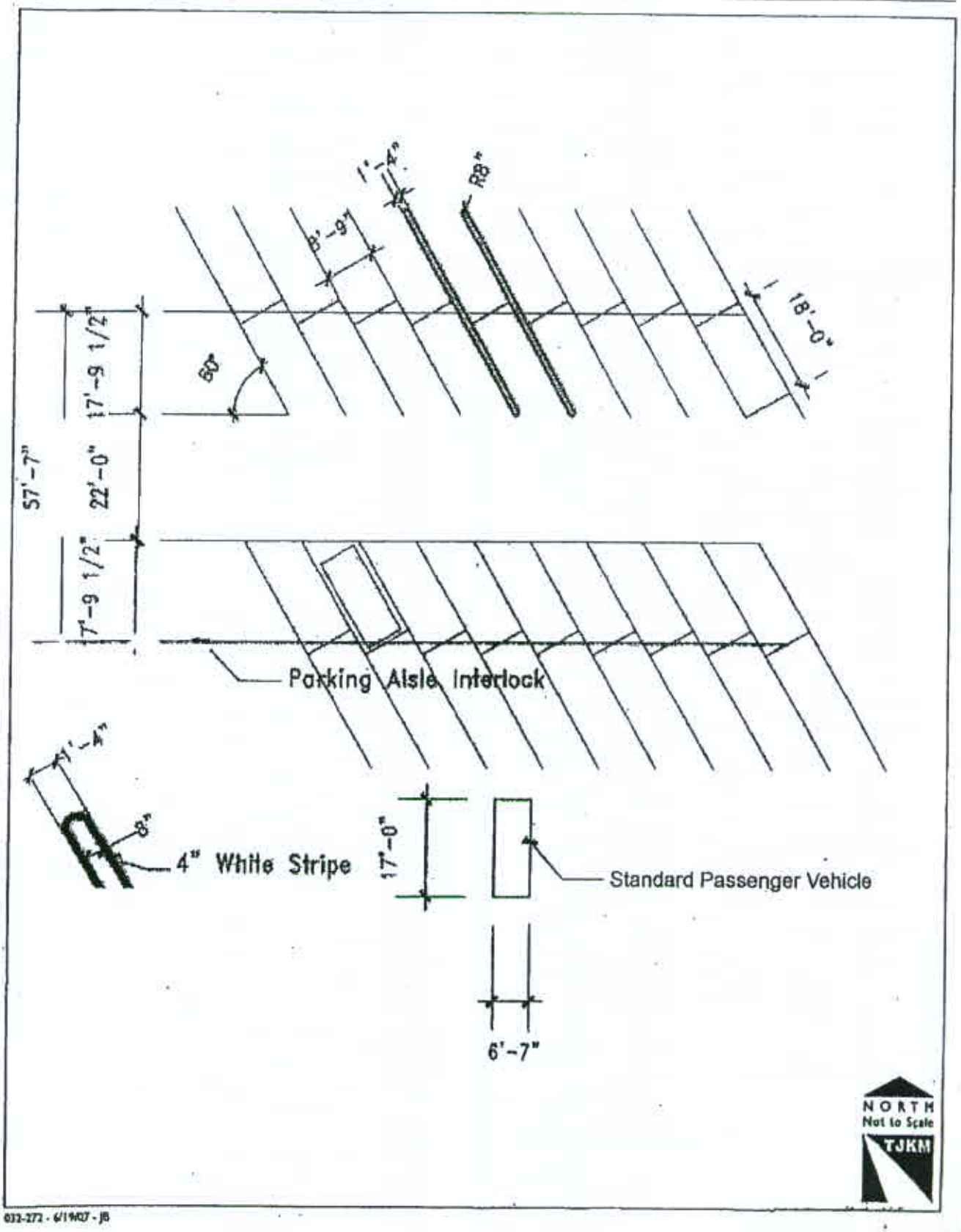
Parking Guidelines for Perpendicular Parking:
At locations where perpendicular parking is used the following guidelines should be considered:

1. The required backup space should be 24'
2. Stalls should be 8' 9" wide (compact and employee only parking stalls should be avoided)
3. At locations where the parking stall(s) faces a continuous concrete curb, an allowable overhang of length of 2' 6" should be allowed.
4. Stalls should be18' in length minus any allowable overhang length
5. Directional signing and pavement markings as appropriate shall be installed to control the direction of traffic flow through the project.
6. The base module length for two way double loaded parking aisles should be 60 feet. This length does not include any reductions for the allowable overhang dimension.
7. At locations where a single loaded parking aisle fronts on a sidewalk and/or concrete median island it is recommended that any trees and/or above ground street furniture within 3 feet from the front edge of the parking stall be centered between parking stalls
8. At locations where parking aisles front on both sides of a concrete median island it is recommended that any trees and/or furniture above ground be centered between a set of four stalls
9. The parking stalls should be double striped to encourage patrons to center their vehicles in their respective parking stall (see Figure 1).
    a. The double striping should be 4" wide white lines
    b. An 8" inside clearance between the two 4" wide white lines should be provided
    c. The end of all parking stall striping should be rounded

City of Fresno – Fancher Creek Town Center

Proposed 60 Degree Diagonal Parking Geometrics

Figure 1



032-272 - 6/19/07 - JB

Parking Guidelines for Parallel Parking:
It is recommend that the any parallel parking consider the following guidelines:

1. The minimum back up or pull out space adjacent to the first or last stall should be a set of reverse curves with a minimum length of 8 feet
2. The minimum back up/pull out space should be 8 feet between two sets of stalls
3. Stalls should be 19' in length
4. At locations where parallel parking is adjacent to a raised curb that is 6" or less the stall width should be 8 feet.
5. At locations where parallel parking is adjacent to a raised curb that is greater than six inches, the stall width should be 10 feet.
6. It is recommended that any street furniture within three feet from the parking stalls be centered between two stalls or placed at the end of the first or last stall
7. The minimum two way aisle widths should be 22 feet

Parking Generation Rates:
In general the following parking generation ratios are proposed for this project. A maximum of a one to one parking stall per unit is proposed for all multi-family residential units that contain two or less bedrooms and 1.5 parking stalls for all residential units that contain three or more bedrooms. Within the commercial component (excludes restaurants and movie theatre) a parking ratio of 4.2 stalls per 1,000 square feet is proposed. For the restaurants and movie theatre a parking ratio of 7 stalls per 1,000 square feet is proposed. The total yield under these ratios and the proposed square footages is 4,620 parking stalls. These ratios are consistent with the recommendations made within the Urban Land Institute Share Parking manual for a 60,000 square feet (2,900 seat) movie theatre, 90,000 square feet of restaurants, 94,000 square feet general office space and up to 800 multi-family residential units. Excluding the residential units the commercial component of the Fancher Creek Town Center would need to provide a maximum of 4,220 and 4,643 parking stalls to serve the peak weekday hour and peak weekend hour, respectively (both during the month of December). It should be noted that the use of shared parking ratios as illustrated in exhibit A should be further verified as more specific land uses are known.

Summary and Conclusions:
Based on the results of the above parking geometrics and shared parking generation analysis it is recommended that the City review and approve the following in the order presented:

1. Approve the parking stall geometrics for 60 Degree diagonal parking
2. Approve the parking stall geometrics for perpendicular parking
3. Approve the parking stall geometrics for parallel parking
4. Approve the use the ULI shared parking analysis to determine the number of parking stalls required for the project

Based on the results of the above parking geometrics and shared parking generation analysis it is recommended that the Fancher Creek Town Center team prepare a revised conceptual site plan that:

1. Utilizes the City approved parking stall geometrics for 60 Degree diagonal parking
2. Utilizes the City approved parking stall geometrics for perpendicular parking
3. Utilizes the City approved parking stall geometrics for parallel parking
4. Recalculate the parking generation for the conceptual site plan based on the balancing of leaseable area and the required parking for the conceptual project.

Should you have any questions or are need of additional information please feel free to contact me at 559-325-7530 or at jbenavides@tjkm.com.

Sincerely,

Jose Luis Benavides

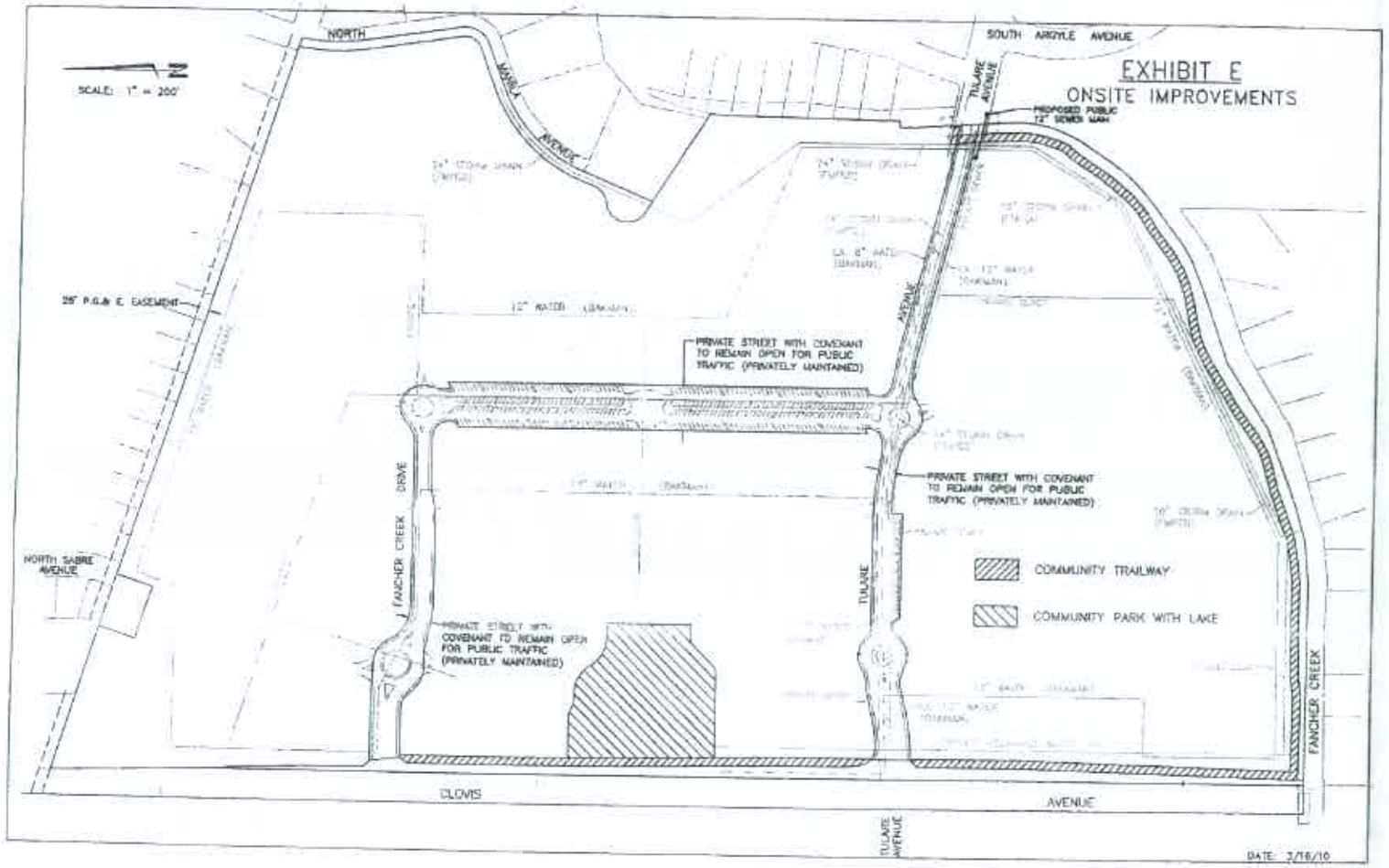
Jose Benavides, P.E.
Associate & Branch Manager, TJKM Fresno

J:\Jurisdiction\F\Fresno\032-272 Fancher Creek\Letter Report\LR 100807.doc

EXHIBIT E

ON-SITE IMPROVEMENTS

58



The final location of the utilities shown on this exhibit will be determined through the utility plan check process. (This note is not applicable to the 12" public sewer located at Tulare and Argyle Avenues)

EXHIBIT F
EXACTIONS

Development of the Town Center under the Agreement shall be subject to the following impacts fees, dedications and improvements and other agency fees, dedications and improvements pursuant to the terms, conditions and requirements provided in this Exhibit. Unless otherwise expressly provided in this Exhibit, all public facilities shall be constructed to standards and pursuant to procedures adopted by the City and existing at the time the plans are submitted to the City for approval.

A. CITY IMPACT FEES

No.	FEE	AMOUNT OR METHOD OF CALCULATION	TIME OF PAYMENT	SUBJECT TO CREDIT AND/OR REIMBURSEMENT	METHOD OF DETERMINING CREDIT AND/OR REIMBURSEMENT
1	Lateral Sewer Charge[1]	Pursuant to FMC[2] and MFS[3].	Per FMC	No	n/a

[1] See City Dedication, Improvements, and Requirements No. 12 related to obligation to pay the Lateral Sewer Charge if sewer connection is made at Tulare and Argyle Connection.

[2] For purposes of Part A of this Exhibit, entitled "Impact Fees" (except the "Transit Fee"), for the first eight (8) years this Agreement is in effect, "FMC" shall refer to the Fresno Municipal Code, and any adopted Council resolutions, uncodified ordinances and/or policies adopted for a particular fee as they exist at the time of the Effective Date of the Agreement. After the first eight (8) years the Agreement is in effect, "FMC" shall refer to the Fresno Municipal Code , and any adopted Council resolutions, uncodified ordinances and/or policies adopted for a particular fee as they exist at the time payment of the fee is required. As set forth in the Agreement at section 101, Part "A" of this Exhibit establishes the development impact fees applicable to the development of the Subject Property during the first eight (8) years the Agreement is in effect. After the first eight (8) years of this Agreement, the development impact fees applicable to the development of the Subject Property shall be **all** applicable fees, as reasonably determined by the City, adopted by the City and in effect at the time payment of the fees is required, including any new fees the City adopted at any time the Agreement is in effect.

No.	FEE	AMOUNT OR METHOD OF CALCULATION	TIME OF PAYMENT	SUBJECT TO CREDIT AND/OR REIMBURSEMENT	METHOD OF DETERMINING CREDIT AND/OR REIMBURSEMENT
2	Oversize Sewer Charge	Per FMC and MFS.	Per FMC	No	n/a
3	Wastewater Facility Charge (including STEP Fees where appropriate)[4]		Per FMC	No	n/a
4	Citywide Fire Facilities Impact Fee		Per FMC	No	n/a
5	Citywide Park Facility Impact Fee	Pursuant to FMC and MFS. Developer to receive a dollar-for-dollar credit for eligible costs, which eligible costs shall be determined by the Director of Parks and Recreation and Community Services Department.	Per FMC	Per FMC Developer to receive a dollar-for-dollar credit for eligible costs, which eligible costs shall be determined by the Director of Parks and Recreation and Community Services	Per FMC Developer to receive a dollar-for-dollar credit for eligible costs, which eligible costs shall be determined by the Director of Parks and Recreation and Community Services

[3] Except for the "Transit Fee," for the first eight (8) years the Agreement is in effect, the Master Fee Schedule in effect at the time the Agreement is approved shall provide the amount of the fee to be paid. After the first eight (8) years the Agreement is in effect, the most current adopted Master Fee Schedule at the time payment is required shall provide the amount of the fee to be paid.

[4] The Project shall pay the City's Wastewater Facility S.T.E.P charges for all non-residential, office, retail, or other commercial uses following occupancy through individual service accounts. Residential (single family, duplex and triplex) uses shall pay Wastewater Facility Charge at time of building permit. A safe to occupy shall not be issued until the required fees have been paid. Non-residential, office, retail, or other commercial S.T.E.P. billings will be based on domestic water meter reads provided by the Bakman Water District and established low, medium or high strength categories depending on the type of development.

No.	FEE	AMOUNT OR METHOD OF CALCULATION	TIME OF PAYMENT	SUBJECT TO CREDIT AND/OR REIMBURSEMENT	METHOD OF DETERMINING CREDIT AND/OR REIMBURSEMENT
				Department.	Department.
6	Citywide Police Facility Impact Fee	Pursuant to FMC and MFS.	Per FMC	Per FMC	Per FMC
7	Citywide Regional Street Fee	Per FMC and MFS.	Per FMC	Per FMC	Per FMC

No.	FEE	AMOUNT OR METHOD OF CALCULATION	TIME OF PAYMENT	SUBJECT TO CREDIT AND/OR REIMBURSEMENT	METHOD OF DETERMINING CREDIT AND/OR REIMBURSEMENT
8	Citywide Traffic Signal Charge	Per FMC and MFS.	Per FMC	The Developer may obtain construction credits for any traffic signal installations that are occurring prior to occupancy of the particular building(s) and may apply for traffic signal impact fee reimbursement, less any unpaid fee obligation for which credits were issued, upon acceptance of the completed improvements by the City. The Developer may obtain construction credits for a traffic signal installation if the Developer secures for the construction of the traffic signal with a performance bond and a payment bond in amounts approved by the City Engineer. Should the installations be accomplished for less than the TSMI Fee obligation or for less than the construction credits that were allowed, the Project shall owe the remaining amount to the City. Should the installations be more expensive than the TSMI fee obligation, the Developer shall be entitled to full reimbursements of any excess eligible amounts exceeding the TSMI fee obligation, subject to availability of funds and Council appropriations of the funds for developer reimbursements.	

No.	FEE	AMOUNT OR METHOD OF CALCULATION	TIME OF PAYMENT	SUBJECT TO CREDIT AND/OR REIMBURSEMENT	METHOD OF DETERMINING CREDIT AND/OR REIMBURSEMENT
9	Parkland Dedication In-Lieu Fee (To be handled in conjunction with item #5 above)	Pursuant to FMC and MFS, taking into consideration that as set forth in item # 5 above, Developer will receive a dollar-for-dollar credit for eligible costs, which eligible costs shall be determined by the Director of Parks and Recreation and Community Services Department.	Per FMC	Per FMC. taking into consideration that as set forth in item # 5 above, Developer will receive a dollar-for-dollar credit for eligible costs, which eligible costs shall be determined by the Director of Parks and Recreation and Community Services Department.	Per FMC, taking into consideration that as set forth in item # 5 above, Developer will receive a dollar-for-dollar credit for eligible costs, which eligible costs shall be determined by the Director of Parks and Recreation and Community Services Department.
10	"Transit Fee" - Any impact fee adopted by Council at any time after execution of the Agreement that is intended to provide transit service in the project area of the Town Center. Developer waives any vesting rights as to the Transit Fee otherwise obtained under the Vesting Tentative Parcel Map as recognized	Pursuant to FMC and MFS in effect at time payment of fee is required.	Per FMC in effect at time payment of fee is required.	Per FMC in effect at time payment of fee is required.	Per FMC in effect at time payment of fee is required.

No.	FEE	AMOUNT OR METHOD OF CALCULATION	TIME OF PAYMENT	SUBJECT TO CREDIT AND/OR REIMBURSEMENT	METHOD OF DETERMINING CREDIT AND/OR REIMBURSEMENT
	in the Agreement and will pay the Transit Fee subject to fee credits for the cost of construction of the Transit Station.				

No.	FEE	AMOUNT OR METHOD OF CALCULATION	TIME OF PAYMENT	SUBJECT TO CREDIT AND/OR REIMBURSEMENT	METHOD OF DETERMINING CREDIT AND/OR REIMBURSEMENT
11	Regional Transportation Mitigation Fee, as applicable as determined by the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency, in accordance with its adopted resolutions and the provisions of its Fresno Regional Transportation Mitigation Fee Administrative Manual.	As determined by the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency, in accordance with the provisions of its adopted resolutions and its Fresno Regional Transportation Mitigation Fee Administrative Manual.	As determined by the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency, in accordance with the provisions of its adopted resolutions and its Fresno Regional Transportation Mitigation Fee Administrative Manual.	As determined by the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency, in accordance with the provisions of its adopted resolutions and its Fresno Regional Transportation Mitigation Fee Administrative Manual.	As determined by the Fresno County Regional Transportation Mitigation Fee Joint Powers Agency, in accordance with the provisions of its adopted resolutions and its Fresno Regional Transportation Mitigation Fee Administrative Manual.

(Continued on Next Page.)

B. CITY DEDICATIONS; IMPROVEMENTS AND REQUIREMENTS

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEP'T	TIME OF COMPLETION	SUBJECT TO REIMBURSMENT/ CREDIT	SUBJECT TO PREVAILING WAGE
1	The improvement of Clovis Avenue to a 6-lane roadway has been completed by the City of Fresno. The Project shall dedicate the necessary right-of-way and construct the following improvements on Clovis Avenue: a. Install a traffic signal at the intersection of Clovis Avenue and Fancher Creek Drive including actuation, emergency vehicle preemption, countdown pedestrian signal heads, R2D2 communication cabinet, ITS camera poles and cameras per City of Fresno Public Works Standards. The traffic signal shall be operational prior to occupancy of any buildings in the North Power Center (Commercial), Lifestyle Stores and Restaurants, Multifamily or Residential over Retail, and prior to any connection of Fancher Creek Drive to Clovis Avenue for vehicular traffic. The traffic signal shall also accommodate the pedestrian crossing for the trail connection across	DPW[5]	Prior to issuance of any building permits.	Only improvements and work related to the traffic signal portion of the work are eligible for any reimbursement or credits and are available only from the Citywide Traffic Signal Charge fee program. No other credits and/or reimbursements are allowed.	Yes.

[5] City of Fresno Department of Public Works

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEP'T	TIME OF COMPLETION	SUBJECT TO REIMBURSMENT/ CREDIT	SUBJECT TO PREVAILING WAGE
	Clovis Avenue. The lane configurations for this new signalized intersection shall be as follows: • Northbound – one U-turn lane, three through lanes, and one right turn lane • Southbound – dual left turn lanes (250' length), three through lanes • Westbound – one left turn lane, and one right turn lane b. Modify the existing traffic signal to include actuation, emergency vehicle preemption, countdown pedestrian signal heads, R2D2 communication cabinet, ITS camera poles and cameras per City of Fresno Public Works Standards at the intersection of Clovis Avenue and Tulare Avenue to provide the following geometrics: • Northbound – dual left turn lanes, three through lanes and a dedicated right turn lane • Southbound – dual left turn lanes, three through lanes and a dedicated right turn lane • Eastbound – one left turn lane, one shared left/through lane, and one through/right turn lane				

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEP'T	TIME OF COMPLETION	SUBJECT TO REIMBURSMENT/ CREDIT	SUBJECT TO PREVAILING WAGE
	• Westbound – dual left turn lanes, one through lane and a dedicated right turn lane. The dedicated right turn lane shall include a "pork chop" traffic island and be designed as a free-right turn entering a fourth northbound lane on Clovis Ave. • The entire length of the Project frontage on Clovis Avenue shall include either a fourth lane for acceleration and deceleration purposes, or a series of dedicated right turn pockets and acceleration lanes in accordance with street improvement plans prepared on the behalf of the Developer by a licensed civil engineer and as approved by the City of Fresno Public Works Department. c. The Clovis Avenue median island shall be landscaped along the entire length of the Project frontage using drought tolerant plants and no lawns. Any existing median islands along the frontage that are not 8" high median curbs in good condition shall be removed and replaced with 8" high concrete median curbs, complete with stamped colored concrete median				

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEP'T	TIME OF COMPLETION	SUBJECT TO REIMBURSMENT/ CREDIT	SUBJECT TO PREVAILING WAGE
	island maintenance band, per City of Fresno Public Works Standard P'9. d. The Developer shall construct a southbound worm-type left turn pocket south of Tulare Avenue that is aligned with the most southerly drive approach into the Town Center. This access point and all others served by left turn openings in the Clovis Avenue median island shall be "street-type" approaches with the minimum cross-fall either complying with Public Works Standards or with the Developer providing upstream drainage inlets to intercept the flow. Neither substandard street-type approaches nor commercial driveway approaches will be permitted in cases where a left turn movement into the access point is allowed. Dedicate necessary right of way for all of the above improvements. (See Attachment 1 and 3.)				
2	The Project shall dedicate the necessary right-of-way and signalize the following intersections, including actuation and emergency vehicle preemption per City of Fresno Public Works Standards:	DPW	Prior to occupancy of total building area greater than 300,000 square feet.	From the Citywide Traffic Signal Charge funds; however, in order to qualify for credits or	Yes.

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEP'T	TIME OF COMPLETION	SUBJECT TO REIMBURSMENT/ CREDIT	SUBJECT TO PREVAILING WAGE
	a. Minnewawa Avenue and Belmont Avenue As an alternate a median island divider eliminating Northbound to Westbound and Southbound to Eastbound left turn movements may be constructed in lieu of the traffic signal if approved by the City Public Works Director and the County of Fresno. b. Minnewawa Avenue and Tulare Avenue Additionally, traffic signalization of various intersections located near, in and around the Town Center shall be as set forth on the Traffic Signalization Map set forth as Attachment 4 to this **Exhibit F**. If Developer is unable to to acquire the necessary easements and rights-of-way for these improvement by negotiation, and has requested that City acquire the necessary easements at Developer's expense, Developer shall comply with the DPW's standard procedures for acquisition of such easements and rights-of-way, including the depositing with the City of all fees and other monies required by DPW, prior to DPW's initiation of acquisition efforts by way of negotiation or eminent domain, if negotiation is unsuccessful.			reimbursement, the traffic signal poles and equipment must be placed at its ultimate location.	

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEP'T	TIME OF COMPLETION	SUBJECT TO REIMBURSMENT/ CREDIT	SUBJECT TO PREVAILING WAGE
3	Intentionally Deleted				
4	The Project shall underground all existing offsite overhead utilities with the limits of this Project in accordance with Fresno Municipal Code Section 12-1011 and Resolution No. 78-522/88-229. (See Note on Attachment 1.)	DPW	Prior to issuance of any building permits.	No.	Yes.
5	The Project shall install ADA-compliant curb ramps at all corners in accordance with City of Fresno Public Works Standards (in the form existing at time plans are submitted to City). (See Note on Attachment 1.)	DPW	Prior to issuance of any building permits.	No.	Yes.
6	The Project shall install a 12' trail along Clovis Avenue and community trail shown on Attachment 1 to Exhibit D identified as a community trail and commonly known as the Fancher Creek Trail conforming to the Caltrans Bikeway Design Standards for a Class 1 bike path, in accordance with Chapter 1000 of the Caltrans Highway Design Manual. Tree placement and species shall be reviewed and approved by the Public Works Department. Dedicate necessary right of way (See Attachment 1 and 3.)	DPW	Prior to issuance of any building permits.	Developer to receive a dollar-for-dollar credit for eligible costs, which eligible costs shall be determined by the Director of Parks and Recreation and Community Services Department.	Yes.
7	The Developer agrees to have the Town Center annexed into Community Facilities District No. 9 which the City is in the process of forming for non-residential developments, or alternatively a special CFD for the overall Fancher Creek Project Area subject to City approval. The Developer may include in the CFD the funding of certain agreed upon On-Site and/or Off-Site Public	DPW	Annexation into CFD and prior to issuance of any building permits and sale of Subject Property. Non-CFD	Reimbursement of costs related to annexation into or formation of the applicable CFD shall be handled in accordance with the terms of Sections	N/A

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEP'T	TIME OF COMPLETION	SUBJECT TO REIMBURSMENT/ CREDIT	SUBJECT TO PREVAILING WAGE
	Improvements (as set forth in Section 202.2.1 of the Agreement). The CFD shall include the maintenance of the median island landscaping on the portion of Clovis Avenue along the frontage of the Fancher Creek Project on a 30-day cycle including median island plant replacement costs. The Developer agrees to maintain on its own (not included in the CFD) all landscaping within the site as a requirement of the Agreement, including any landscaping within the Clovis Avenue trail and the Clovis Avenue street trees. The only landscaping to be included in the CFD shall be the Clovis Avenue median island landscaping. (See Attachment 2.)		maintenance shall be perpetual and ongoing after construction of relevant improvement.	202.2.1 and 202.2.2 of the Agreement.	
8	The Project shall construct an 80' bus bay curb and gutter at any location where Fresno Area Express determines will be a future bus stop, as well as on Clovis Avenue just north of Tulare Avenue and just north of Fancher Creek Drive, in accordance with City of Fresno standard placement of far side bus bays/bus stops, in accordance with City of Fresno Public Works Standard **P-73** (in the form existing at time of submittal of plans), complete with a 10' monolithic sidewalk. Bus bays shall be in 4th lane and shall not require any additional widening.	DPW	Prior to issuance of any building permits.	No.	Yes.
9	The Project shall construct an underground street lighting system to Public Works Standard **E-1**	DPW	Prior to issuance of any building	No.	Yes.

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEP'T	TIME OF COMPLETION	SUBJECT TO REIMBURSMENT/ CREDIT	SUBJECT TO PREVAILING WAGE
	within the limits of this development along Clovis Avenue. Spacing and design shall conform to Public Works Standards. Any pedestrian-level lighting proposed by the Developer shall be in addition to the City-standard lighting and shall be fully included in the CFD. The standards to apply shall be those existing at time of submittal of plans. (See Note Attachment 1.)		permits.		
10	The first order of work shall include a minimum of two points of vehicular access to the major streets for <u>any</u> phase of this development.	DPW	Upon completion of first public works of improvement.	No.	N/A

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEP'T	TIME OF COMPLETION	SUBJECT TO REIMBURSMENT/ CREDIT	SUBJECT TO PREVAILING WAGE
11	The project is expected to surcharge the existing 15-inch sanitary sewer facilities located in Clovis Avenue to Butler Avenue and the 18-inch sanitary sewer located in Butler Avenue starting at Minnewawa when daily average wastewater discharge from the project exceeds 225,000 gallons per day (gpd). Daily average wastewater discharges from the project are estimated by the City of Fresno to be approximately 400,000 gpd therefore conditions are as follows: (1) As a result of sewer flows from the development and the impact on capacity of existing city sewer mains the project shall install and maintain an on-site effluent meter(s) upstream from the project's discharge into the public sewer system in compliance with FMC Sections 6-315 and 6-322. The meter type shall be approved by DPU prior to installation and the improvement plans shall include the location and configuration of the meter allowing for access by City of Fresno staff for reading. The property owner will be required to maintain the meter and shall do so within two weeks of notification by the City that the meter is not functioning correctly.	DPU[6]	(1) Prior to issuance of any building permits.	(1) No.	Yes.

[6] City of Fresno Department of Public Utilities

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEP'T	TIME OF COMPLETION	SUBJECT TO REIMBURSMENT/ CREDIT	SUBJECT TO PREVAILING WAGE
	(2) When average daily flows from the project exceeds available capacity of 225,000 gpd by 30% (292,500 gpd) or a peak day flow of 400,000 gpd the City will terminate all new occupancy approvals, stop processing and issuing building permits for the project until capacity enhancements to the public sewer system, approved by the DPU, have been completed to accommodate any additional discharge required to serve the project.		(2) Prior to Project exceeding 225,000 gpd by 30% (292,500 gpd) or a peak day flow of 400,000 gpd	(2) No.	
	(3) The project shall covenant that; if or when average daily flows from the project exceed available capacity of 225,000 gpd by 30% (292,500 gpd) or a peak day flow of 400,000 gpd, the developer/owner upon written notice from the City of Fresno, shall within 180 days of such notice, submit plans and specifications to the DPU necessary to construct sewer system improvements to increase capacity as directed by the DPU. The developer shall construct sanitary sewer improvements according to the approved plans and specifications. It is expected that portions of the sanitary sewer system in Kings Canyon Road, Clovis and Butler Avenues will require capacity improvements as a result of this development.		(3) Covenant shall be filed prior to issuance of any building permits. Improvement to Kings Canyon, Clovis and Butler Avenue will be completed within 18 months of approved plans.	(3) No.	

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEP'T	TIME OF COMPLETION	SUBJECT TO REIMBURSMENT/ CREDIT	SUBJECT TO PREVAILING WAGE
12	Connection to the City's sewer system will be allowed at either the Tulare and Argyle Avenue alignments east of the development or in Clovis Avenue and Kings Canyon Road alignments west of the development. (See Attachment 1.) **OPTION 1:** If the Developer elects to connect at **E. Tulare at S. Argyle** they shall do the following: *First Order of Operation:* A 12-inch sanitary sewer shall be constructed in East Tulare intercepting sewer flows from manhole 2666-13 (or reconnect the existing 8-inch and 10-inch sewer main east of Fancher Creek in Tulare Avenue to the required 12-inch main). When crossing Fancher Creek the new 12-inch sanitary sewer shall be constructed within the existing or future Tulare Avenue right-of-way alignment if possible. If necessary the new 12-inch sanitary sewer shall be constructed adjacent and parallel to the bridge structure (as close as possible) and the existing or future Tulare Avenue right-of-way alignment; however, when the sewer main exits the right-of-way a 40 foot public utilities easement shall be centered on the sanitary sewer main and dedicated to the City prior to approval of the off-site improvement plans. Once the new 12-inch	DPU	Prior to issuance of any grading permits.	No; subject only to the reimbursement agreement as expressly described in the first column for item 12, OPTION 1.	Yes.

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEP'T	TIME OF COMPLETION	SUBJECT TO REIMBURSMENT/ CREDIT	SUBJECT TO PREVAILING WAGE
	sanitary sewer main has crossed Fancher Creek, it shall be designed and constructed to return to the existing Tulare Avenue right-of-way as soon as possible and proceed to Argyle Avenue. At Argyle Avenue, turn south and proceed to manhole 2666-05. At manhole 2666-05 the existing 8-inch sanitary sewer shall be removed and replaced with a 12-inch sanitary sewer to manhole 2666-03. All connecting sewer laterals shall be reconnected to the new 12-inch sanitary sewer. By reimbursement agreement, Department of Public Utilities will share 50% of actual costs incurred for design, permitting and construction of the 12-inch sanitary sewer main by the developer; cost sharing will start at the interception of the existing 10" and 8" sanitary sewer mains in Tulare Avenue or at manhole 2666-13, whichever connection point comes first. The 50% cost sharing will continue to manhole 2666-03. A cost reimbursement agreement shall be prepared and approved by Council prior to initiation of design. The cost reimbursement agreement will detail issues such as, but not limited to warranty, submittal of engineer's estimates, progress payments, retention, notice of acceptance,				

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEP'T	TIME OF COMPLETION	SUBJECT TO REIMBURSMENT/ CREDIT	SUBJECT TO PREVAILING WAGE
	etc. Prior to design, the City will provide a sewer video locating as many sewer laterals as possible. Included in this project and apart of the cost reimbursement agreement (50% cost reimbursement), shall be the installation of a flow meter in compliance with FMC Sections 6-315 and 6-322. The meter type shall be ADS compatible, approved by the DPU prior to installation and the improvement plans shall locate the installation of the meter in manhole 2666-01. The City will maintain this meter. *Second Order of Operation:* The project shall covenant that: When the flow meter in manhole 2666-01 records a Peak Day Flow producing a Relative Depth of .74 (74% full) which is equivalent to 90% capacity, the up stream sanitary sewer main shall be removed and replaced starting from manhole 2666-01 to manhole 2666-02. The new sanitary sewer main shall be of a size and type that increases capacity keeping the Peak Day Flow below a Relative Depth of .74 (74% full) which is equivalent to 90% capacity. Included with this project will be the removal and re-installation or the installation of a new flow meter in manhole 2666-02, in compliance with FMC Sections 6-315 and				

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEP'T	TIME OF COMPLETION	SUBJECT TO REIMBURSMENT/ CREDIT	SUBJECT TO PREVAILING WAGE
	6-322. The Developer is responsible for all costs for the Second Order of Operation and the Developer will have one year after notification by the City to construct sanitary sewer improvements. If sewer improvements are not constructed within one year all occupancy permits will be denied. *Third Order of Operation:* The project shall covenant that: When the flow meter in manhole 2666-02 records a Peak Day Flow producing a Relative Depth of .74 (74% full) which is equivalent to 90% capacity, the up stream sanitary sewer main shall be replaced starting from manhole 2666-02 to manhole 2666-03. The new sanitary sewer main shall be of a size and type that increases capacity keeping the Peak Day Flow below a Relative Depth of .74 (74% full) which is equivalent to 90% capacity. The Developer is responsible for all costs for the Third Order of Operation and the Developer will have one year after notification by the City to construct sanitary sewer improvements. If sewer improvements are not constructed within one year all occupancy permits will be denied. (1) Developer shall pay the Lateral				

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEP'T	TIME OF COMPLETION	SUBJECT TO REIMBURSMENT/ CREDIT	SUBJECT TO PREVAILING WAGE
	Sewer Charge as designated in the City's Master Fee Resolution for frontage along South Clovis Avenue if the Tulare and Argyle Avenue alignments are chosen for sanitary sewer discharge and sanitary sewer main improvements. These fees are to be paid at time of approval of any Entitlement (Parcel Map, Site Plan, DOP, etc.) or prior to approval of off-site sewer improvement plans. **OPTION 2:** If the Developer elects to connect at **S. Clovis at E. Kings Canyon** the Developer shall do the following: An existing 12-inch sewer is located along the north side of Kings Canyon Road at Clovis Avenue. Connection to this pipeline requires extension of a 12-inch sewer line in Clovis Avenue (east side of street) to Kings Canyon Road to serve the proposed project. (1) A 12-inch sanitary sewer shall be constructed along the east side of Clovis Avenue northerly from the existing 12-inch sewer in East Kings Canyon Road to Tulare				

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEP'T	TIME OF COMPLETION	SUBJECT TO REIMBURSMENT/ CREDIT	SUBJECT TO PREVAILING WAGE
	Avenue. (2) From Tulare Avenue continue northerly in Clovis Avenue with the construction of an 8-inch sanitary sewer to Fancher Creek Drive North. (See Attachment 1.)				

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEP'T	TIME OF COMPLETION	SUBJECT TO REIMBURSMENT/ CREDIT	SUBJECT TO PREVAILING WAGE
13	**General Sanitary Sewer Requirements** (1) Sanitary sewer facilities installed on-site or within private streets shall be private. It is the responsibility of the project and its owners to repair and maintain all sewer facilities deemed private.	DPU	(1) After construction of facilities; ongoing obligation.	(1) No.	(1) No.
	(2) Engineered sanitary sewer facility improvement plans prepared by a registered civil engineer shall be submitted to the City of Fresno Department of Pubic Utilities for review and approval of proposed public sewer facilities. Those plans must adhere to the requirements in this Exhibit and be approved by the Director or his designee prior to issuance of building permits. It is the project's responsibility to coordinate and eliminate elevation and alignment conflicts with other utilities. Separation requirements per the California Department of Health are strictly enforced.		(2) Prior to issuance of building permits.	(2) N/A	(2) No.
	(3) For construction of off-site sewer improvements, the project shall, pursuant to the terms of Section 201.3 of the Agreement, comply with City of Fresno ordinances and conditions in effect at the time of construction and shall pay processing fees in effect at the time plans are submitted to the City.		(3) At submittal of off-site construction plans.	(3) N/A.	(3) N/A

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEP'T	TIME OF COMPLETION	SUBJECT TO REIMBURSMENT/ CREDIT	SUBJECT TO PREVAILING WAGE
	See Attachment 1.				
	(4) Residential units shall be provided with separate water services and meters from non-residential uses within the same building. All water services shall be metered and approved backflow devices installed when required.		(4) Prior to Certificate of occupancy.	(4) No.	(4) N/A
	(5) All landscaping and outdoors water uses shall be supplied through water services and meters installed for irrigation purposes only and shall be separated from services used to supply domestic uses within a building.		(5) Prior to Certificate of Occupancy.	(5) No.	(5) N/A.
	(6) In addition to and without limiting any other requirement in this Exhibit, the public sewer system improvements including off-site shall be constructed in its entirety (without phasing) and are to be completely constructed and fully operational prior to occupancy of the first building.		(6) N/A	(6) N/A	(6) N/A
14	All solid waste enclosures and facilities shall be constructed to Public Works Standards P-33 and P-34 and shall be included on improvements plans to be approved prior to issuance of building permits. Eight enclosures for the Multi-family Residential Four 3-cell enclosures for the restaurants	DPU	Prior to Certificate of Occupancy for each building.	No.	No.

No.	DEDICATION AND/OR IMPROVEMENT	CITY DEP'T	TIME OF COMPLETION	SUBJECT TO REIMBURSMENT/ CREDIT	SUBJECT TO PREVAILING WAGE
	One 2-cell enclosure for Bldg A One 2-cell enclosure for Bldg B One 2-cell enclosure for the Movie Theater Three 2-cell enclosures for the South Power Center Three 2-cell enclosures for the North Power Center Two 2-cell enclosures for the Lifestyle Stores If compactors are to be used, these figures will change. Compactors required 60' clearance in front and 3' clearance on either side for loading and unloading.				

C. OTHER AGENCY FEES, DEDICATIONS AND/OR IMPROVEMENTS

Developer shall comply with the attached letters and/or noticed conditions provided by the agencies listed below unless the particular agency provides notice to the City that the agency has provided a new official letter of conditions/requirements that is intended to replace the letter attached to this Agreement. During each phase of development, Developer shall provide written verification by all of the following agencies that they are in compliance with those agencies' conditions/requirements prior to the issuance of any and all building permits from the City for such phase of development.

1. **Bakman Water Company (aka Bakman Water District) (No Attachment). Before any building permits will be issued Developer will provide an agreement from Bakman Water Company evidencing their agreement to provide water to the Development. The City will not provide water to the Development.**
2. **Fresno County - Schedule of Fees, as applicable as determined by County in accordance with applicable laws and regulations (Exhibit F, Attachment 5)**
3. **Fresno Metropolitan Flood Control District (Exhibit F, Attachment 5)**
4. **Fresno Irrigation District is required to sign any parcel or tentative maps in the Subject Property that include an FID easement (No Attachment).**
5. **San Joaquin Air Pollution Control District (SJAPCD), letter dated July 16, 2009, as applicable as determined in accordance with applicable law and regulations.**

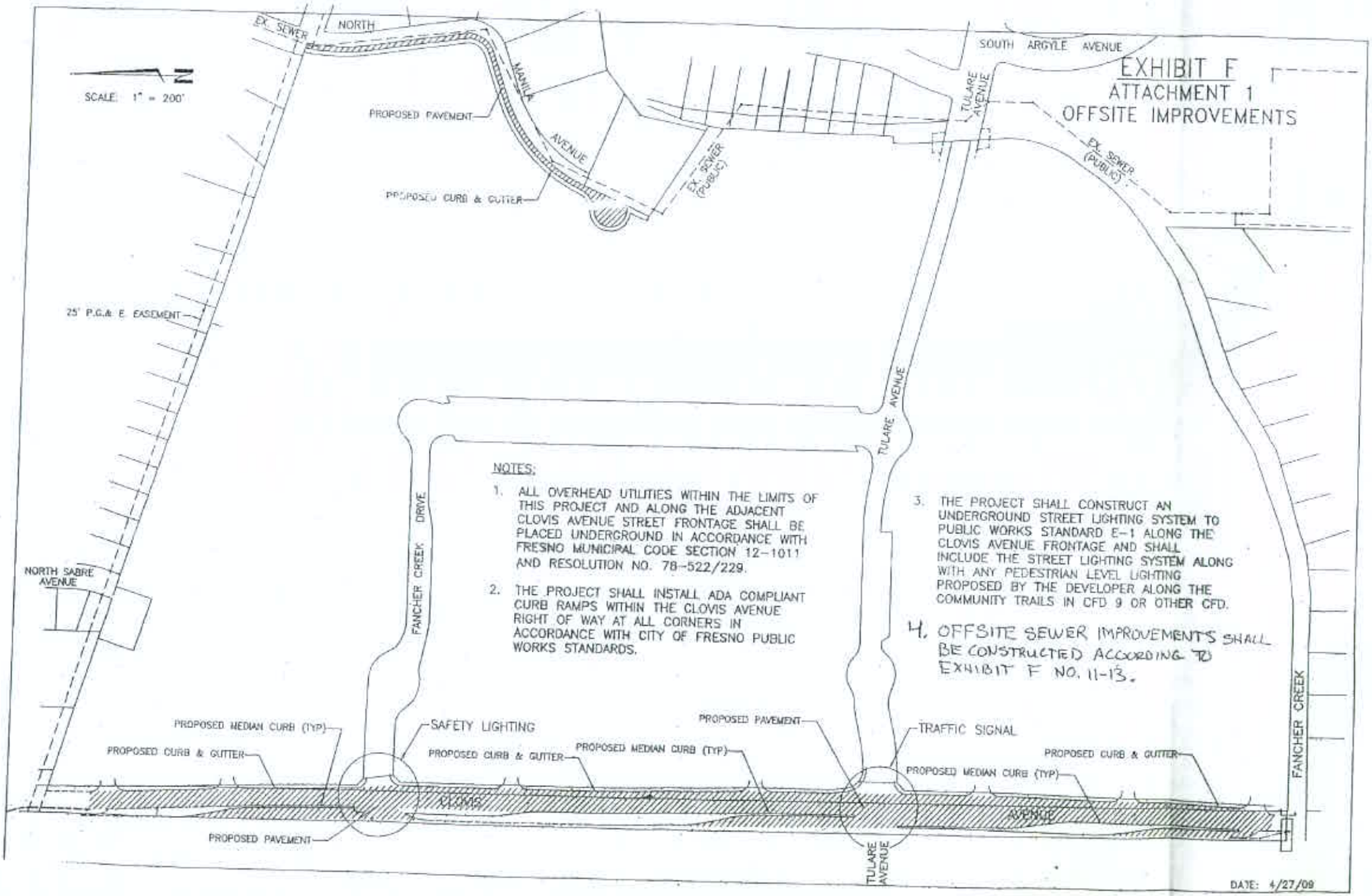
86

Exhibit F, Attachment 1

Off-Site Improvements

81

EXHIBIT F
ATTACHMENT 1
OFFSITE IMPROVEMENTS



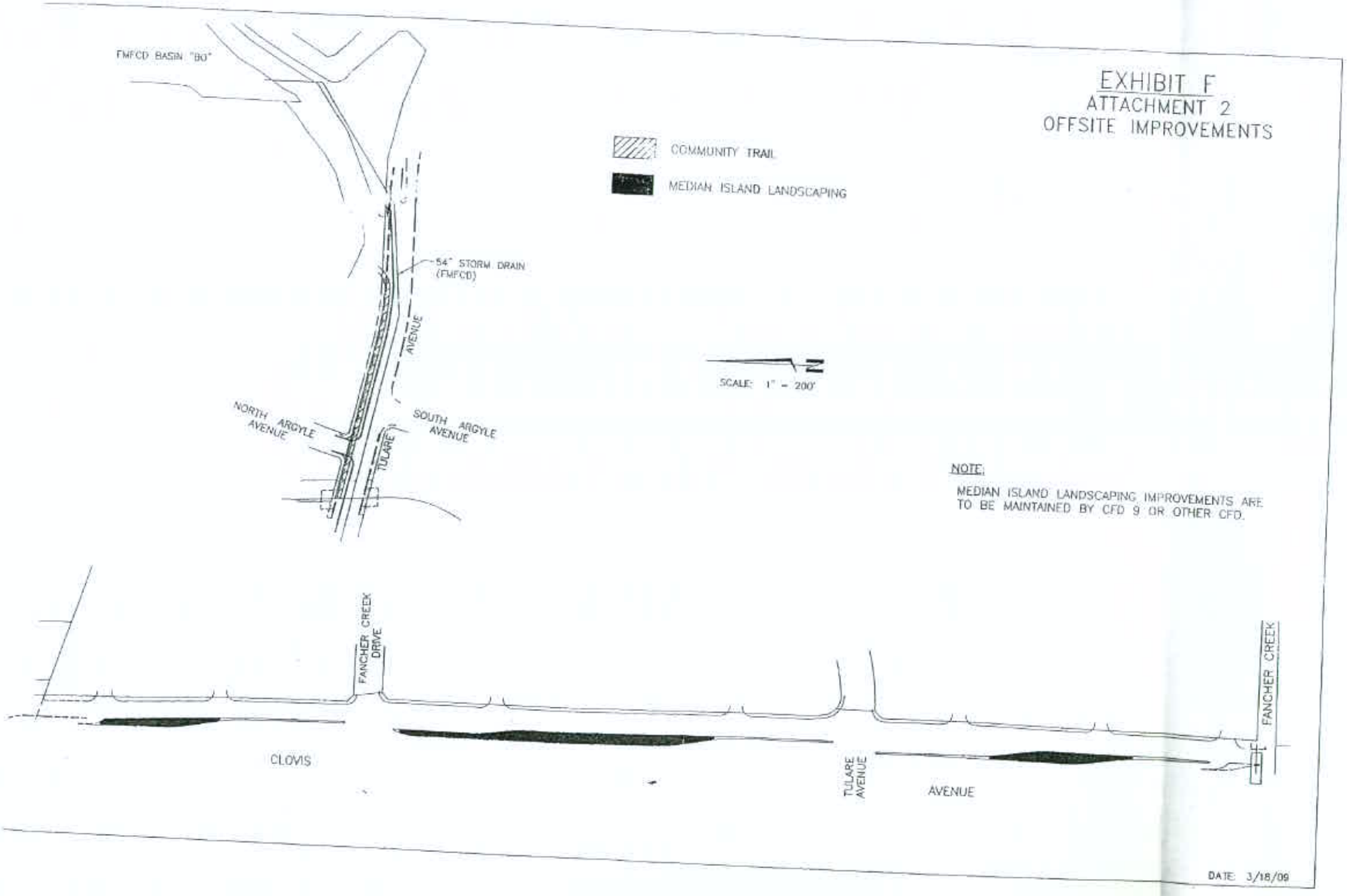
NOTES:

1. ALL OVERHEAD UTILITIES WITHIN THE LIMITS OF THIS PROJECT AND ALONG THE ADJACENT CLOVIS AVENUE STREET FRONTAGE SHALL BE PLACED UNDERGROUND IN ACCORDANCE WITH FRESNO MUNICIPAL CODE SECTION 12-1011 AND RESOLUTION NO. 78-522/229.
2. THE PROJECT SHALL INSTALL ADA COMPLIANT CURB RAMPS WITHIN THE CLOVIS AVENUE RIGHT OF WAY AT ALL CORNERS IN ACCORDANCE WITH CITY OF FRESNO PUBLIC WORKS STANDARDS.
3. THE PROJECT SHALL CONSTRUCT AN UNDERGROUND STREET LIGHTING SYSTEM TO PUBLIC WORKS STANDARD E-1 ALONG THE CLOVIS AVENUE FRONTAGE AND SHALL INCLUDE THE STREET LIGHTING SYSTEM ALONG WITH ANY PEDESTRIAN LEVEL LIGHTING PROPOSED BY THE DEVELOPER ALONG THE COMMUNITY TRAILS IN CFD 9 OR OTHER CFD.
4. OFFSITE SEWER IMPROVEMENTS SHALL BE CONSTRUCTED ACCORDING TO EXHIBIT F NO. 11-13.

Exhibit F, Attachment 2

Off-Site Improvements

EXHIBIT F
ATTACHMENT 2
OFFSITE IMPROVEMENTS



NOTE:

MEDIAN ISLAND LANDSCAPING IMPROVEMENTS ARE TO BE MAINTAINED BY CFD 9 OR OTHER CFD.

DATE: 3/18/09

Exhibit F, Attachment 3

Dedications, Exactions, and Vacations

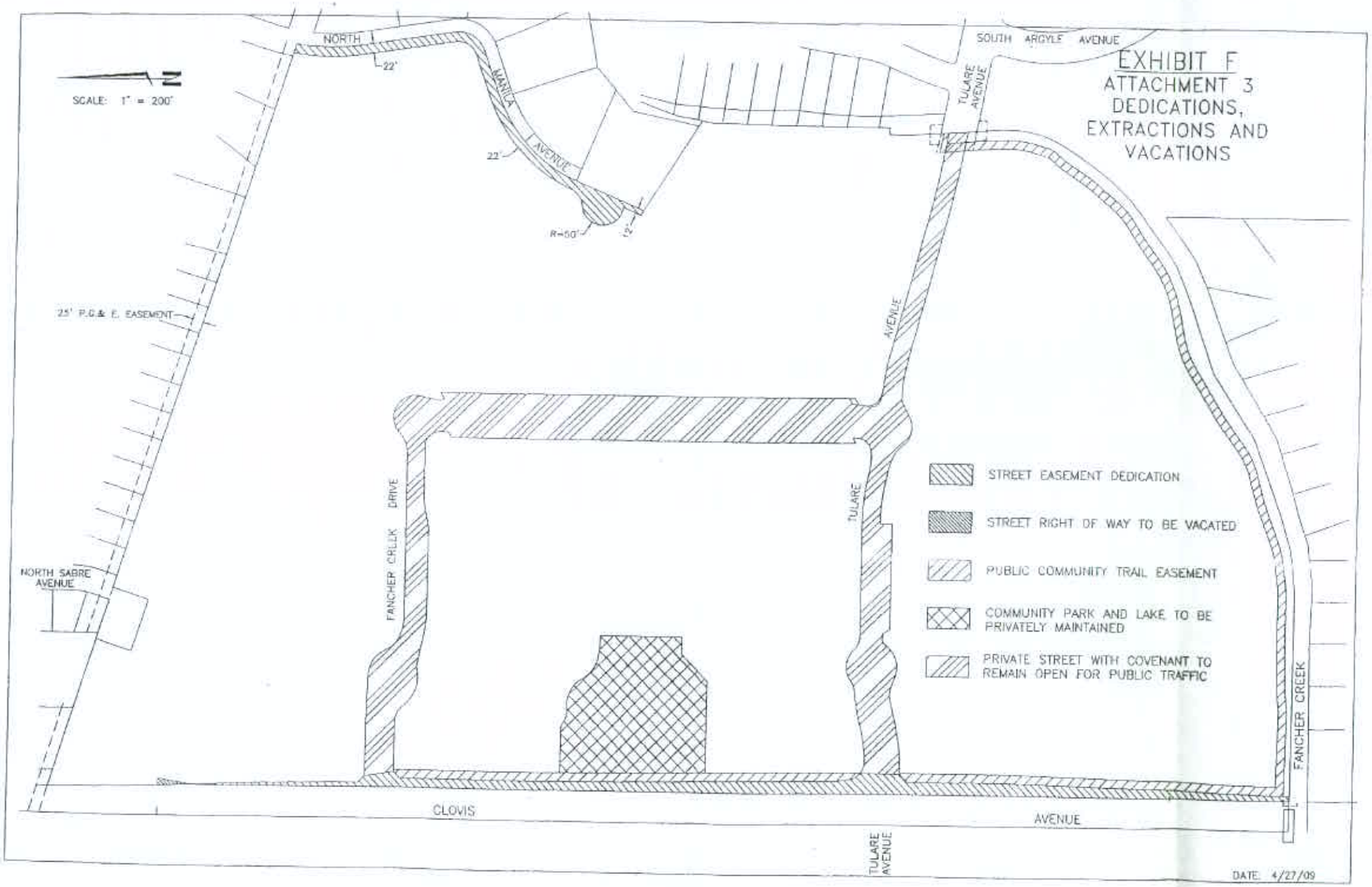


EXHIBIT F
ATTACHMENT 3
DEDICATIONS,
EXTRACTIONS AND
VACATIONS
SCALE: 1" = 200'
N
NORTH
22'
MANILA
AVENUE
22'
R=50'
2'
SOUTH ARGYLE AVENUE
TULARE AVENUE
AVENUE
25' P.G.& E. EASEMENT
NORTH SABRE AVENUE
FANCHER CREEK DRIVE
TULARE
STREET EASEMENT DEDICATION
STREET RIGHT OF WAY TO BE VACATED
PUBLIC COMMUNITY TRAIL EASEMENT
COMMUNITY PARK AND LAKE TO BE PRIVATELY MAINTAINED
PRIVATE STREET WITH COVENANT TO REMAIN OPEN FOR PUBLIC TRAFFIC
FANCHER CREEK
CLOVIS
AVENUE
TULARE AVENUE
DATE: 4/27/09

29

Exhibit F, Attachment 4

Traffic Signalization Map

CLOVIS & ASHLAN

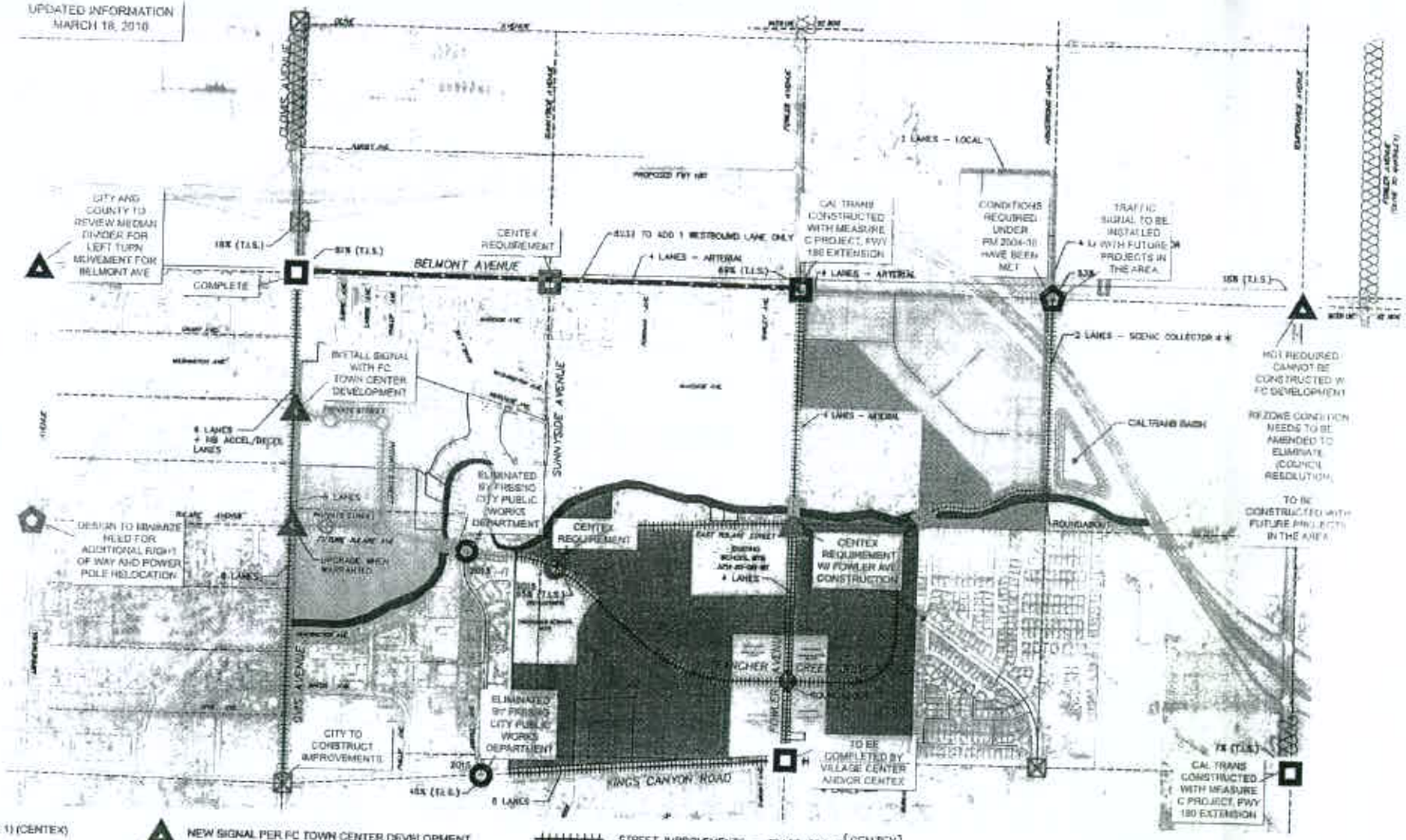
FOWLER & McKINLEY

TEMPERANCE & ASHLAN

TEMPERANCE & McKINLEY

TEMPERANCE & JENSEN

UPDATED INFORMATION
MARCH 18, 2010



NEW SIGNAL (TRACT 5232 - PHASE 1) (CENTEX)

SIGNAL COMPLETE

NEW SIGNAL WHEN WARRANTED

SIGNAL REQUIREMENT MET

UPGRADED SIGNAL (TRACT 5232 - PHASE 1) (CENTEX)

UPGRADE SIGNAL WHEN WARRANTED

SIGNAL NOT REQUIRED

NEW SIGNAL PER FC TOWN CENTER DEVELOPMENT

TRAFFIC SIGNAL NOTED IN TIS (2015) & EIR (NOT IN CONDITIONS, ZONING PM2004-36, T5232, T5499)

TRAFFIC SIGNAL NOTED IN TIS (2015) & EIR (CENTEX REQUIREMENT)

SIGNAL ELIMINATED

BRIDGE REQUIREMENT (SHARED COST: 5232, 5499, ETC.) (CENTEX, BONADELLE, FCP)

EXISTING SIGNAL

STREET IMPROVEMENTS – TRACT 5232 [CENTEX]

BELMONT STREET IMPROVEMENTS – TRACT 5232 [CENTEX] (ONLY ADD 1 WESTBOUND LANE)

STREET IMPROVEMENTS – TRACT 5499 [BONADELLE]

STREET IMPROVEMENTS (FULL WIDTH) – PM2004-36 [FCP-TECH PARK]

STREET IMPROVEMENTS (PARTIAL WIDTH) – PM2004-36 [FCP-TECH PARK]

CLOVIS AVENUE STREET IMPROVEMENTS [CITY PROJECT]

ADD ACCEL/DECEL LANES AND CURB & GUTTER [FCP-TOWN CENTER]

TULARE AVENUE/RANCHER CREEK DRIVE [FCP-TOWN CENTER]

TRACT 5232 [CENTEX]

TRACT 5499 [BONADELLE]

PM2004-36 [FCP – INDUSTRIAL]

VILLAGE CENTER [FCP]

REGIONAL COMMERCIAL TOWN CENTER [FCP]

ROAD SEGMENT IN EIR (*NOT IN CONDITIONS) *ZONING, PM2004-36, T5232, T5499

Exhibit F, Attachment 5

Schedule of County Fees

Schedule A - Schedule of Fees

Service Area and Land Use	County-wide Public Protection	General Government	Library	Health and Human Services	Sheriff Patrol & Investigation	County Parks	Admin. Charge (2.5%)	Total
Unincorporated areas in County (except within Coalinga-Huron Library District*)								
Residential			*(Fee per Dwelling Unit)*					
Single Family Unit	$ 1,644	$ 1,424	$ 485	$ 417	$ 257	$ 65	$ 107	$ 4,399
Multi-Family Unit	$ 1,208	$ 1,046	$ 356	$ 306	$ 189	$ 48	$ 79	$ 3,232
Nonresidential		*(Fee per 1,000 Building Square Feet)*						
Retail	$ 255	$ 221	N/A	N/A	$ 40	N/A	$ 13	$ 529
Office	$ 370	$ 320	N/A	N/A	$ 58	N/A	$ 19	$ 767
Industrial	$ 121	$ 104	N/A	N/A	$ 19	N/A	$ 6	$ 250
Warehouse	$ 141	$ 122	N/A	N/A	$ 22	N/A	$ 7	$ 292
Incorporated areas in Cities (except Coalinga and Huron,* and Kingsburg and Clovis***)**								
Residential			*(Fee per Dwelling Unit)*					
Single Family Unit	$ 1,644	$ 664	$ 485	$ 417	N/A	$ 65	$ 82	$ 3,357
Multi-Family Unit	$ 1,208	$ 488	$ 356	$ 306	N/A	$ 48	$ 60	$ 2,466
Nonresidential		*(Fee per 1,000 Building Square Feet)*						
Retail	$ 255	$ 103	N/A	N/A	N/A	N/A	$ 9	$ 367
Office	$ 370	$ 149	N/A	N/A	N/A	N/A	$ 13	$ 532
Industrial	$ 121	$ 49	N/A	N/A	N/A	N/A	$ 4	$ 174
Warehouse	$ 141	$ 57	N/A	N/A	N/A	N/A	$ 5	$ 203
Unincorporated areas in County within Coalinga-Huron Library District*								
Residential			*(Fee per Dwelling Unit)*					
Single Family Unit	$ 1,644	$ 1,424	*	$ 417	$ 257	$ 65	$ 95	$ 3,902
Multi-Family Unit	$ 1,208	$ 1,046	*	$ 306	$ 189	$ 48	$ 70	$ 2,867
Nonresidential		*(Fee per 1,000 Building Square Feet)*						
Retail	$ 255	$ 221	N/A	N/A	$ 40	N/A	$ 13	$ 529
Office	$ 370	$ 320	N/A	N/A	$ 58	N/A	$ 19	$ 767
Industrial	$ 121	$ 104	N/A	N/A	$ 19	N/A	$ 6	$ 250
Warehouse	$ 141	$ 122	N/A	N/A	$ 22	N/A	$ 7	$ 292
Incorporated areas in Cities of Coalinga and Huron,* City of Kingsburg, and City of Clovis*** **								
Residential			*(Fee per Dwelling Unit)*					
Single Family Unit	$ 1,644	$ 664	* / ** / ***	$ 417	N/A	$ 65	$ 70	$ 2,860
Multi-Family Unit	$ 1,208	$ 488	* / ** / ***	$ 306	N/A	$ 48	$ 51	$ 2,101
Nonresidential		*(Fee per 1,000 Building Square Feet)*						
Retail	$ 255	$ 103	N/A	N/A	N/A	N/A	$ 9	$ 367
Office	$ 370	$ 149	N/A	N/A	N/A	N/A	$ 13	$ 532
Industrial	$ 121	$ 49	N/A	N/A	N/A	N/A	$ 4	$ 174
Warehouse	$ 141	$ 57	N/A	N/A	N/A	N/A	$ 5	$ 203

* Coalinga-Huron Library District is outside of County's Library system, and includes the cities of Coalinga and Huron, and some surrounding area not served by the County Library system.

** In Kingsburg, the City of Kingsburg charges an existing library fee that is greater than the County's library fee, above.

*** (Effective for Clovis commencing July 1, 2008) In Clovis, the City of Clovis' library fee will be greater than the County's library fee, above.

Refer to Ordinance Chapter 17.90 for the terms governing development fees charged by cities toward costs of County public facilities.

Exhibit F, Attachment 6

Fresno Metropolitan Flood Control District

Notice of Requirements

File No. 210.412

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
NOTICE OF REQUIREMENTS

PUBLIC AGENCY

Mike Sanchez, Supervising Planner
Planning & Development Department
City of Fresno
2600 Fresno Street
Fresno, CA 93721

DEVELOPER

ED KASHIAN
LANCE-KASHIN & CO.
8365 N. FRESNO ST., SUITE 150
FRESNO, CA 93720

PROJECT NO. **2008-001**
DRAINAGE AREA **" Y " " BO "**
DATE
APN **313-021-01, 31310122 & 24**

PRELIMINARY FEE(S) (See below)

DRAINAGE AREA	" Y "	$19,242.00
DRAINAGE AREA	" BO "	$620,118.00
TOTAL FEE		$639,360.00
ADDRESS	E/S CLOVIS N& S OF TULARE AVE	

FMFCD No. 2008-001

The proposed development will generate storm runoff which produces potentially significant environmental impacts and which must be properly discharged and mitigated pursuant to the California Environmental Quality Act and the National Environmental Policy Act. The District in cooperation with the City and County has developed and adopted the Storm Drainage and Flood Control Master Plan. Compliance with and implementation of this Master Plan by this development project will satisfy the drainage related CEQA/NEPA impact of the project mitigation requirements.

The proposed development shall pay drainage fees pursuant to the District's Drainage Fee Ordinance prior to issuance of building permits for a particular phase or portion of the project at the rates in effect at the time of such issuance. As the developer's project has historically been located within Zone 2 (Drainage Area "Y") of the drainage fee rate structure, the District will apply the Zone 2 rate structure to this project with the majority of the project area at the commercial rate and approximately 5.3 acres at the multi-family (R-4) rate. Further, as the developer will be required to construct facilities with Drainage Area "BO" (Zone 1 rate schedule), the District will allow the developer to apply drainag efee credits from eligible facilities in Drainage Area "BO" to the Zone 2 (Drainage Area "Y") drainage fee obligation. The fee indicated above is valid through February 28, 2009 based on the site plan submitted to the District on October 3, 2008. Assuming this project is phased, each phase will be subject to the rate schedule in effect at the time of development of that phase.

Much of the project will receive drainage service by the developer constructing drainage facilities within Drainage Area "BO". To the extent that such facilities are eligible for drainage fee credit, the Districtl will allow the developer to apply the construction credits within Drainage Area "BO" and apply them to meet the drainage fee obligation of Zone 2 (Drainage Area "Y"). The District will make internal accounting adjustments to retain appropriate PPDA account balances

Considerations which may affect the fee obligation(s) or the timing or form of fee payment:

a) Fees related to undeveloped or phased portions of the project may be deferrable.

b) Master Plan storm drainage facilities may be constructed, or required to be constructed in lieu of paying fees.

5469 E. OLIVE - FRESNO, CA 93727 - (559) 456-3292 - FAX (559) 456-3194

Two sided document

98

c) The actual cost incurred in constructing Master Plan drainage system facilities is credited against the drainage fee obligation.

d) When the actual costs incurred in constructing Master Plan facilities exceeds the drainage fee obligation, reimbursement will be made for the excess costs from future fees collected by the District from other development.

e) Any request for a drainage fee refund requires the entitlement cancellation and a written request addressed to the General Manager of the District within 60 days from payment of the fee. A non refundable $300 Administration fee or 5% of the refund whichever is less will be retained without fee credit.

Approval of this development shall be conditioned upon compliance with these District Requirements.

1. _____ a. Drainage from the site shall be directed to _____

   X b. Grading and drainage patterns shall be as identified on Exhibit No. 1 // 2

   _____ c. The grading and drainage patterns shown on the site plan conform to the adopted Storm Drainage and Flood Control Master Plan.

2. The proposed development shall construct and/or dedicate Storm Drainage and Flood Control Master Plan facilities located within the development or necessitated by any off-site improvements required by the approving agency:

   X Developer shall construct facilities as shown on Exhibit No. 1 as "Master Plan Facilities to be constructed by Developer".

   _____ None required.

3. The following final improvement plans shall be submitted to the District for review prior to final development approval:

X	Grading Plan	X	Storm Drain Plan	X	Final Map
X	Street Plan	X	Water & Sewer Plan	_____	Other

4. Availability of drainage facilities:

   _____ a. Permanent drainage service is available provided the developer can verify to the satisfaction of the City of Fresno that runoff can be safely conveyed to the Master Plan inlet(s).

   _____ b. The construction of facilities required by Paragraph No. 2 hereof will provide permanent drainage service.

   _____ c. Permanent drainage service will not be available. The District recommends temporary facilities until permanent service is available.
   Temporary service is available through _____

   X d. See Exhibit No. 2.

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Two sided document

99

5. The proposed development:

X Appears to be located within a 100 year flood prone area as designated on the latest Flood Insurance Rate Maps available to the District, necessitating appropriate floodplain management action. (See attached Floodplain Policy.)

_____ Appears to be located within a 500 year flood prone area as designated on the latest Flood Insurance Rate Maps available to the District.

_____ Does not appear to be located within a flood prone area.

6. _____ The subject site contains a portion of a canal or pipeline that is used to manage recharge, storm water, and/or flood flows. The existing capacity must be preserved as part of site development. Additionally, site development may not interfere with the ability to operate and maintain the canal or pipeline.

7.

The Federal Clean Water Act and the State General Permits for Storm Water Discharges Associated with Construction and Industrial Activities (State General Permits) require developers of construction projects disturbing one or more acres, and discharges associated with industrial activity not otherwise exempt from National Pollutant Discharge Elimination System (NPDES) permitting, to implement controls to reduce pollutants, prohibit the discharge of waters other than storm water to the municipal storm drain system, and meet water quality standards. These requirements apply both to pollutants generated during construction, and to those which may be generated by operations at the development after construction.

a. State General Permit for Storm Water Discharges Associated with Construction Activities, approved August 1999, (modified December 2002.) A State General Construction Permit is required for all clearing, grading, and disturbances to the ground that result in soil disturbance of at least one acre (or less than one acre if part of a larger common plan of development or sale). Permittees are required to: submit a Notice of Intent to be covered and must pay a permit fee to the State Water Resources Control Board (State Board), develop and implement a storm water pollution prevention plan, eliminate non-storm water discharges, conduct routine site inspections, train employees in permit compliance, and complete an annual certification of compliance.

b. State General Permit for Storm Water Discharges Associated with Industrial Activities, April, 1997 (available at the District Office.) A State General Industrial Permit is required for specific types of industries described in the NPDES regulations or by Standard Industrial Classification (SIC) code. The following categories of industries are generally required to secure an industrial permit: manufacturing; trucking; recycling; and waste and hazardous waste management. Specific exemptions exist for manufacturing activities which occur entirely indoors. Permittees are required to: submit a Notice of Intent to be covered and must pay a permit fee to the State Water Resources Control Board, develop and implement a storm water pollution prevention plan, eliminate non-storm water discharges, conduct routine site inspections, train employees in permit compliance, sample storm water runoff and test it for pollutant indicators, and annually submit a report to the State Board.

FMFCD No. 2008-001

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Two sided document

c. The proposed development is encouraged to select and implement storm water quality controls recommended in the Fresno-Clovis Storm Water Quality Management Construction and Post-Construction Guidelines (available at the District Office) to meet the requirements of the State General Permits, eliminate the potential for non-storm water to enter the municipal storm drain system, and where possible minimize contact with materials which may contaminate storm water runoff.

8. A requirement of the District may be appealed by filing a written notice of appeal with the Secretary of the District within ten days of the date of this Notice of Requirements.

9. The District reserves the right to modify, reduce or add to these requirements, or revise fees, as necessary to accommodate changes made in the proposed development by the developer or requirements made by other agencies.

10. _____ See Exhibit No. 2 for additional comments, recommendations and requirements.

Gerald E. Lakeman,
District Engineer

Project Engineer

C: GIANNETTA ENGINEERING
1119 "S" STREET
FRESNO, CA 93721

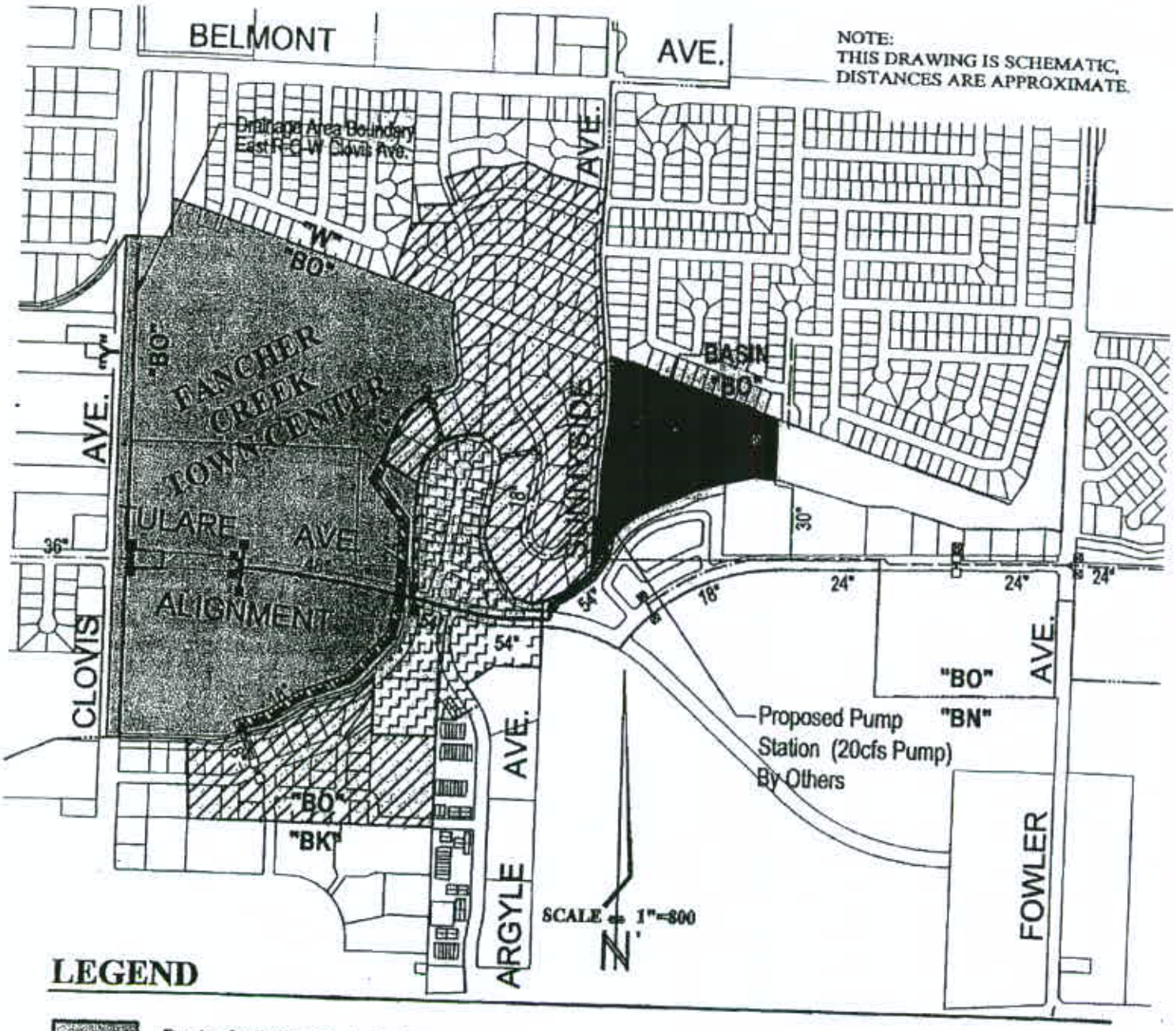


EXHIBIT NO. 1

FANCHER CREEK TOWN CENTER

Proposed Service to Basin "BO"

DRAINAGE AREA: "Y" & "BO"

FRESNO METROPOLITAN FLOOD CONTROL DISTRICT

102

OTHER REQUIREMENTS
EXHIBIT NO. 2
(sheet 1 of 3)

The cost of construction of Master plan facilities, excluding dedication of storm drain easements, is eligible for credit against the drainage fee of the drainage area served by the facilities. A Development Agreement shall be executed with the District to effect such credit. Reimbursement provisions, in accordance with the Drainage Fee Ordinance, will be included to the extent that the developer's Master Plan costs exceed the fee of said area. The fees indicated on the cover sheet are the District's adopted Zone 2 fee rates. All requirements are applicable to the entire project at this time unless the Developer provides a detailed phasing diagram. If such a diagram is presented to the District, then a phased fee schedule can be implemented. Each proposed phase would be subject to the District's most current Zone 2 fee schedule at the time of each phases building entitlements.

The pipeline sizes, as shown on Exhibit No.1, is based on the latest Master Plan. These pipe sizes were determined by the District through the latest project proposal provided to the staff by the Developer. The District's Board of Directors approved the Drainage Area boundary shift at Clovis Avenue and the Master Plan pipeline sizes as shown on Exhibit No. 1 at the July 9, 2008 Board Meeting. The calculations used to determine the pipe sizes were that of the District's standard level of service for commercial development runoff. If the land use proposal changes, then the developer must notify the District immediately and provide the District with a new site plan that indicates such land use change.

An on-site storm drainage collection system will undoubtedly be used with this development. There is also a private lake proposal within the latest site plan. The developer's engineer must provide a detailed grading and drainage plan of the site to show how the on-site collection systems hydrology timing will interface with the District's system. If the private lake is to provide some storm runoff attenuation then calculations of the storage freeboard must be submitted showing the peak storage and the method of lake dewatering. The proposed Master Plan pipeline system will tie to Basin "BO". It has been determined that the new high water elevation within Basin "BO" will be 324.10 U.S.G.S. The projects on-site inlets will not be allowed to be constructed below the 324.10 elevation.

There are two "Exempt areas" as shown on Exhibit No. 1. These areas are located north and south of the FCTC project. The Exempt areas drainage is currently being served through three direct pipeline discharges to Fancher Creek. With the deteriorating condition of the pipelines and the ever growing regulatory environment for storm water quality, the District proposes to conduct a Public Hearing to consider including these

exempt areas into the Drainage Area "BO" system along with the FCTC project. Two of three Master Plan pipeline extensions for the exempt areas will have to be constructed

OTHER REQUIREMENTS
EXHIBIT NO. 2
(sheet 2 of 3)

through the FCTC project area as shown on Exhibit No. 1. Typical fifteen foot (15') wide storm drain easements must be granted to the District by the Developer for said exempt areas Master Plan pipeline alignments. It is recommended that the developers engineer contact the District so that the most effective alignments for these pipelines can be determined, and the timing of the installation coordinated with the FCTC project. The Developer will be required to construct the Master Plan facilities to serve the exempt areas as shown on Exhibit No. 1. The District will reimburse the Developer the cost of the facilities in accordance with the Drainage Fee Ordinance.

To accommodate the necessary capacity to handle the project's drainage, Basin "BO" must be excavated so that the floor is lowered to an ultimate thirty feet in depth. The developer will be required to complete the basin excavation and grading and remove approximately 60,000 cubic yards. The District will issue the Developer a no fee permit for the removal of the material. Following excavation, any disturbed areas of current grass/growth established must be re-hydroseeded at the appropriate season. The Developer must coordinate the dirt hauling across Fancher Creek with the Fresno Irrigation District. The Developer must construct a temporary bridge or conduit that allows Fancher Creek to flow. Normally FID shuts the water flow down within Fancher Creek in September, October or November of each year. This would only allow a limited time to install such a temporary bridge or conduit in Fancher Creek. This will require careful planning between FID, FMFCD and the Developer. The Developer will be responsible for any permits to work within Fancher Creek and the related haul route. The Developer will also be responsible to monitor and dewater the basin during the period of excavation and outfall construction.

There is the potential to supply surface water from Basin "BO" to the FCTC private lake and/or outdoor landscaping supply, provided the facilities necessary for such feature are constructed at the developers expense and to the extent City or Bakman Water District entitlement water is approved for this purpose. The Developer must conform to the attached FMFCD lakes policy. The Developer must prepare and gain the District's written approval of a "Lakes Operational Plan" so it is clear as to the method of water inflow and dewatering of the lake. The Developer will not be allowed to directly dewater the private lake into Fancher Creek.

There are two proposed inlets to be constructed on the east side of Clovis Avenue at the Tulare Avenue alignment shown on Exhibit No. 1. The City of Fresno has extended an 18" diameter storm drain from the east side of Clovis Avenue to the southwest corner of

Clovis and Tulare Avenue. There is an outlet at the southwest corner of Clovis and Tulare Avenues that will provide the east side of Clovis Avenue with temporary service.

OTHER REQUIREMENTS
EXHIBIT NO. 2
(sheet 3 of 3)

The permanent Master Plan pipeline within Tulare Avenue between Minnewawa and Clovis Avenues is currently being designed. Construction of this pipeline will be provided by the District and may begin in May of 2009. Once the pipeline is complete, the temporary siphon can be abandoned by the City and permanent service will be available.

Most of the FCTC project site lies within Flood Zone "AO" as indicated on the latest available FEMA Map. The Developer must comply with FEMA for development with a flood plain, (see attached flood plain policy). However, the District understands that the Developer has submitted a CLOMAR to FEMA for removal of the subject FCTC project from the Zone "AO". The District understands that FEMA has approved the map changes, subject to the condition of certain grading improvements at Fancher Creek Detention Basin. The Developer shall make improvements within the Districts Fancher Creek Basin under a permit from the District to comply with the FEMA CLOMAR or develop in accordance with the City's Floodplain Management Ordinance. It appears favorable for the Developer to comply with the CLOMAR instead of mitigating the impacts of the development through FEMA's Zone A floodplain policy.

FLOOD PLAIN POLICY

Primary Flood Plains

Because of the relatively high velocities and volumes of flood flow associated with primary flood plains, and because the primary flood plain is responsible for passing the greatest percentage of the flood event, development located in such flood plains is subject to substantial risk, both to itself and to others as a result of the potential for blockage and diversion of flood waters. In view of these factors, the following policy statement is proposed:

Policy

1) All proposed development activity shall be the subject of a detailed hydrological flood hazard investigation to determine the relationship of the proposed development to the secondary flood plain and the primary flood plain; and, further, to identify the estimated high water elevation of the 100-year flood event.

2) All development and/or permanent improvement activity which, if located within the primary floodway, may unduly impede, retard, or change the direction of flow of water either, by itself, or by the catching or collecting of other debris or is placed where the flow of water would carry such obstruction downstream to the damage or detriment of either life or property, should not be permitted.

Secondary Flood Plains

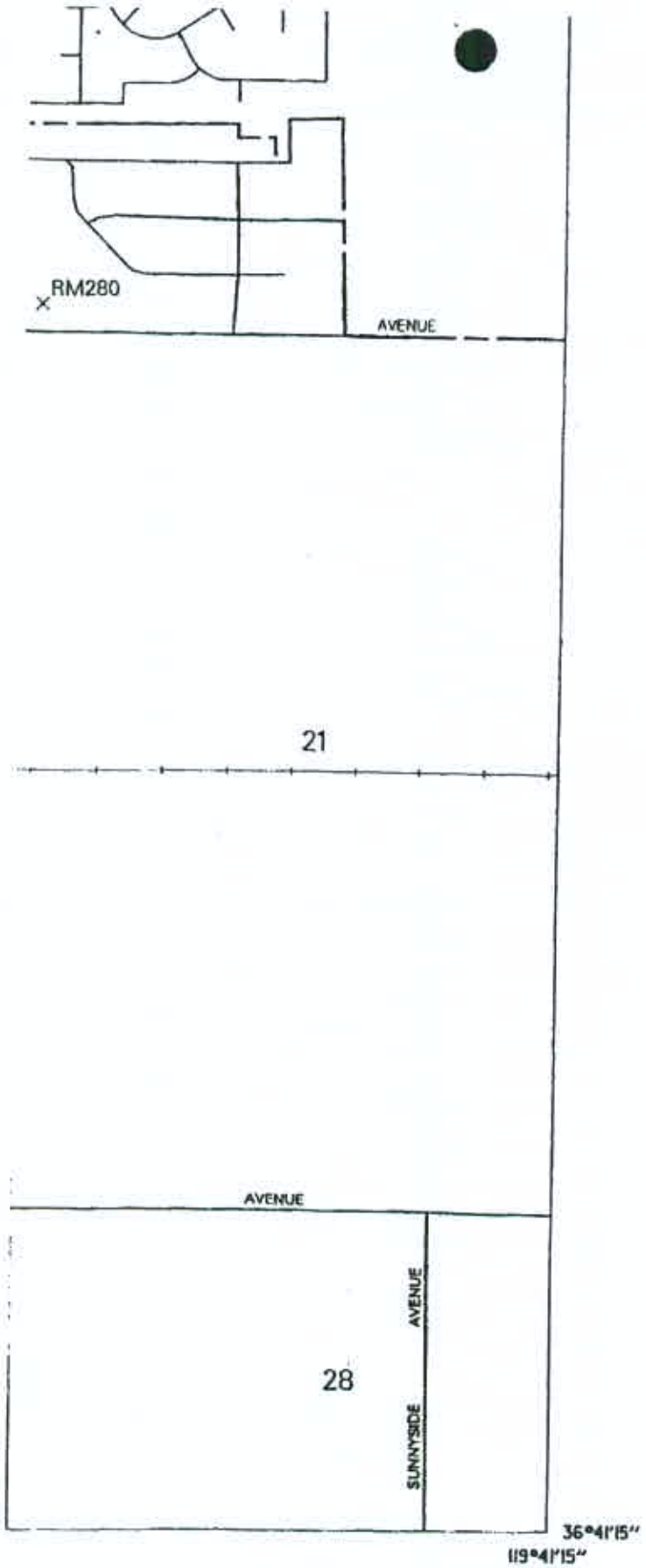
Because development within secondary flood plains is subject to inundation, but without the threat of increased velocities of flood waters, and because the excessive development of the secondary flood plain can result in increased water surface elevations through displacement of flood waters, the following policy statement is suggested:

Policy

1) Development in secondary flood plains is generally acceptable when a detailed hydrological flood hazard investigation report had been prepared indicating that the area proposed for development is located within a secondary as opposed to a primary flood plain.

2) The development must be properly flood proofed below the estimated high water elevation of the 100-year flood event.

3) The development is accomplished in such a way as to prohibit the displacement of any and all flood waters from that portion of the flood plain to be developed.



Refer to the FLOOD INSURANCE RATE MAP EFFECTIVE DATE shown on this map to determine when actuarial rates apply to structures in zones where elevations or depths have been established.

To determine if flood insurance is available, contact an insurance agent or call the National Flood Insurance Program at (800) 638-6620.

APPROXIMATE SCALE IN FEET

1000 0 1000

NATIONAL FLOOD INSURANCE PROGRAM

FIRM

FLOOD INSURANCE RATE MAP

FRESNO COUNTY, CALIFORNIA AND INCORPORATED AREAS

PANEL 2130 OF 3550

(SEE MAP INDEX FOR PANELS NOT PRINTED)

CONTAINS:

COMMUNITY	NUMBER	PANEL	SUFFIX
FRESNO, CITY OF	060048	2130	F
FRESNO COUNTY, UNINCORPORATED AREAS	065029	2130	F

MAP NUMBER 06019C2130 F

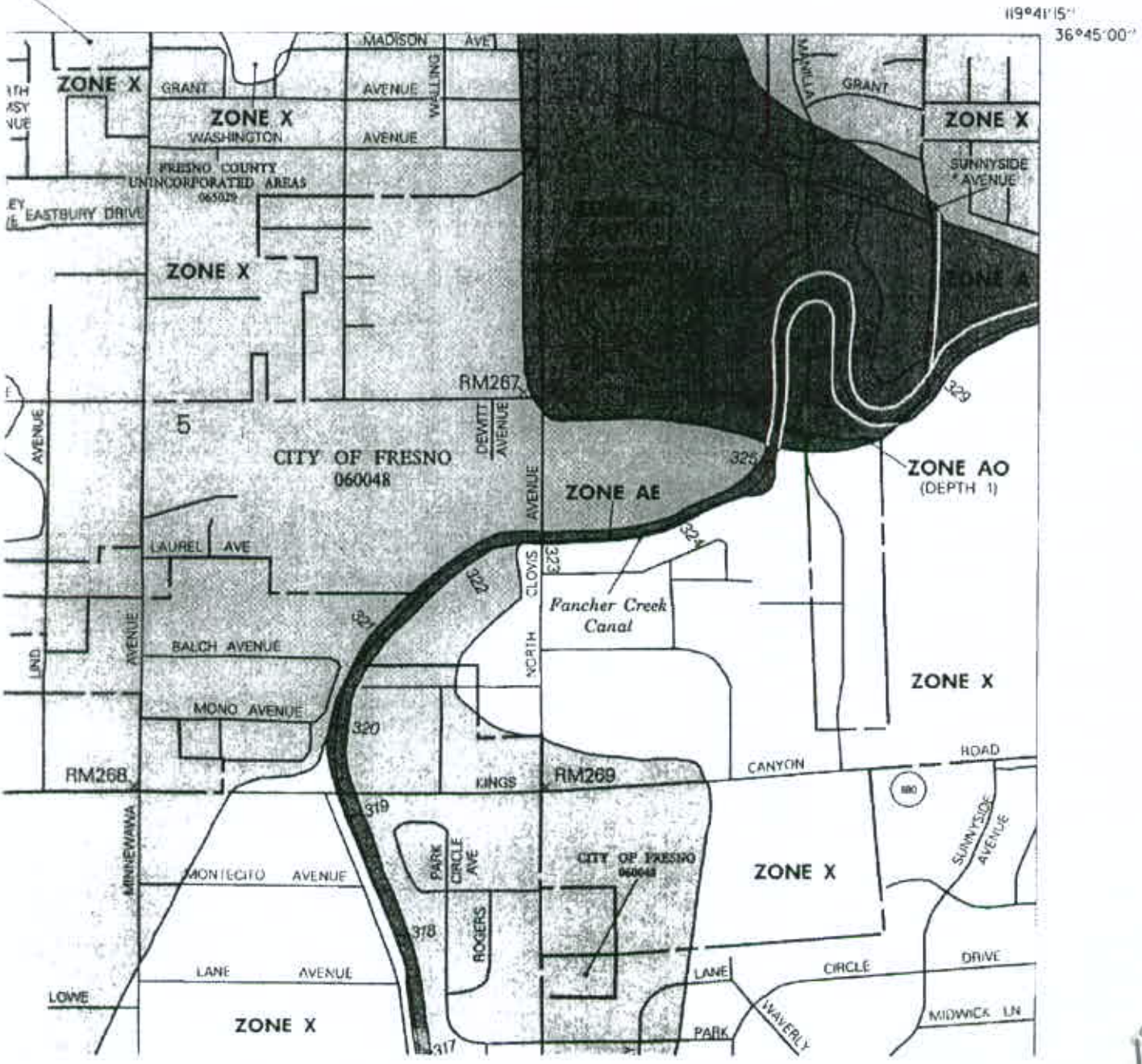
EFFECTIVE DATE: JULY 19, 2001

Federal Emergency Management Agency

101

F G

RESNO


119°41'15"
36°45'00"
ZONE X
GRANT
MADISON AVE
AVENUE
WALLING
ZONE X
WASHINGTON
AVENUE
FRESNO COUNTY
UNINCORPORATED AREAS
065029
EASTBURY DRIVE
ZONE X
MANELLA
GRANT
ZONE X
SUNNYSIDE AVENUE
ZONE A
RM267
5
CITY OF FRESNO
060048
DEWITT AVENUE
AVENUE
ZONE AE
326
328
ZONE AO
(DEPTH 1)
324
323
CLOVIS
Pancher Creek
Canal
LAUREL AVE
AVENUE
BALCH AVENUE
NORTH
ZONE X
MONO AVENUE
320
RM268
KINGS
RM269
CANYON
ROAD
319
PARK
CIRCLE AVE
CITY OF FRESNO
060048
ZONE X
SUNNYSIDE AVENUE
MINNEWAWA
MONTEGITO AVENUE
318
ROGERS
LANE
AVENUE
LANE
CIRCLE
DRIVE
LOWE
ZONE X
PARK
WAVERLY
MIDWICK LN
317

108

POLICY MANUAL	Date Adopted: January 26, 1987
Classification: PROGRAMS	Date Last Amended:
Subject: Private Lakes	Approved By:

1. The preservation, conservation and recharge of the surface water entitlements of the Fresno-Clovis metropolitan area for recharge of the local groundwater aquifer is a long-term objective of the Fresno Metropolitan Flood Control District. The following represents suggestions to all involved entities to assist in securing this objective.

   A. A private lake developer should demonstrate that the proposed lake(s): (1) will not have a substantial negative impact on water use when compared to the alternative of other open-space uses such as landscaping; (2) will not increase net water use or increase the risk of negative groundwater quality impacts; and (3) will not divert water from a more efficient or productive recharge facility resulting in increased evaporation losses and recharge efficiency losses.

   B. The surface water entitlement used for private lake water level maintenance, or recharge within the private lake, should be the subject of an entitlement contract with the entitlement agency. Such contract should provide that the private lake shall be subordinate in water delivery priority to public recharge facilities also relying on surface water deliveries, and, that said agency will satisfy all delivery requirements to public facilities before delivery is made to private facilities.

   C. A private lake developer who includes recharge in the lake's purpose should agree to forfeit receipt of surface waters when it is determined that the maintenance required to sustain such recharge is no longer performed or has become ineffective in maintaining the lake's recharge capacity.

2. The construction, filling, operation and maintenance of private lakes for aesthetic, recharge or storm water purposes creates direct impacts on the District through increased risk of flooding and system impact. The following are District

109

policies concerning the design, construction, operation and maintenance of such facilities:

A. The private lake design, construction and operation must avoid the creation or maintenance of conditions conducive to mosquito breeding. Such design, construction and operations plan must be reviewed and approved by the appropriate mosquito abatement authority.

B. The private lake plan must provide for appropriate and regular maintenance. If groundwater recharge is a design purpose of the lake, the maintenance program must maintain the lake's recharge capacity.

C. The design of the private lake(s) must include sufficient free-board area and volume to safely control overfilling due to error, accident or rainfall. The following minimums apply:

(1) Such area and volume shall be sufficient to accept a thirty-six hour error in maximum FID delivery.

(2) Such area and volume shall be sufficient to accept one-half foot of rainfall on the area of the lake and any additional drainage area contributing runoff to the lake, this volume requirement in addition to 2.c(1).

D. The private lake design and operations plan shall include a plan of relief and dewatering. If the lake is directly connected to, or overflows to, FMFCD facilities then both of the following are required:

(1) an automatic valve to shut off deliveries into the lake when the design water surface elevation is reached;

(2) the granting of authority to FMFCD to enter the premises and manually shut off lake deliveries.

E. The private lake developer shall prepare a formal maintenance program which specifically identifies, among other details, the timing and method of lake draining for maintenance purposes. If drained to FMFCD facilities, a prior written agreement with FMFCD is required.

F. When the private lake is to include storm runoff

management in its design, construction and operation, the following conditions must be met:

(1) The lake must have a method of direct relief to FMFCD facilities.

(2) The lake developer must provide engineering calculations to demonstrate the routing of a 100-year 10-day event through the lake, such design to provide a minimum free-board of 1 feet above the 100-year water surface elevation. If in-lake storage for the 100-year event is proposed, a means of after event dewatering the lake to restore the design capacity for the 100-year event is required.

(3) The lake developer must pay standard drainage fees on total area of development, provided:

(a) If the FMFCD facilities must be extended or increased due to the lake development proposal, any increase in FMFCD system costs or pro-rata costs per parcel within any drainage area must be paid in cash in addition to the standard drainage fees.

(b) If development and related storm drainage use of the lake does not have a negative impact on the FMFCD system and its costs, or costs per parcel, then fees will not be required on the area of the lake when such area is zoned open-space.

(c) All replanning, engineering and related costs to restructure the FMFCD system to accommodate a private lake as a component of the public drainage system must be paid by the developer, in addition to standard drainage fees, to the District.

112

(4) A public drainage easement encompassing the area of the lake and related free-board shall be granted at no cost to FMFCD.

(5) The private lake developer must develop and ensure full implementation and funding of an on-going lake maintenance program. The developer may contract with FMFCD for performance of maintenance work.

(6) The private lake developer shall provide liability insurance of the type and limits determined by FMFCD. Developer shall ensure continued coverage of FMFCD and the development by such insurance.

G. The District shall prohibit all non-storm drainage discharges into its systems, including those systems which drain into private lakes, District basins, District pumping plants, and the San Joaquin River. All discharges into the District's system shall comply with established storm water quality discharge standards as may be enacted by appropriate local State and Federal agencies.

113

Exhibit F, Attachment 7

San Joaquin Valley Air Pollution Control District

July 16, 2009 Letter

114

San Joaquin Valley
AIR POLLUTION CONTROL DISTRICT

July 16, 2009

Michael Sanchez
City of Fresno
Planning and Development Department
2600 Fresno Street
Fresno, CA 93721

Project: Fancher Creek Development Agreement
District Reference No: 20090432

Dear Mr. Sanchez:

Per the City of Fresno's request, the San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the proposed Development Agreement (Agreement) between the City and Fancher Creek Properties. The District offers the following comments:

1. The District has considered the information provided in the Agreement, and has determined that this Agreement constitutes a discretionary approval by the City of Fresno. Furthermore, development of the project would equal or exceed District Rule 9510 (Indirect Source Review) applicability thresholds. Therefore, the project would be subject to the provisions of District Rule 9510, including emission reduction requirements and any related fee requirements.

2. The District recommends compliance with District Rule 9510, before issuance of the first building permit for each project phase, including payment of all applicable fees, be made a condition of approval. Information about how to comply with District Rule 9510 can be found online at: http://www.valleyair.org/ISR/ISRHome.htm.

3. The District recommends that Exhibit F, Section C of the Agreement, *Other Agency Fees, Dedications and/or Improvements*, be revised to include the District as an agency for demonstration of compliance. In addition to compliance with District Rule 9510, individual development projects may also be subject to the following District rules:

Seyed Sadredin
Executive Director/Air Pollution Control Officer

Northern Region
4800 Enterprise Way
Modesto, CA 95356-8718
Tel: (209) 557-6400 FAX: (209) 557-6475

Central Region (Main Office)
1990 E. Gettysburg Avenue
Fresno, CA 93726-0244
Tel: (559) 230-6000 FAX: (559) 230-6061
www.valleyair.org

Southern Region
2700 M Street, Suite 275
Bakersfield, CA 93301-2373
Tel: (661) 326-6900 FAX: (661) 326-6985

Printed on recycled paper

A. Regulation VIII, (Fugitive PM10 Prohibitions),
B. Rule 4102 (Nuisance),
C. Rule 4601 (Architectural Coatings),
D. Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations), and
E. District Rule 4002 (National Emission Standards for Hazardous Air Pollutants).

4. The above list of rules is neither exhaustive nor exclusive. To identify other District rules or regulations that apply to this project or to obtain information about District permit requirements, the applicant is strongly encouraged to contact the District's Small Business Assistance Office at (559) 230-5888. Current District rules can be found online at: www.valleyair.org/rules/1ruleslist.htm.

If you have any questions or require further information, please call Patia Siong at (559) 230-5930.

Sincerely,

David Warner
Director of Permit Services

Daniel L Barber

for Arnaud Marjollet
Permit Services Manager

DW:ps

1116

EXHIBIT G

INTENTIONALLY OMITTED

117

EXHIBIT H

INTENTIONALLY OMITTED

118

EXHIBIT I

ORDINANCE ADOPTING DEVELOPMENT AGREEMENT

Recording Requested by:
City Clerk, Fresno, California
No Fee-Govt. Code 6103

Return to City Clerk, Fresno

Space above this line reserved for Fresno County Recorder-s Office

BILL NO. B-7

ORDINANCE NO. 2010-8

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, AMENDING THE OFFICIAL ZONE MAP OF THE CITY OF FRESNO HERETOFORE ADOPTED BY ARTICLES 1 TO 4.5 INCLUSIVE, CHAPTER 12, OF THE FRESNO MUNICIPAL CODE, BEING THE ZONING ORDINANCE OF THE CITY OF FRESNO

WHEREAS, pursuant to the provisions of Government Code sections 65864, et seq., the City of Fresno is authorized to enter into a development agreement with any person having a legal or equitable interest in real property for the development of the property; and,

WHEREAS, Fancher Creek Properties, a California limited liability company, ("Developer") has an interest in entering into a development agreement to develop the property generally described in Exhibit "A" to this ordinance which is attached hereto and incorporated herein by reference ("Subject Property"); and,

WHEREAS, approval of a development agreement as requested by the Developer will allow the development of the Fancher Creek Town Center which is comprised of 1.2 million square feet of mixed retail space and 740 residential units on a 95 acre site ("Proposed Project"); and,

WHEREAS, the Proposed Project was part of a larger development project, commonly known as the Fancher Creek Development Project which encompassed an approximately 476 acre project site; and,

WHEREAS, the Fancher Creek Development Project, including the Proposed Project on the Subject Property, was environmentally assessed in EIR No. 10133, which was certified by Council on May 17, 2005; and,

Adopted 3/25/10
Approved 3/25/10
Effective 4/25/10

2010-8

120

WHEREAS, City staff and the Developer negotiated a development agreement (inclusive of Exhibits "A" to "L") that is titled "Development Agreement By and Between the City of Fresno and Fancher Creek Properties, LLC" dated March 25, 2010 ("Development Agreement"); and,

WHEREAS, the Council approved Rezone R-04-14 on May 17, 2005 for the Fancher Creek Development Project, which rezoned a portion of the Subject Property, which included conditions of zoning that the Developer install or upgrade traffic signals at the following intersections as part of the overall Fancher Creek Development Project:

i. Minnewawa Avenue at Tulare Street

ii. Minnewawa Avenue at Belmont Avenue

iii. Belmont Avenue at Temperance Avenue

iv. Belmont Avenue at Armstrong Avenue

v. Clovis Avenue at Tulare Avenue

vi. Clovis Avenue at Belmont Avenue

vii. Temperance Avenue at Kings Canyon Road; and,

WHEREAS, none of the intersections listed above were found to be necessary mitigation measures under EIR No. 10133; and,

WHEREAS, the Public Works Department in consideration of the Proposed Project, has determined that not all of the intersections listed above should be required as a condition of the Proposed Project based on the timing of improvements for related public infrastructure and therefore, has determined that only the following intersections should be made an obligation of the Developer in the Proposed Development Agreement:

i. Minnewawa Avenue at Tulare Street

ii. Minnewawa Avenue at Belmont Avenue

v. Clovis Avenue at Tulare Avenue

vi. Clovis Avenue at Belmont Avenue; and,

121

WHEREAS, the Public Works Department is recommending that those intersections required under R-04-14 but not made a condition of the Proposed Project can be adequately obtained by conditioning other portions of the Fancher Creek Development Project; and,

WHEREAS, pursuant to the provisions of Section 65867 of the Government Code, the Planning Commission of the City of Fresno held a public hearing on August 19, 2009, to consider the Proposed Development Agreement during which the Planning Commission considered and recommended approval of the Proposed Development Agreement pursuant to Planning Commission Resolution No. 12973; and,

WHEREAS, the Council of the City of Fresno, on March 25, 2010, received the recommendations of the Planning Commission and the City staff as detailed in the staff report to Council for the introduction and adoption of this Ordinance approving the Development Agreement.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Council finds that CEQA Guidelines Section 15162 requires the following:

> (a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:
>
> > (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
> >
> > (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
> >
> > (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
> >
> > > (A) The project will have one or more significant effects not

discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

SECTION 2. Council finds in its independent judgment, based upon its review of EIR No. 10133 and the Addendum prepared for EIR No. 10133 dated June 29, 2009, and the entire administrative record, including but not limited to the Staff reports, the oral and documentary evidence submitted to Council and the Planning Commission, that the Proposed Project was part of the project assessed under EIR No. 10133 and that none of the circumstances that would require a new environmental document, pursuant to CEQA Guidelines section 15162, is required to approve the Proposed Development Agreement. Accordingly, Council hereby adopts the Addendum prepared for EIR No. 10133 dated June 29, 2009.

SECTION 3. Council finds that the Proposed Project is a development for which the Development Agreement is appropriate pursuant to the evidence and findings provided in the Staff Report to Council dated March 25, 2010.

SECTION 4. Council finds, in accordance with Section 65867.5 of the Government Code, and pursuant to the evidence and findings provided in the Staff Report to Council dated March 25, 2010, that:

(a) The Development Agreement is being adopted pursuant to this Ordinance and is subject to referendum.

(b) The Development Agreement is consistent with the 2025 Fresno General Plan and the Roosevelt Community Plan.

(c) The Development Agreement includes approval of subdivisions, as defined in Section 66473.7 of the Subdivision Map Act and based upon a written verification provided by Bakman Water Company, dated July 30, 2009, that there is sufficient water supply, as defined by Section 66473.7, to serve the Proposed Project and as determined in the Water Supply Assessment prepared in the EIR No. 10133, and alternatively, that Section 66473.7 does not apply to this Proposed Project because it includes a residential project where the immediate contiguous properties surrounding the residential project site are or previously have been developed for urban uses pursuant to Section 66473.7(i).

SECTION 5. Council finds that the Development Agreement complies with the Fresno Municipal Code and other applicable ordinances (including the conditions of zoning under Rezone No. R-04-14), standards, policies and regulations of the City of Fresno pursuant to the evidence and findings provided in the Staff Report to Council dated March 25, 2010.

SECTION 6. Council finds that the Development Agreement furthers the public health, safety and welfare and will not be materially detrimental to the use, enjoyment, or valuation of property of other persons located in the vicinity of the Subject Property, pursuant to the evidence and findings provided in the Staff Report to Council dated March 25, 2010.

SECTION 7. Council finds that the construction of the public facilities required in Development Agreement to construct the Development is adequate to serve the Development pursuant to the evidence and findings provided in the Staff Report to Council dated March 25, 2010.

SECTION 8. Council finds that the Development Agreement provides for clear and substantial public benefit to the City of Fresno and residents pursuant to the evidence and findings provided in the Staff Report to Council dated March 25, 2010.

SECTION 9. Council hereby adopts and approves the Development Agreement titled "Development Agreement By and Between the City of Fresno and Fancher Creek Properties, LLC,"

dated March 25, 2010, in substantially the same form as that presented to Council in the Staff Report to Council dated March 25, 2010 and authorizes the City Manager and/or his or her designee to finalize and execute the Proposed Development Agreement, subject to City Attorney's Office approval as to form, on behalf of the City of Fresno.

SECTION 10. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its passage and, only as to the parcel not already annexed into the City, upon annexation of said parcel into the City of Fresno.

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CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO)
CITY OF FRESNO)

I, REBECCA E. KLISCH, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, California, at a regular meeting held on the 25th day of March, 2010, by the following vote:

Ayes: Borgeas, Brand, Dages, Perea, Sterling, Xiong, Westerlund
Noes: None
Absent: None
Abstain: None

REBECCA E. KLISCH
City Clerk

By _____

APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

By: _____
John W. Fox, Senior Deputy
Date: 3/25/2010

Development Agreement by and between
City of Fresno and Fancher Creek
Properties, LLC
Filed by the City of Fresno
Assessor Parcel No. APN(s): 512-070-01, 07,
17, 19, 29, 32, 39, 48,
50 & 54

126

EXHIBIT A

DESCRIPTION OF THE SUBJECT PROPERTY OWNED IN FEE

The portion of the Northwest Quarter and the Southwest Quarter of Section 4, Township 14 South, Range 21 East, Mount Diablo Base and Meridian, described as follows:

Beginning at the Northwest corner of said Section 4; thence South 0°04'33" East, along the West line of said Northwest Quarter, a distance of 910.00 feet; thence South 89°41'21" East, a distance of 83.50 feet to the TRUE POINT OF BEGINNING; thence South 89°41'21" East, a distance of 155.84 feet; thence North 0°04'33" West, a distance of 207.77 feet to the intersection with the Southerly line of the 25 foot wide Pacific Gas & Electric Company easement, recorded October 18, 1957 in Book 3982, page 624, Fresno County Records; thence South 72°31'57" East, along said Southerly line, a distance of 172.66 feet; thence South 17°31'56" West, along the boundary of the property deeded to the City of Fresno, recorded September 19, 1994 as Document No. 94146329 and recorded October 12, 1994, as Document No. 94159187, Fresno County Records, a distance of 89.94 feet; thence South 72°29'59" East along said boundary, a distance of 130.00 feet; thence North 17°31'56" East along said boundary, a distance of 90.01 feet to the intersection with the South boundary of Tract No. 2784, Legacy Homes No. 1, recorded in Volume 31, pages 54 and 55 of Plats, Fresno County Records; thence South 72°31'57" East, a distance of 983.00 feet to the Southeast corner of said Tract No. 2784; thence South 72°29'26" East along the South boundary of Tract 1681, Fancher Creek Ranchos NO. 2, recorded in Volume 19, page 25 of Plats, Fresno County Records, a distance of 374.37 feet to the intersection with the West boundary of Tract No. 1589, Fancher Creek Ranchos No. 1, recorded in Volume 19, pages 23 and 24 Plats, Fresno County Records, said West boundary also being the centerline of North Manila Avenue; thence Southerly along a non-tangent curve, along said West boundary and centerline, whose radius point bears South 80°00'43" East, having a radius of 477.46 feet, through a central angle of 18°28'44", a distance of 153.99 feet; thence South 8°29'21" East along said West boundary and centerline, a distance of 224.76 feet; thence Southwesterly along a tangent curve, along said West boundary and centerline, concave to the Northwest, having a radius of 65.11 feet, through a central angle of 78°00'00", a distance of 88.64 feet; thence South 69°30'39" West, along said West boundary and centerline, a distance of 100.00 feet; thence Southwesterly along a tangent curve, along said West boundary and centerline, concave to the Southeast, having a radius of 358.10 feet, through a central angle of 44°33'25", a distance of 278.48 feet; thence South 22°28'59" West, along said West boundary and centerline, a distance of 10.00 feet; thence South 22°28'59" West, a distance of 177.20 feet; thence South 57°45'35" East, a distance of 252.08 feet to the centerline of Fancher Creek; thence South 8°57'14" West along said centerline, a distance of 32.66 feet; thence South 0°48'58" West along said centerline, a distance of 421.74 feet to the intersection with a line parallel with and 174.20 feet South of the North line of the South Half of said Section 4; thence North 89°55'16" West along said line a distance of 15.96 feet; thence along the centerline of Fancher Creek the following described courses; (1) South 0°10'09" East, a distance of 33.34 feet; (2) South 3°54'28" East, a distance of 230.14 feet; (3) Southwest along a tangent curve, concave to the Northwest, having a radius of 284.60 feet, through a central angle of 37°28'46", a

127

distance of 186.17 feet; (4) thence South 33°34'18" West, a distance of 59.81 feet; (5) thence Southwesterly along a tangent curve, concave to the Northwest, having a radius of 500.00 feet, through a central angle of 19°15'44", distance of 168.09 feet; (6) thence South 52°50'02" West, a distance of 119.90 feet; (7) thence South 58°43'21" West, a distance of 32.91 feet; (8) thence South 67°32'47" West, a distance of 79.19 feet; (9) thence South 70°47'25" West, a distance of 185.67 feet; (10) thence South 57°07'22" West, a distance of 187.40 feet; (11) thence South 69°26'18" West, a distance of 206.48 feet; (12) thence South 73°38'53" West, a distance of 80.38 feet; (13) thence South 84°21'26" West, a distance of 103.14 feet; (14) thence North 89°42'53" West, a distance of 104.99 feet; (15) thence North 89°34'43" West, a distance of 375.76 feet to the Southeast corner of the property described by the deed recorded July 22, 1966 in Book 5339, page 451, Fresno County Records; thence North 0°04'26" West, parallel with and 68.00 feet East of the West line of said Section 4, a distance of 291.87 feet to a point 881.13 feet South of the North line of said Southwest Quarter; thence North 0°14'31" East, a distance of 362.55 feet to a point 518.58 feet South of said North line; thence North 0°04'26" West, parallel with and 70.00 feet East of said West line, a distance of 329.81 feet; thence North 0°04'33" West, parallel with and 70.00 feet East of said West line, a distance of 1641.02 feet to a point which bears South 0°04'33" East, a distance of 1000.00 feet and North 89°55'27" East, a distance of 70.00 feet from the Northwest corner of said Section 4; thence North 8°30'31" East, a distance of 90.43 feet to the TRUE POINT OF BEGINNING.

12.8

EXHIBIT J

PARCEL MAP

EXHIBIT J PARCEL MAP NO. 2007-41

TENTATIVE PARCEL MAP No. 2007-41

A PLANNED DEVELOPMENT
A VESTING MAP
A PHASED MAP

VICINITY MAP:

SCALE: 1" = 100'

NORTH SABRE AVENUE

EAST ALGONQUIN AVENUE

NORTH ARGYLE AVENUE

SOUTH ARGYLE AVENUE

EAST TULARE STREET

FANCHER CREEK

HUNTINGTON BOULEVARD

GRANT AVENUE

NORTH GLOVER AVENUE

SECTION A-A

SECTION B-B
FANCHER CREEK

IMPROVEMENTS REQUIRED FOR THIS PARCEL MAP TO BE INSTALLED:

1. STREETS - CITY OF FRESNO STANDARDS
2. SEWER - CITY OF FRESNO STANDARDS
3. WATER - CITY OF FRESNO STANDARDS
4. CURB & GUTTER - CITY OF FRESNO STANDARDS
5. SIDEWALK - CITY OF FRESNO STANDARDS
6. STREET LIGHTS - CITY OF FRESNO STANDARDS
7. DRAINAGE - FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
8. GAS & ELECTRICITY - PACIFIC GAS & ELECTRIC
9. TELEPHONE - SBC
10. CABLE TELEVISION - COMCAST

GARY G. GIANNETTA
CIVIL ENGINEERING & LAND SURVEYING

5/1/09

EXHIBIT K

EASEMENT FOR PUBLIC ACCESS OVER INTERNAL ROADS

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City Clerk
City of Fresno
2600 Fresno Street
Fresno, CA 93721-3603
ATTN: Planning and Development Department

NO FEE – GOVERNMENT CODE 6103

EASEMENT FOR PUBLIC ACCESS OVER INTERNAL ROADS

RECITALS

WHEREAS, Fancher Creek Properties, LLC, a California limited liability company ("**Developer**") is the owner of the real property situated in the City of Fresno, County of Fresno, State of California, as described in **Exhibit A** attached hereto and incorporated by reference ("**Subject Property**");

WHEREAS, Developer hereby warrants that any and all parties having record title interest in the Subject Property which may ripen into a fee have subordinated to this instrument and that all such instruments of subordination, if any, are attached hereto and made a part of this instrument; and

WHEREAS, Developer intends to develop the Subject Property pursuant to the terms of that certain Development Agreement dated _____, by and between the City of Fresno, a municipal corporation ("**City**") and Developer ("**Development Agreement**") as part of the larger Fancher Creek Project which shall be a mixed use, master-planned project that will include residential communities, a town center, retail, a village center with senior housing, a business park, park space and internal roads necessary for traffic circulation within the boundaries of the Subject Property as well as to and from public rights-of-way in the vicinity of the Subject Property; and

WHEREAS, development of the Subject Property includes those certain internal roads, Fancher Creek Drive and Tulare Avenue ("**Internal Roads**"), as the same are generally depicted on that certain site map at **Exhibit B** attached hereto and incorporated by reference; and

WHEREAS, the Internal Roads are included in and constitute an integral part of the Circulation Element of the 2025 Fresno General Plan adopted by the City on November 19, 2002 (Resolution No. 2002-379); and

WHEREAS, Developer desires to maintain the Internal Roads and intends to construct the same to City specifications and maintain the same in the manner of private drivesw, retaining control of maintenance, signage and installation of any and all utilities to be placed within or along said Internal Roads; and

WHEREAS, the City requires that the Internal Roads, though privately maintained, be accessible to the public as deemed necessary in order to implement the aforementioned Circulation Element of the 2025 Fresno General Plan.

COVENANTS, CONDITIONS AND RESTRICTIONS

NOW THEREFORE, in furtherance of the Recitals, which are hereby incorporated as if fully set forth herein and in consideration of the covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer hereby covenants that the Subject Property shall be held, conveyed, encumbered, used, occupied, developed, maintained, and improved subject to the following covenants, conditions, and restrictions, which are for the purpose of enhancing attractiveness, usefulness, value, desirability and safety of the Subject Property, the surrounding property, and the public at large, and to minimize possible adverse effects on the public health, safety, peace, and general welfare. Each of the covenants, conditions and restrictions contained in this Easement for Public Access Over Internal Roads ("**Easement**") shall run with the Subject Property and shall be binding upon and inure to the benefit of each successive owner of the Subject Property and his heirs, successors and assigns.

1. The Internal Roads shall be accessible to the public for pedestrian and vehicular ingress and egress, including emergency vehicle access at all times consistent with a public right of way. The Internal Roads shall be renamed consistent with local and State law.

2. Use of the Internal Roads shall at all times be subject to all applicable laws, ordinances, rules, regulations and requirements of the City, County, State and any other governmental authorities as to law enforcement activities and application of the California Vehicle Code.

3. Developer shall seek and acquire the City's prior approval, which approval shall not be unreasonably withheld, in the event it seeks to alter the Internal Roads in any manner that can reasonably be expected to impact traffic circulation on said Internal Roads, including, but not limited to changes in location from that agreed upon in the Development Agreement.

132

4. Each of the covenants, conditions and restrictions contained in this Easement shall run with the Subject Property and shall be binding on each successive owner of the Subject Property, his heirs, representatives, successors and assigns.

5. To the furthest extent allowed by law, Developer hereby agrees to indemnify, hold harmless and defend City, its officers, officials, employees, agents and volunteers ("Indemnitees") from any and all loss, liability, fines, penalties, forfeitures, costs and damages incurred by Indemnitees, and from any and all claims, demands and actions in law or equity (including attorneys' fees and litigation expenses) caused by, or arising out of, the design, construction, maintenance or use of the Internal Roads, as set forth herein, but specifically excluding any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct of Indemnitees, as well as any claims arising out of or related to property rights, interests or privileges. Notwithstanding the foregoing, during the term of the Development Agreement or any other agreement entered into pursuant thereto relating to construction and maintenance of the Internal Roads, the indemnity rights and obligations shall be as set forth in the Development Agreement or the applicable agreement entered into pursuant thereto with respect to the construction and maintenance of the Internal Roads.

6. The covenants and conditions of this Easement are intended to benefit the public and public properties as well as properties appurtenant. Accordingly, it is agreed that the City shall have the right to enforce this Easement by any legal or equitable means.

7. The conditions and obligations of this Easement shall remain in full force and effect until such time as the Planning and Development Director of the City of Fresno issues a written release of such conditions and obligations and records such release with the Fresno County Recorder.

8. The provisions of this Easement shall be deemed independent and severable and the invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof. Whenever the context of this Easement so requires, in interpreting this Easement, any gender includes the other, the singular includes the plural, and the plural includes the singular.

IN WITNESS WHEREOF, Developer and City have caused this Agreement to be duly executed as of the day and year first above written.

CITY: CITY OF FRESNO, a Municipal Corporation. By:_____ Bruce Rudd, Interim City Manager	**DEVELOPER:** FANCHER CREEK PROPERTIES, LLC, a California limited liability company By: KASHIAN ENTERPRISES, a California limited partnership _____ Edward M. Kashian General Partner By: AFRICAL DEVELOPMENT, LLC, a California limited liability company _____ Thomas G. Richards Managing Member
ATTEST: REBECCA E. KLISCH City Clerk By:_____ Deputy	
APPROVED AS TO FORM: JAMES C. SANCHEZ City Attorney By:_____ John W. Fox, Senior Deputy Date:_____	

13-1

CITY CLERK'S CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

On_____ before me, _____,
Deputy City Clerk personally appeared _____,
personally known to me (or provided to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument(s) the
person(s), or the entity upon which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

CITY CLERK
REBECCA E. KLISCH, CMC

By: _____
DEPUTY

SUBORDINATION

The undersigned as holder of the beneficial interest in and under that certain Deed of Trust recorded on _____, in the office of the Fresno County Recorder as Document No. _____ of which the Deed of Trust in, by and between:

_____ as Trustor,
_____ as Trustee,
and _____ as Beneficiary, hereby expressly subordinates said Deed of Trust and its beneficial interest thereto to the foregoing **EASEMENT FOR PUBLIC ACCESS OVER INTERNAL ROADS**.

DATED: _____

BENEFICIARY

By: _____

By: _____

(Beneficiary to print/type document information, Name and Title; and attach Notary Acknowledgment)

KCP:bfi [4841KCP_bfi Fancher Creek Exhibits A-K COMBINED] 031909

136

Exhibit L

Infill Infrastructure Grant Program
Program Guidelines
(Rev. 1/30/09)

"Transit Station Defined"

"Bus Hub" means an intersection of three or more bus routes, where one route or a combination of routes has a minimum scheduled headway of 10 minutes or at least six buses per hour during peak hours. Peak hours means the time between 7 a.m. to 10 a.m., inclusive, and 3 p.m. to 7 p.m., inclusive, Monday through Friday or the alternative peak hours designated for the transportation corridor by the transit agency.

"Bus Transfer Station" means an arrival, departure, or transfer point for the area's intercity, intraregional, or interregional bus service having permanent investment in multiple bus docking facilities, ticketing services, and passenger shelters.

"Transit Station" means a rail or light-rail station, ferry terminal, Bus Hub, or Bus Transfer Station. Included in this definition are planned transit stations otherwise meeting this definition whose construction is programmed into a Regional or State Transportation Improvement Program to be completed no more than five years from the deadline for submittal of applications set forth in the NOFA.

Planning + Development

City of FRESNO

REPORT TO THE CITY COUNCIL

AGENDA ITEM NO. 10:00am #1
COUNCIL MEETING: 3-25-10

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

March 25, 2010

FROM: JERRY BISHOP, Assistant Director
Planning and Development Department

KEITH BERGTHOLD, Assistant Director
Planning and Development Department

BY: MIKE SANCHEZ, Planning Manager
Planning Division

SUBJECT: CONSIDERATION OF DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF FRESNO AND FANCHER CREEK PROPERTIES, LLC. AND THE REPEAL OF THE TULARE STREEET OFFICIAL PLAN LINE WITHIN THE FANCHER CREEK TOWN CENTER

Presented to City Council
Date 3/25/10
Disposition Approved, Bill B-7 Ord # 2010-8, + Bill B-8, Ord # 2010-9 adopted (Ord. 10-8 as amended)

RECOMMENDATION

Staff recommends that the City Council take the following actions:

1. Consider and adopt an addendum dated June 29, 2009 to Environmental Impact Report No. 10133 prepared for the Fancher Creek Project as certified through Council Resolution No. 2005-183.

2. BILL – (For Introduction and Adoption) – Approving the Development Agreement by and Between the City of Fresno and Fancher Creek Properties LLC.

3. BILL – (For Introduction and Adoption) To repeal the Tulare Street Official Plan Line, easterly from Clovis Avenue, within the Fancher Creek Town Center Project Area to allow for the private development and maintenance of Tulare Street within said project area.

EXECUTIVE SUMMARY

The Fresno City Council on May 17, 2005, through Resolution No. 2005-183 certified Environmental Impact Report No. 10133, prepared for the Fancher Creek Project. In addition, the Council also approved Rezone Application No. R-04-14 which rezoned a 43-acre portion of the subject property to C-3/cz zoning. On November 15, 2005, the Council approved Rezone Application No R-05-050 to rezone the balance of the property to C-3/cz zoning. Since this time, staff together with the Developer and its representatives have embarked on a long process to comprehensively construct a development agreement that clearly indicates the Developer's overall vision for the Fancher Creek Town Center while simultaneously incorporating all necessary public infrastructure improvements in a timely manner. Furthermore, the agreement outlines a clear path for how subsequent development will be processed by the Planning and Development Department. The subject property is situated on 95 acres generally located on the northeast and southeast corners of Clovis Avenue and the East Tulare Street alignment.

Under the provisions of Section 65864 et seq. of the Government Code, the City of Fresno is authorized to enter into a Development Agreement with any person having a legal or equitable interest in real property for the development of the property. The purpose of the Development Agreement is to

strengthen the public planning process, encourage private participation in comprehensive planning, and secure investment in, and commitment to, public facilities and infrastructure in the vicinity of the project in order to assure the maximum efficient utilization of resources at the least economic cost to the public.

The purpose of the proposed development agreement by and between the City of Fresno ("City") and Fancher Creek Properties, LLC ("Developer") is to set forth the rights and responsibilities of the parties related to the development of the Fancher Creek Town Center with respect to: 1) Vested rights; (2) The timing within which infrastructure improvements of the project need to be constructed; (3) The sale, transfer or assignment of all or a portion of the project and rights, duties or obligations of the agreement; (4) Allocation of fee credits and reimbursements (i.e. developer financing); (5) The exactions and fees the project will be subject to; (6) Allowed density and intensity of uses and conditions, terms, restrictions and requirements for subsequent discretionary actions; (7) The duration of the agreement; and, (8) Development standards and processing of future submittals.

The Planning Commission on August 19, 2009, considered the above items and recommended approval of staff's recommendation of the Development Agreement which included a length of term 10 years; and that the Developer be subject to the Regional Transportation Mitigation Fee (RTMF) by a vote of 4 to 2 with one member absent. After the Planning Commission meeting, the Developer requested that City Staff hold-off proceeding to Council with the draft Development Agreement as recommended by the Planning Commission as the Developer wanted to determine whether it was in its best interest to develop the site pursuant to the terms of the Development Agreement or whether it would develop the site pursuant to the rights afforded to it once the City approved Vesting Tentative Parcel Map 2007-41. On March 11, 2010, the Interim City Manager and Developer's representative, Tom Richards met and reached partial agreement as to the final items of disagreement between City Staff and the Developer that were presented to the Planning Commission. Specifically, the Developer agreed that the Regional Transportation Mitigation Fee was now under the jurisdiction of the Regional Transportation Mitigation Fee Joint Powers Authority ("JPA") and that the City had no authority to waive the imposition of the fee. As such, the Developer would pay if and when the JPA determines it is required based upon the JPA's policies and procedures. Furthermore, the Interim City Manager and Mr. Richards agreed that the term of the Agreement would be 20 years but that the development would be protected from increases in existing development impact fees and from having to pay any new development impact fees (adopted after the Agreement was in effect) only for the first eight years the Agreement is in effect. After the first eight years, developer would pay all of the applicable City development impact fees at the amounts set forth in the Master Fee Schedule in effect at the time payment of the fee was required. The attached document entitled "Development Agreement by and between the City of Fresno and Fancher Creek Properties, LLC." reflects City staff's understanding of the final agreement reached between City Staff and the Developer. The final two issues to be resolved between City Staff and the Developer are:

1. Whether the 8 year protection against increases in existing fees and payment of new fees described above should apply to processing fees. City staff's position is that it should not. The Developer's position is that it should.

2. What language should be included in the Development Agreement regarding the location of the Transit Station that the Developer will construct.

PROJECT INFORMATION

PROJECT	Development Agreement by and between the City of Fresno and Fancher Creek Properties, LLC. Repeal of Tulare Street Official Plan Line between Clovis Avenue within the Fancher Creek Town Center that will permit said street to be developed as a private street.	
APPLICANT	Fancher Creek Properties, LLC. (Gary Gianetta, Engineer)	
LOCATION	Northeast and southeast corners of Clovis Avenue and the East Tulare Street alignment. **(Council District 5, Councilmember Dages)**	
SITE SIZE	Approximately 95 acres	
LAND USE	Existing -	Vacant/agriculture
	Proposed -	Regional Commercial with mixed use component with trail and water amenities
ZONING	Existing -	C-3/cz (*Regional Commercial/with conditions of zoning*);
PLAN DESIGNATION AND CONSISTENCY	The existing/proposed C-3/cz zone district designation is consistent with the 2025 Fresno General Plan and the Roosevelt Community Plan planned land use designations of regional commercial.	
ENVIRONMENTAL FINDING	Final EIR No. 10133 certified by City Council on May 17, 2005. Addendum to EIR dated June 29, 2009	
PLAN COMMITTEE RECOMMENDATION	District 5 Plan Implementation Committee received the Fancher Creek Development Agreement as an informational item and did not make a recommendation.	
STAFF RECOMMENDATION	Recommend approval of staff recommendation to the City Council of the Development Agreement by and between the City of Fresno and Fancher Creek Properties, LLC. as set forth in Exhibit __.	

BORDERING PROPERTY INFORMATION

	Planned Land Use	Existing Zoning	Existing Land Use
North	Medium Low and Medium High Density Residential	**R-1/UGM** *Single Family Residential/Urban Growth Management*	Single and Multiple Family Residential
South	Medium High Density Residential	**R-3 (County)** *Limited Five Acre Agricultural/Urban*	Multiple Family Residential

East	Medium Density Residential	**R-1/UGM** *Single Family Residential/Urban Growth Management*	Single family Residential
West	Medium-Low and Medium-High Density Residential Office Commercial	**R-1, R-2, R-3 (County)** **C-P** *Administrative and Professional Office*	Single Family Residential, Apartments, and Office Uses

ENVIRONMENTAL FINDING

Environmental Impact Report No. 10133, prepared for the Fancher Creek Project (EIR No. 10133) was certified by the Fresno City Council on May 17, 2005 through Resolution No. 2005-183. EIR No. 10133 evaluated the construction of over 2300 residential units in the entire 475 acre Project Area for the Fancher Creek development. The Town Center Area of the Project Area was evaluated as a mixed use regional commercial shopping center and was expected to include 1.2 million square feet of mixed retail space and 240 residential units. The current proposal as included in the proposed Development Agreement includes the same amount of commercial retail space but up to 740 residential units (Exhibit D to proposed Agreement). Therefore, there is a proposed increase of 500 residential units in the Town Center portion of the project.

An Addendum to EIR No. 10133 was prepared in the review and approval of the Development Agreement to develop the Fancher Creek "Town Center" in the Project Area which is generally located at northeast and southeast corners of Clovis Avenue and Tulare Street, covering approximately 95 acres. The purpose of this addendum is to address the change in the proposed Project analyzed in EIR No. 10133 that moves approximately 500 residential units within the Project Area from outside the Town Center to inside the Town Center. In addition, the addendum describes and takes into account the repeal of the Tulare Street Official Plan Line between Clovis Avenue easterly within the Fancher Creek Town Center Project area.

Pursuant to Section 15164 of the CEQA Guidelines, the lead agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred. An addendum need not be circulated for public review but must be considered by the decision-making body with the Final EIR prior to making a decision on the project. A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 should be included in an addendum to an EIR, the lead agency's required findings on the project, or elsewhere in the record.

Section 15162 provides the following with respect to changes in a project: that when an EIR has been certified, no subsequent EIR shall be prepared for that project unless the lead agency determines, substantial changes are proposed in the project which will require major revisions of the previous EIR due to the involvement of significant environmental effects or a substantial increase in the severity of previously identified significant effects

After review and consideration under Section 15162 standards, staff recommends that substantial evidence exists that the proposed addition of 500 residential units in the Town Center will not require major revisions of EIR No. 10133 because the change does not involve a significant environmental effect or substantial increase in the severity of previously identified significant effects as noted in the attached addendum. Accordingly, Staff recommends that the City Council adopt the addendum dated June 29,

2009 to Environmental Impact Report No. 10133 prepared for the Fancher Creek Project as certified through Council Resolution No. 2005-183.

BACKGROUND / ANALYSIS

The Fresno City Council on May 17, 2005, through Resolution No. 2005-183 certified Environmental Impact Report No. 10133, prepared for the Fancher Creek Project. In addition, the Council also approved Rezone Application No. R-04-14 which rezoned a 43-acre portion of the subject property to C-3/cz zoning. On November 15, 2005, the Council approved Rezone Application No R-05-050 to rezone the balance of the property to C-3/cz zoning. Since this time, staff together with the Developer and their representatives have embarked on a long process to comprehensively construct a development agreement that clearly indicates the Developer's overall vision for the Fancher Creek Town Center while simultaneously incorporating all necessary public infrastructure improvements in a timely manner. Furthermore the agreement outlines a clear path for how subsequent development will be processed by the Planning and Development Department. The subject property is situated on 95 acres generally located on the northeast and southeast corners of Clovis Avenue and the East Tulare Street alignment.

Under the provisions of Section 65864 et seq. of the Government Code, the City of Fresno is authorized to enter into a Development Agreement with any person having a legal or equitable interest in real property for the development of the property. The purpose of the Development Agreement is to strengthen the public planning process, encourage private participation in comprehensive planning, and secure investment in, and commitment to, public facilities and infrastructure in the vicinity of the project in order to assure the maximum efficient utilization of resources at the least economic cost to the public.

The purpose of the proposed development agreement by and between the City of Fresno and Fancher Creek Properties, LLC is to set forth the rights and responsibilities of the parties with respect to the development of the Fancher Creek Town Center including: 1) Vested rights; (2) The timing within which infrastructure improvements of the project need to be constructed; (3) The sale, transfer or assignment of all or a portion of the project and rights, duties or obligations of the agreement; (4) Allocation of fee credits and reimbursements (i.e. developer financing); (5) What fees and exactions the project will be subject to; (6) Allowed density and intensity of uses and conditions, terms, restrictions and requirements for subsequent discretionary actions; (7) The duration of the agreement; and, (8) Development standards and processing of future submittals.

Planning Commission Action of August 19, 2009

On August 19, 2009, the Planning Commission considered the Development Agreement and the repeal of the Tulare Street Official Plan Line with the Fancher Creek Town Center. During these deliberations, two outstanding items between the City and the Project Developer were resolved. These were the removal of the Bakman Water Company Letter from the development agreement and the acquisition of right-of-way for future traffic signals. Representatives from both Bakman Water and Fancher Creek Properties agreed to meet and resolve any water requirement issues that will be imposed on the project. As for the right-of-way acquisition, Fancher Creek representatives stated during the deliberations that they (Fancher Creek Properties) would pay the City the necessary monies acquire necessary right-of-way either by negotiation or eminent domain proceedings, if necessary.

The Planning Commission voted to recommend approval of staff recommendation of the development agreement and repeal of the Official Tulare Street Plan Line by a vote of 4 to 2 with one member absent.

Staff's recommendation included the 10 year term of agreement and the Project Developer being subject to the RTMF Fee. The project Developer has asked for a 20 year term of agreement and that the RTMF Fee be removed from the agreement.

Subsequent Agreement in Principle With Regard to Two Remaining Deal Points

Through extended negotiations between city staff and the project Developer's representatives concluding with a meeting between the Interim City Manager and Tom Richards, Developer's representative, City staff believed it reached an agreement in principle with regard to the remaining deal points at issue as follows:

1. With regard to the Regional Transportation Mitigation Fee ("RTMF") it was agreed that the City lacked jurisdiction over the imposition of the fee since the City entered into the Joint Powers Agreement to establish the Regional Transportation Mitigation Fee Joint Powers Authority ("JPA")to impose and implement the fee. As such, the development will be subject to the RTMF only if the JPA determines the fee applies to the development. This has been addressed in the Agreement, in Exhibit F, section F(A)__

2. With regard to the term of the Agreement, it was agreed that the term would be 20 years with the following limitations:

2.1 The development is protected from increases in existing City development impact fees and new City development impact fees for the first 8 years the Agreement is in effect.

2.2 After the first 8 years the Agreement is in effect, the development would be subject to all City development impact fees, including impact fees adopted at any time during the term of the Agreement. In this case, the amount of the development impact fees will be that amount in the most current adopted Master Fee Schedule at the time the fee payment is required.

This agreement is memoralized in sections 101 and 104 of the Development Agreement and in Footnotes 2 and 3 of Exhibit F.

3. Developer agreed to pay a Development Agreement preparation fee of $50,000.00. This agreement is memorialized in Exhibit "C".

Two Remaining Issues to Be Resolved

Though City Staff and the Developer have made much progress in coming to agreement on the final outstanding deal points, as of the date of this Staff Report two issues remain to be resolved:

1. Whether the 8 year protection against increases in existing fees and payment of new fees described above should apply to processing fees. City staff's position is that it should not. The Developer's position is that it should.

With regard to Processing Fees (described in Exhibit "C") City Staff's position is that the development of the Subject Property should be subject to the Processing Fees set forth in Exhibit "C'. In addition, with regard to other processing fees set forth in the Master Fee Schedule that the development would be subject to, the amount of the fee should be the amount set forth in the most current Master Fee Schedule adopted by the City and in effect at the time payment of the processing fee is required. This is because

these processing fees pay for actual hard costs, including City staff time, to process the entitlement applications and other permits the Developer has applied for. The Department of Planning and Development is an enterprise fund, and therefore, is responsible for meeting its budget through revenue generated from processing fees. Freezing processing fees for entitlements and permits associated with such a large project could significantly impact the revenue to the Department.

It is City Staff's understanding that the Developer seeks the eight (8) year protection against increases in existing processing fees because it needs certainty during the early phases of this project with regard to the costs associated with the development.

2. What language should be included in the Development Agreement regarding the location of the Transit Station that the Developer will construct.

Toward the end of recent negotiations between City Staff and the Developer, Developer requested that language be added to sections 202.1.1, 202.1.3 and 202.6 to clarify to key issues for the Developer related to the proposed Transit Station. First, the Developer wanted to confirm that the Transit Station would be constructed either on the Subject Property or off-site but on property contiguous to the Subject Property, as this is critical for Developer to comply with the terms of its Proposition 1-C grant. Second, the Developer wanted it stated in the Development Agreement that the Developer would be entitled credits for cost of construction of the Transit Station from a Transit Fee if the City adopts such a fee and the Developer pays the fee. This second issue was addressed in Part "A" of Exhibit "F" already but the Developer also wanted it stated in the Agreement.

With regard to the location of the Transit Station, City Staff has been working on language to address Developer's concern but also addresses City Staff's concern that the Transit Station be constructed at a location that is acceptable to the City. The Developer is agreeable to such language in concept. However, as of the finalizing of this Staff Report, the Developer and City Staff have not agree to the exact language.

With regard to the fee credit issue, City Staff as of the finalizing of this Staff Report, City Staff has not agreed to Developer's proposed language.

As to both of these issues related to the Transit Station, it is possible that City Staff and Developer may reach agreement prior to the March 25th Council Meeting. If such an agreement is reached, City Staff will notify the Council immediately by way of a tray memo.

Defining Characteristics, Benefits and Disadvantages of Development Agreements

Defining Characteristics

Section 65865.2 of the Government Code indicates that a development agreement shall specify the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The development agreement may include conditions, terms, restrictions, and requirements for subsequent discretionary actions, provided that such conditions, terms, restrictions and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement. The agreement may provide that construction shall be commenced within a specified time and that the project or any phase thereof

be completed within a specified time. The agreement may also include terms and conditions relating to Developer financing of necessary public facilities and subsequent reimbursement over time.

Exhibit D of the Development Agreement outlines permitted uses and development standards for the Fancher Creek Town Center Project which includes a Design Review Committee that will consist of two city staff members appointed by the Planning Director and one member appointed by the project Developer. This Design Review Committee is expected to streamline the entitlement process for all future applications pursuant to the provisions of the Development Agreement. The agreement also gives the Planning Director authority to defer critical public infrastructure and safety services requirements to the appropriate Department Director.

Benefits

Under Section 65864 of the Government Code the Legislature has found and declared that the lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public. Therefore, the Legislature has also found that development agreements may be seen as a benefit in providing assurance to the Developer for a development project that upon approval of the project, the Developer may proceed with the project in accordance with the existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development. Furthermore, the Legislature has found that the lack of public facilities, including, but not limited to, streets, sewerage, transportation, drinking water, school, and utility facilities is a serious impediment to the development of new housing; and, that whenever possible, applicants and local governments may include provisions in agreements whereby applicants are reimbursed over time for financing public facilities.

Disadvantages

The City of Fresno also recognizes certain potential disadvantages to development agreements including the following: (1) Development agreements limit agencies ability to respond to a changing regulatory environment (e.g., agreement locks in regulations at time the agreement is approved [although may contract to address areas of concern within the agreement]); (2) The local agency needs to identify all of the issues presented by a project at the outset and future changes require mutual consent; (3) Market changes may affect the ability of a developer to meet the terms in an agreement; and, (4) Development Agreements only lock in local regulations (i.e., does not in anyway limit subjectivity to changes in State or Federal law). The proposed Development Agreement cannot eliminate previous conditions of zoning that the City Council imposed on Rezone Application Nos. R-04-14 and R-05-50. Many of these conditions of zoning dealt specifically traffic signals and street improvements within the Fancher Creek project area.

Substance of Development Agreement

Vested Rights and Duration of the Agreement

The term of this proposed Agreement, as stipulated in Section 104 (Term; Recordation) of said Agreement, shall commence upon the agreement being recorded with the County Recorder (which is to be 10 days from final approval of the agreement which occurs 30 days after final passage of the ordinance), and shall extend for a period of 20 years. It should be noted that the Agreement may be

modified or extended (pursuant to the circumstances set forth in the Agreement) upon mutual consent of the Parties. Otherwise, the Agreement shall be deemed terminated and of no further force or effect after the stipulated 20 year period.

Pursuant to Section 101 (Vested Rights) of the subject Agreement, the Developer shall have a vested right to develop the Subject Property for the period this Agreement is in effect in accordance with the Development Approvals (Recital "D" of the Agreement), Subsequent Development Approvals (Recital "F" of the Agreement), the provisions of this Agreement and the Applicable Rules (Section 102.1) of the Agreement. The Vested Rights under this agreement shall apply to the negotiated and agreed upon impact fees, permit processing fees, dedications, and exactions, that will be required in connection with the development of the subject property.

Timing of Improvements

Under the terms of this proposed Agreement, both parties (City of Fresno and Fancher Creek Properties, LLC) acknowledge that the Developer cannot at this time predict when, or the order in which, individual buildings on the Subject Property will be developed. Such decisions with respect to phasing of development of the Subject Property will be depend upon a number of circumstances not within the control of the Developer, including, without limitation, market conditions and demand for the use or uses of the Subject Property, the condition of capital markets and availability of appropriate financing for the development of the Subject Property and other similar factors.

In order to retain the flexibility necessary to respond to such market conditions, the Developer shall have the right to develop the Subject Property in phases, in such order, and at such times as the Developer deems appropriate within the exercise of its subjective business analysis of those factors determining the appropriate course of development of the Subject Property. However, it should be noted that the Developer will also be required to comply with the Development Agreement (Exhibit D).

Sale, Transfer or Assignment of Rights, Duties, or Obligations

The proposed Agreement, its rights, duties or obligations may be assigned, sold, exchanged or transferred, in whole or in part, in connection with a transfer by the Developer of all or portion of its interests in the Subject Property subject to the terms contained within the Agreement (Sections 105.1-105.4).

An assumption is required to be set forth in an assumption agreement in a form reasonably acceptable to and approved in writing by the City. Any assumption will also require a Notice to the assignee that they may be subject to fees for development of the property consistent with the Agreement.

Impact Fees, Dedications and Exactions

Under the current proposed terms of this Agreement, the only dedications, and exactions applicable to the development of the Subject Property are those contained within the Development Agreement (Exhibit F and related attachments) and those respective to a requested formulation of a Community Facilities District, if applicable (inclusive of any reimbursement to extent allowed by law).

With regard to development impact fees, for the first eight (8) years the Agreement is in effect the development is protected from having to pay increases in existing City development impact fees and from having to pay City development impact fees adopted and in effect after this Agreement is in effect. After the first 8 years the Agreement is in effect, the development would be subject to all City development impact fees, including impact fees adopted at any time during the term of the Agreement. After the first 8 years the Agreement is in effect, the amount of the development impact fees will be that amount in the most current adopted Master Fee Schedule at the time the fee payment is required.

The Developer will be responsible for paying any fees the City collects for other agencies pursuant to State or Federal law or any City agreements or City ordinances adopted or entered into to comply with State or Federal law or judgment of a court of law.

Fee Credits and Reimbursements

As currently proposed within the Agreement, the Developer will be eligible for reimbursements and credits for the following: traffic signal improvements, 12' Fancher Creek trail, sewer connection at Tulare and Argyle (if elected as connection point), any eligible park facilities (as determined by the Parks Director) and costs for creation or annexation to CFD. In addition, the Developer would be entitled to fee credits for its construction of the Transit Station described in the Agreement, if the City adopts a Transit Fee meeting the definition in Exhibit "F" to the Agreement and the Developer pays the fee.

Repeal of Tulare Street Official Plan Line

It is the intent of the project Developer to fully construct and install all street improvements within the Fancher Creek Town center and have Tulare Street become a private street that will be maintained by Fancher Creek Properties, LLC. In order to accomplish this, the Tulare Street Official Plan Line (OPL) must be repealed for that segment that lies within the Town Center area.

The Tulare Street OPL east of Clovis Avenue was adopted on August 18, 1987. In the General Plan it is classified as a collector street which by definition is intended to provide connection and access to the arterial street (Clovis Avenue). The developer would like to rescind this OPL so that Tulare Street within the project limits is not a public street maintained by the City of Fresno. The developer will provide one lane in each direction with an easement that requires the private street remain open for public pedestrian and vehicular traffic at all times. By providing one lane in each direction the developer is satisfying the intent of a collector street. With roundabouts installed at two locations on this private street within the project limits this private roadway will be able to accommodate the anticipated traffic volumes associated with this mixed use project and no additional impacts or mitigation are required other than the covenant for public traffic use. In addition, any parking proposed along this roadway has been or shall be approved by the City Traffic Engineer for design and location and is limited to parallel parking or diagonal parking.

The Traffic Engineer has found that in his professional assessment of the site plan and project description for Fancher Creek, no additional infrastructure mitigation is necessary to develop/entitle the commercial retail mixed use center portion of the project along Clovis Avenue from what was already identified in the Fancher Creek EIR (EIR No. 10133). The change in project will not result in any new significant impacts or the need for any additional mitigation.

Potential Alternatives to the Approved Project and Subsequent Discretionary Actions

Given the long-term build-out of the project, the Parties of the Agreement (City of Fresno and Fancher Creek Properties, LLC) acknowledge that development of the Subject Property may require amendments to the Development Agreement or Subsequent Development Approvals.

Section 208.1 (Administrative Amendments) of the proposed Agreement provides that upon the written request for an amendment or modification to a Development Approval or Subsequent Development Approval of the Developer, the Planning Director or his/her designee shall determine: (i) whether the requested amendment or modification is minor; and (ii) whether the requested amendment or modification is consistent with the Applicable Rules. If the Planning Director or his/her designee finds that the proposed amendment or modification is minor, consistent with the Applicable Rules, and is not subject to further environmental review under CEQA (*See* CEQA Guidelines §§ 15162, 15163), the amendment shall be determined to be an "Administrative Amendment" and the Planning Director or

his/her designee may approve, or may approve with appropriate conditions, the Administrative Amendment consistent with the procedures described in Exhibit D of the Agreement. The determination of whether a requested amendment or modification is an Administrative Amendment shall be within the reasonable discretion of the Planning Director. Notwithstanding the above, if the Director determines that an amendment has the potential to affect a facility under the responsibility of another City department, the Director shall refer the amendment to the Director of the affected Department (and/or his or her designee) who must also concur that the amendment is a minor amendment under the terms provided in this Section. For example, if an amendment has the ability to affect traffic, the Director of Public Works (and/or his or her designee) must concur that the amendment is administrative, if an amendment has the ability to affect sewer loads, the Director of Public Utilities Department (and/or his or her designee) must concur that the amendment is administrative.

Examples of amendments or modifications which may, depending on particular circumstances, be treated as Administrative Amendments, include, but are not limited to, the following: (1) lot line adjustments that do not alter the concepts of the project design; (2) alterations in vehicle circulation patterns or vehicle access points which do not adversely affect capacity or service levels; (3) changes in trail alignments; (4) substitutions of comparable landscaping for any landscaping shown on any final development plan or landscape plan; (5) variations in the location of structures that do not substantially alter the design concepts of the project; and (6) minor alterations in design or configuration of buildings that are consistent with the Development Standards set forth in Exhibit D of the Agreement; and (7) minor adjustments to the Subject Property legal description. Administrative Amendments are subject to a processing fee as provided in Exhibit C of the Agreement.

Furthermore, as provided for in Section 208.2 (Material Amendments) of the proposed agreement, any request of Developer for an amendment or modification to a Development Approval or Subsequent Development Approval that is reasonably determined by the Planning Director or his/her designee to be a material amendment ("Material Amendment"), as opposed to an Administrative Amendment, shall be subject to review, consideration and action pursuant to the laws in effect at the time the Material Amendment is considered for approval. Notwithstanding any provision in the Agreement to the contrary, the City may impose mitigation measures necessary to comply with CEQA for Material Amendments. Material Amendments are subject to processing fees as provided in Exhibit C of the Development Agreement.

Findings of Consistency

Section 65867.5 of the Subdivision Map Act provides that a development agreement is a legislative act that shall be approved by ordinance and is subject to referendum and requires that:

1. A development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan; and,

2. A development agreement that includes a subdivision, as defined in Section 66473.7 (of the Subdivision Map Act), shall not be approved unless the agreement provides that any tentative map prepared for the subdivision will comply with the provisions of Section 66473.7 relative to the determination of a "sufficient water supply" as defined therein.

The Project Developer has also filed Parcel Map No. 2007-41 which was accepted on February 19, 2008 and proposes a total of 43 parcels. Parcel Maps are typically approved by the Director of Planning and Development. Parcel Map No. 2007-41 is expected to be approved after the City Council adopts the

proposed Development Agreement. The Parcel Map will be conditioned upon compliance with the Development Agreement.

Alternatives to the Development Agreement

Subsequent to the Planning Commission meeting of August 19, 2009, the Project Developer submitted to the City on September 15, 2009, four alternatives for consideration in lieu of the proposed Development Agreement. These include:

1. Make the exhibits to the Development Agreement addressing fees, exactions and development standards (Exhibits D and F) conditions of approval of the Vesting Tentative Parcel Map for the site. FCP would then proceed with the development of the site pursuant to the rights granted by the Vesting Tentative Parcel Map.

2. The City and FCP enter into a letter of agreement setting forth the fees, exactions, dedications and development standards that would apply to the project.

3. Proceed with the development of the site under the City's Planned Unit Development ("PUD") Ordinance.

4. Proceed with the Development Agreement as currently drafted but state in the agreement that the vesting rights afforded to FCP would be those vesting rights provided to FCP under current law for his Vesting Tentative Parcel Map.

Options Nos. 1 and 3 would require the submittal of a conditional use permit which would include detailed site plans and elevations. To date the proposed Town Center Project has yet to produce these types of details. In addition, there still must be a mechanism to deal with the repeal of the Tulare Street Official Plan Line within the Town Center proper in order for the street to be privately developed and maintained. The repeal of an Official Plan Line does require a general plan amendment under options 1 and 3. Under the proposed Development Agreement, the repeal of Tulare Street would have been incorporated as part of the document. The PUD option has commercial limitations, primarily interior access only to the project site, which would prevent it from being a viable option.

Option 2 is not viable approach since it does not comply with the requirements of a development Agreement set forth in the Government Code and would be difficult to enforce. Lastly, staff finds that the Option 4 leaves uncertain the vesting period associated with this development. The project Developer has been made aware of staff's position on these matters in a letter dated October 1, 2009. The most recent discussions with Fancher Creek Properties appear to indicate a willingness to resolve the two remaining open items.

CONCLUSION

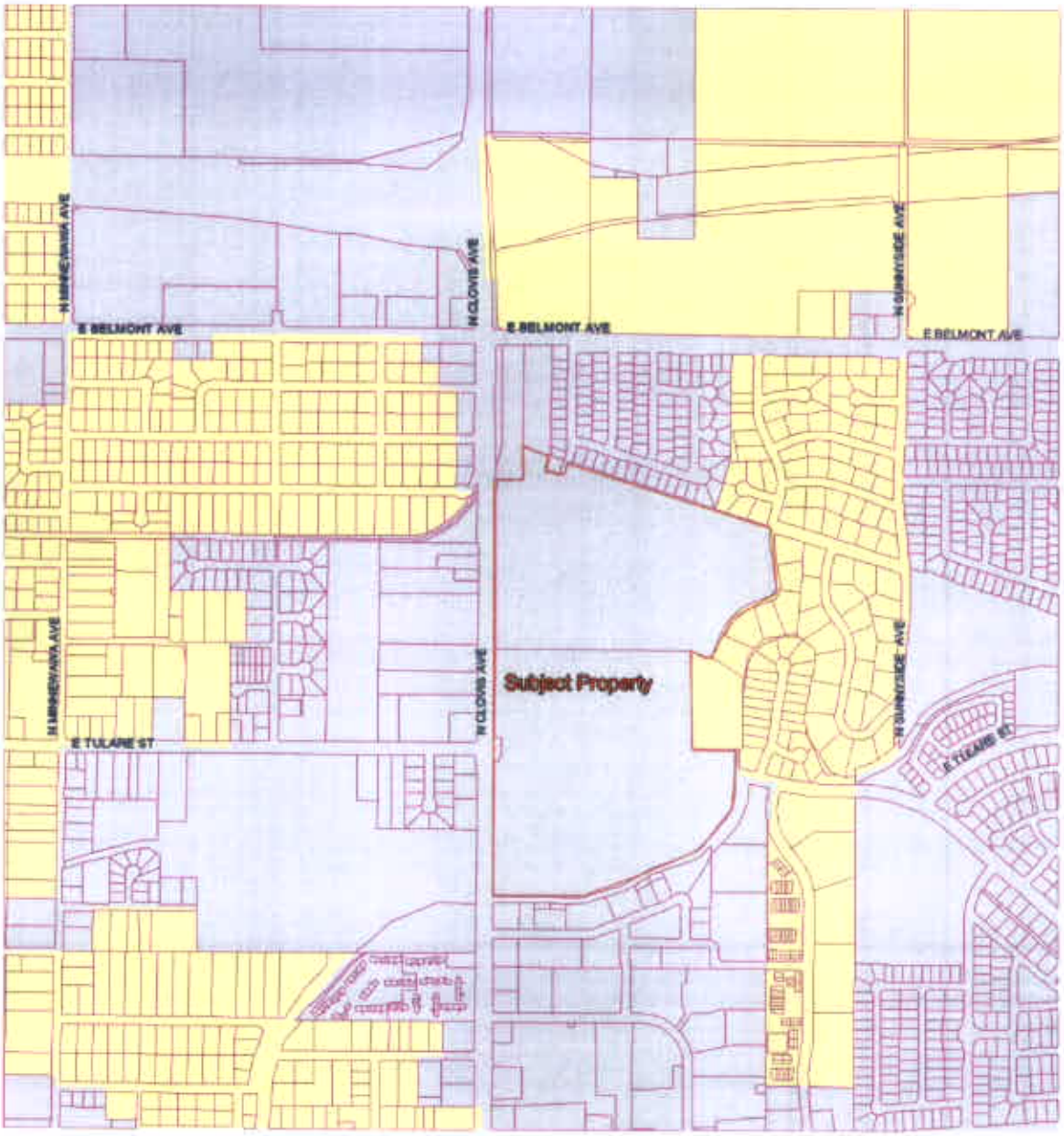
The appropriateness of the proposed project has been examined with respect to its consistency with the goals and policies of the 2025 Fresno General Plan the Roosevelt Community Plan; its compatibility with surrounding existing or proposed uses; and its avoidance or mitigation of potentially significant adverse environmental impacts. These factors have been evaluated as described above and by the accompanying environmental assessment. Upon consideration of this evaluation, it can be concluded that the proposed Development Agreement by and between the City of Fresno and Fancher Creek Properties, LLC. Is consistent with the 2025 Fresno General Plan and Roosevelt Community Plan and,

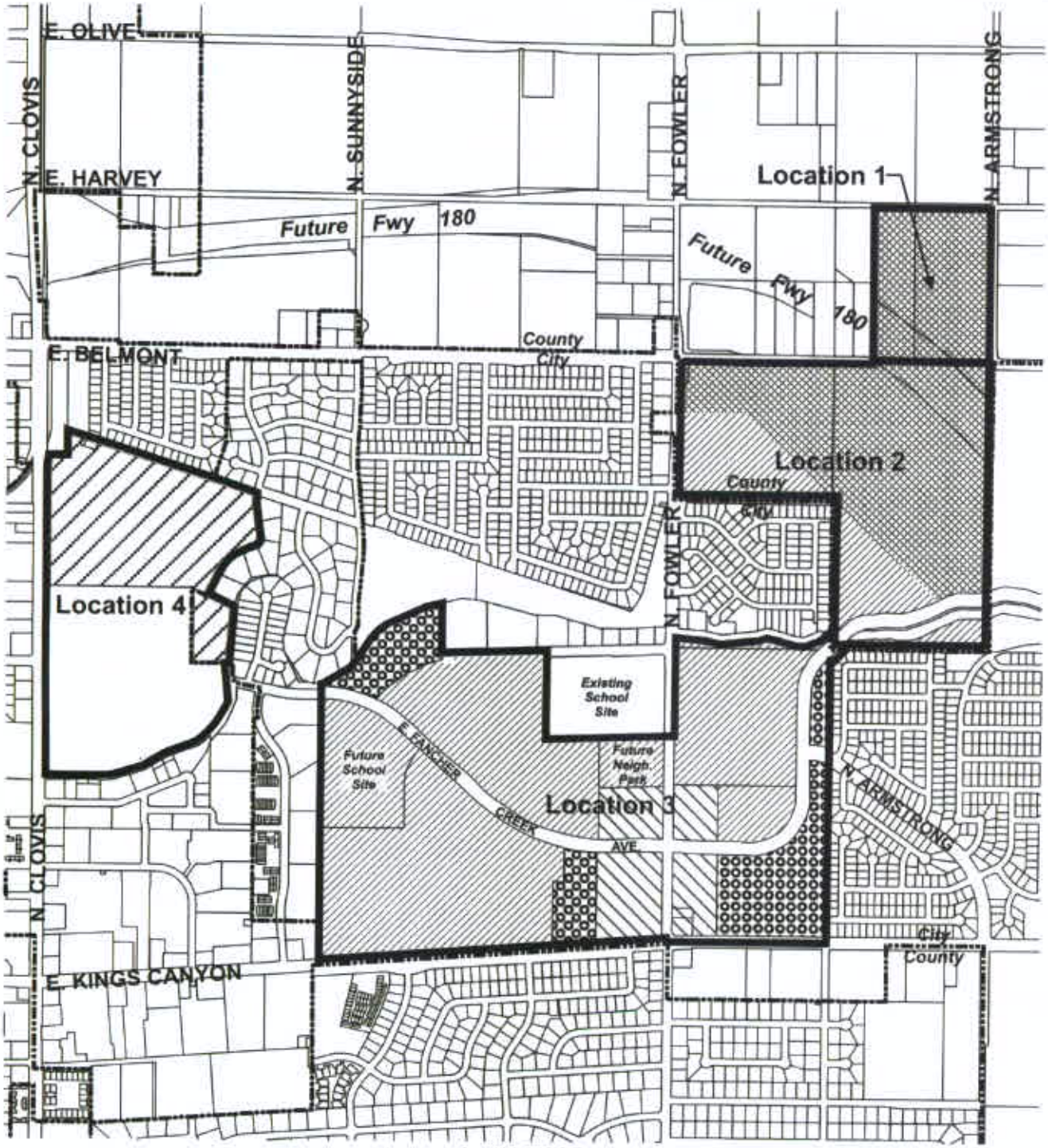
that the associated repeal of the Tulare Street Official Plan Line, as described earlier will comply with the provisions of the Fresno Municipal Code.

Attachments: Vicinity Maps
Development Agreement by and between the City of Fresno and Fancher Creek Properties, LLC. Exhibits A-L
Addendum to Environmental Impact Report No. 10133 dated June 29, 2009.
Planning Commission Resolution No. 12973
Ordinance Bill approving Development Agreement
Ordinance Bill Approving the repeal of the Tulare Street Official Plan Line

VICINITY MAP

Fancher Creek Town Center





LEGEND

- Subject Property (Locations 1 thru 4)
- Rezone Application No. R-04-014 From AE-5/UGM to R-2/BA-15/UGM
- Rezone Application No. R-04-014 From AE-5 To C-3
- Rezone Application No. R-04-014 From AE-20 (County) and AE-5/UGM to R-1/BA-15/UGM/cz and R-1/BA-15/UGM
- Rezone Application No. R-04-014 From AE-5/UGM to C-2/UGM
- Rezone Application No. R-04-014 From AE-20 (County) to M-1/BA-15/UGM

VICINITY MAP

REZONING APPLICATION NO. R-04-014

VESTING TENTATIVE TRACT MAP NO. 5232/UGM

CONDITIONAL USE PERMIT NO. C-04-079
(For Tentative Tract Map)

Between Clovis, Kings Canyon, Harvey and Armstrong Aves.

NOT TO SCALE

PLANNING & DEVELOPMENT DEPARTMENT

A.P.N.: Parcel Books 310, 313

ZONE MAP: 2356, 2456

BY/DATE: J.S. / 4-29-05

14

When Recorded Mail To:

City Clerk

City of Fresno

2600 Fresno Street

Fresno, CA 93721-3603

CITY OF FRESNO
City Clerk's Office (Original)

FRESNO County Recorder
Robert C. Werner
DOC- 2010-0097083
Friday, JUL 30, 2010 11:35:37
Ttl Pd $0.00 Nbr-0003258486
GSF/R7/2-14

CITY OF FRESNO

Planning and Development Department

EASEMENT FOR PUBLIC ACCESS OVER INTERNAL ROADS

AND SUBORDINATION

1

RECITALS

WHEREAS, Fancher Creek Properties, LLC, a California limited liability company ("**Developer**") is the owner of the real property situated in the City of Fresno, County of Fresno, State of California, as described in **Exhibit A** attached hereto and incorporated by reference ("**Subject Property**");

WHEREAS, Developer hereby warrants that any and all parties having record title interest in the Subject Property which may ripen into a fee have subordinated to this instrument and that all such instruments of subordination, if any, are attached hereto and made a part of this instrument; and

WHEREAS, Developer intends to develop the Subject Property pursuant to the terms of that certain Development Agreement dated July 21, 2010, by and between the City of Fresno, a municipal corporation ("**City**") and Developer ("**Development Agreement**") as part of the larger Fancher Creek Project which shall be a mixed use, master-planned project that will include residential communities, a town center, retail, a village center with senior housing, a business park, park space and internal roads necessary for traffic circulation within the boundaries of the Subject Property as well as to and from public rights-of-way in the vicinity of the Subject Property; and

WHEREAS, development of the Subject Property includes those certain internal roads, Fancher Creek Drive and Tulare Avenue ("**Internal Roads**"), as the same are generally depicted on that certain site map at **Exhibit B** attached hereto and incorporated by reference; and

WHEREAS, the Internal Roads are included in and constitute an integral part of the Circulation Element of the 2025 Fresno General Plan adopted by the City on November 19, 2002 (Resolution No. 2002-379); and

WHEREAS, Developer desires to maintain the Internal Roads and intends to construct the same to City specifications and maintain the same in the manner of private drives, retaining control of maintenance, signage and installation of any and all utilities to be placed within or along said Internal Roads; and

WHEREAS, the City requires that the Internal Roads, though privately maintained, be accessible to the public as deemed necessary in order to implement the aforementioned Circulation Element of the 2025 Fresno General Plan.

COVENANTS, CONDITIONS AND RESTRICTIONS

NOW THEREFORE, in furtherance of the Recitals, which are hereby incorporated as if fully set forth herein and in consideration of the covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Developer hereby covenants that the Subject Property shall be held, conveyed, encumbered, used, occupied, developed, maintained, and improved subject to the following covenants, conditions, and restrictions, which are for the purpose of enhancing attractiveness, usefulness, value, desirability and safety of the Subject Property, the surrounding property, and the public at large, and to minimize possible adverse effects on the public health, safety, peace, and general welfare. Each of the covenants, conditions and restrictions contained in this Easement for Public Access Over Internal Roads ("**Easement**") shall run with the Subject Property and shall be binding upon and inure to the benefit of each successive owner of the Subject Property and his heirs, successors and assigns.

1. The Internal Roads shall be accessible to the public for pedestrian and vehicular ingress and egress, including emergency vehicle access at all times consistent with a public right of way. Developer shall comply with the provisions of Sections 1008 and 1009 of the Civil Code of the State of California to ensure that the Internal Roads, though accessible to the public and public agencies as set forth in this Easement, continue to be maintained in the manner of private drives and that the public does not obtain a prescriptive easement of any kind over, under, through or across said Internal Roads. The Internal Roads shall be renamed consistent with local and State law.

2. Use of the Internal Roads shall at all times be subject to all applicable laws, ordinances, rules, regulations and requirements of the City, County, State and any other governmental authorities as to law enforcement activities and application of the California Vehicle Code.

3. Developer shall seek and acquire the City's prior approval, which approval shall not be unreasonably withheld, in the event it seeks to alter the Internal Roads in any manner

that can reasonably be expected to impact traffic circulation on said Internal Roads, including, but not limited to changes in location from that agreed upon in the Development Agreement.

4. Each of the covenants, conditions and restrictions contained in this Easement shall run with the Subject Property and shall be binding on each successive owner of the Subject Property, his heirs, representatives, successors and assigns.

5. To the furthest extent allowed by law, Developer hereby agrees to indemnify, hold harmless and defend City, its officers, officials, employees, agents and volunteers ("**Indemnitees**") from any and all loss, liability, fines, penalties, forfeitures, costs and damages incurred by Indemnitees, and from any and all claims, demands and actions in law or equity (including attorneys' fees and litigation expenses) caused by, or arising out of, the design, construction, maintenance or use of the Internal Roads, as set forth herein, but specifically excluding any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct of Indemnitees, as well as any claims arising out of or related to property rights, interests or privileges. Notwithstanding the foregoing, during the term of the Development Agreement or any other agreement entered into pursuant thereto relating to construction and maintenance of the Internal Roads, the indemnity rights and obligations shall be as set forth in the Development Agreement or the applicable agreement entered into pursuant thereto with respect to the construction and maintenance of the Internal Roads.

6. The covenants and conditions of this Easement are intended to benefit the public and public properties as well as properties appurtenant. Accordingly, it is agreed that the City shall have the right to enforce this Easement by any legal or equitable means.

7. The conditions and obligations of this Easement shall remain in full force and effect until such time as the Planning and Development Director of the City of Fresno issues a written release of such conditions and obligations and records such release with the Fresno County Recorder.

8. The provisions of this Easement shall be deemed independent and severable and the invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof. Whenever the context of this Easement so requires, in interpreting this Easement, any gender includes the other, the singular includes the plural, and the plural includes the singular.

IN WITNESS WHEREOF, Developer and City have caused this Agreement to be duly executed as of the day and year first above written.

CITY:

CITY OF FRESNO,

a Municipal Corporation.

By: Mark Scott

~~Bruce Rudd, Interim City Manager~~

Mark Scott, City Manager

DEVELOPER:

FANCHER CREEK PROPERTIES, LLC,
a California limited liability company

By: KASHIAN ENTERPRISES,
a California limited partnership

Edward M. Kashian
General Partner

By: AFRICAL DEVELOPMENT, LLC,
a California limited liability company

Thomas G. Richards
Managing Member

ATTEST:

REBECCA E. KLISCH

City Clerk

By: Sherri L. Bedertscher
Deputy

7/21/10

APPROVED AS TO FORM:

JAMES C. SANCHEZ

City Attorney

By: John W. Fox
John W. Fox, Senior Deputy

Date: 7/14/2010

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Fresno

On May 7, 2010 (Date) before me, Cynthia C. Letson Notary Public (Here Insert Name and Title of the Officer),

personally appeared Thomas G. Richards (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

CYNTHIA C. LETSON
Commission # 1842871
Notary Public - California
Fresno County
My Comm. Expires Apr 28, 2013

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Cynthia C Letson (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Easement for Public Access Over Internal Roads

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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4

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }

County of Fresno

On May 6, 2010 (Date) before me, Steven M. Young, Notary Public (Here Insert Name and Title of the Officer),

personally appeared Edward M. Kashian (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(~~s~~) whose name(~~s~~) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument the person(~~s~~), or the entity upon behalf of which the person(~~s~~) acted, executed the instrument.

STEVEN M. YOUNG
COMM. #1803670
NOTARY PUBLIC-CALIFORNIA
FRESNO COUNTY
My Comm. Exp. June 24, 2012

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Steven M. Young (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Easement for Public Access over Internal Roads

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
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SUBORDINATION

The undersigned is holder of the beneficial interest in and under that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated May 1, 2006, in, by and among:
FANCHER CREEK PROPERTIES, LLC, a California limited liability company, as "**Trustor**" or "**Borrower**,"
FINANCIAL TITLE COMPANY, as "**Trustee**,"
and **CENTRAL PACIFIC BANK, a Hawaii banking corporation**, as "**Beneficiary**," recorded on May 12, 2006 as Document No. 2006-0101297 of the official records of the office of the Fresno County Recorder (together with any and all amendments thereto or modifications thereof (the "**Deed of Trust**"). The undersigned hereby expressly subordinates said Deed of Trust and its beneficial interest thereto to the attached **EASEMENT FOR PUBLIC ACCESS OVER INTERNAL ROADS**.

DATED: July 12, 2010

BENEFICIARY

By: Reilly McCharty, SVP
SENIOR VICE PRESIDENT
CENTRAL PACIFIC BANK

By: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(Beneficiary to print/type Name and Title; and attach Notary Acknowledgment)

ACKNOWLEDGMENT

State of California
County of San Diego)

On July 12, 2010 before me, Meagan Pomeroy Notary Public
(insert name and title of the officer)

personally appeared Reilly Shaughnessy,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

MEAGAN POMEROY
COMM. #1856261
Notary Public-California
SAN DIEGO COUNTY
My Comm. Exp. JUNE 29, 2013

Signature _____ (Seal)

9

EXHIBIT A

DESCRIPTION OF THE SUBJECT PROPERTY OWNED IN FEE

[See Attached]

EXHIBIT A

DESCRIPTION OF THE SUBJECT PROPERTY OWNED IN FEE

The portion of the Northwest Quarter and the Southwest Quarter of Section 4, Township 14 South, Range 21 East, Mount Diablo Base and Meridian, described as follows

Beginning at the Northwest corner of said Section 4; thence South 0°04'33" East, along the West line of said Northwest Quarter, a distance of 910.00 feet; thence South 89°41'21" East, a distance of 83.50 feet to the TRUE POINT OF BEGINNING; thence South 89°41'21" East, a distance of 155.84 feet; thence North 0°04'33" West, a distance of 207.77 feet to the intersection with the Southerly line of the 25 foot wide Pacific Gas & Electric Company easement, recorded October 18, 1957 in Book 3982, page 624, Fresno County Records; thence South 72°31'57" East, along said Southerly line, a distance of 172.66 feet; thence South 17°31'56" West, along the boundary of the property deeded to the City of Fresno, recorded September 19, 1994 as Document No. 94146329 and recorded October 12, 1994, as Document No. 94159187, Fresno County Records, a distance of 89.94 feet; thence South 72°29'59" East along said boundary, a distance of 130.00 feet; thence North 17°31'56" East along said boundary, a distance of 90.01 feet to the intersection with the South boundary of Tract No. 2784, Legacy Homes No. 1, recorded in Volume 31, pages 54 and 55 of Plats, Fresno County Records; thence South 72°31'57" East, a distance of 983.00 feet to the Southeast corner of said Tract No. 2784; thence South 72°29'26" East along the South boundary of Tract 1681, Fancher Creek Ranchos NO. 2, recorded in Volume 19, page 25 of Plats, Fresno County Records, a distance of 374.37 feet to the intersection with the West boundary of Tract No. 1589, Fancher Creek Ranchos No. 1, recorded in Volume 19, pages 23 and 24 Plats, Fresno County Records, said West boundary also being the centerline of North Manila Avenue; thence Southerly along a non-tangent curve, along said West boundary and centerline, whose radius point bears South 80°00'43" East, having a radius of 477.46 feet, through a central angle of 18°28'44", a distance of 153.99 feet; thence South 8°29'21" East along said West boundary and centerline, a distance of 224.76 feet; thence Southwesterly along a tangent curve, along said West boundary and centerline, concave to the Northwest, having a radius of 65.11 feet, through a central angle of 78°00'00", a distance of 88.64 feet; thence South 69°30'39" West, along said West boundary and centerline, a distance of 100.00 feet; thence Southwesterly along a tangent curve, along said West boundary and centerline, concave to the Southeast, having a radius of 358.10 feet, through a central angle of 44°33'25", a distance of 278.48 feet; thence South 22°28'59" West, along said West boundary and centerline, a distance of 10.00 feet; thence South 22°28'59" West, a distance of 177.20 feet, thence South 57°45'35" East, a distance of 252.08 feet to the centerline of Fancher Creek; thence South 8°57'14" West along said centerline, a distance of 32.66 feet; thence South 0°48'58" West along said centerline, a distance of 421.74 feet to the intersection with a line parallel with and 174.20 feet South of the North line of the South Half of said Section 4; thence North 89°55'16" West along said line a distance of 15.96 feet; thence along the centerline of Fancher Creek the following described courses; (1) South 0°10'09" East, a distance of 33.34 feet; (2) South 3°54'28" East, a distance of 230.14 feet; (3) Southwest along a tangent curve, concave to the Northwest, having a radius of 284.60 feet, through a central angle of 37°28'46", a

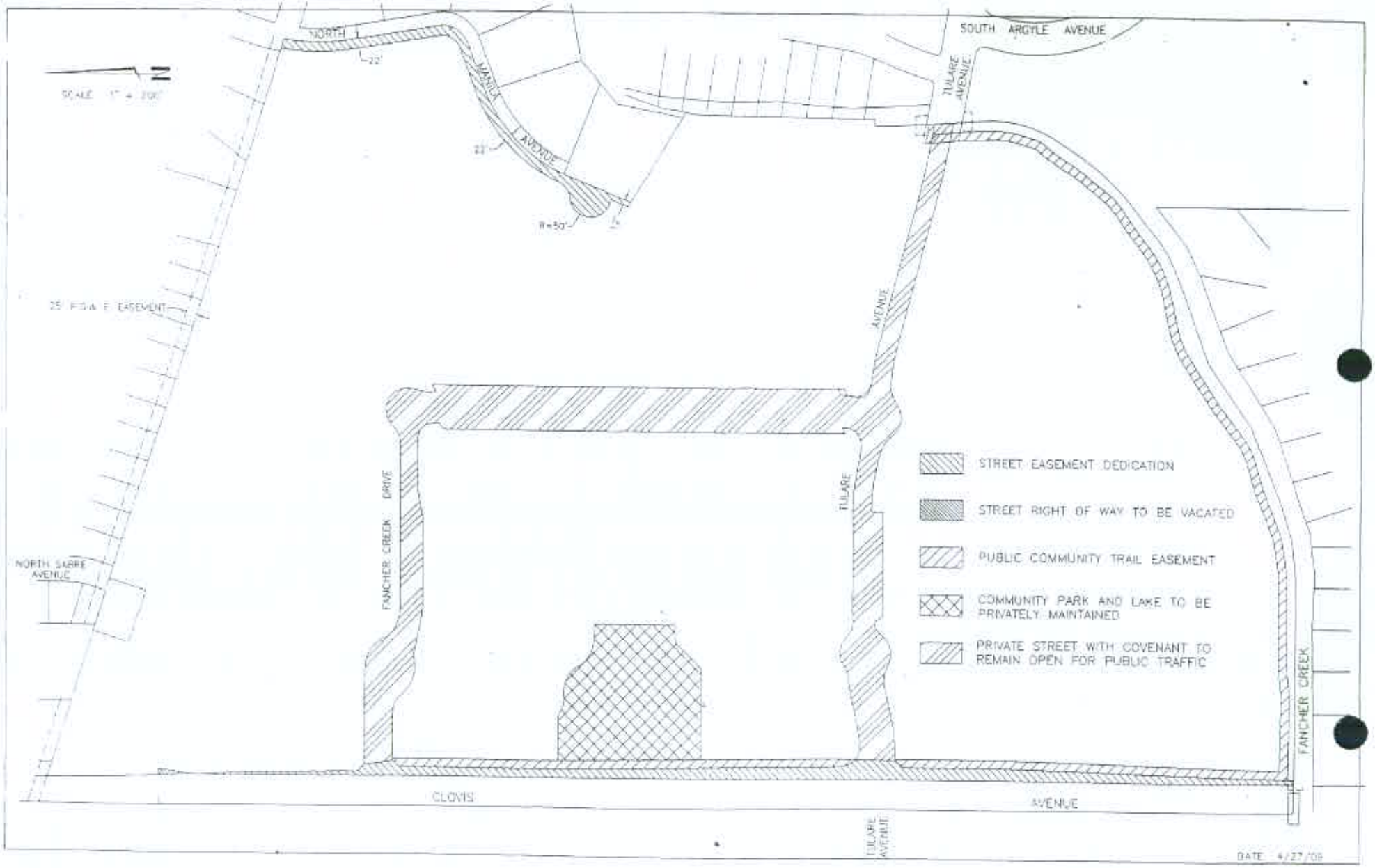
distance of 186.17 feet; (4) thence South 33°34'18" West, a distance of 59.81 feet; (5) thence Southwesterly along a tangent curve, concave to the Northwest, having a radius of 500.00 feet, through a central angle of 19°15'44", distance of 168.09 feet; (6) thence South 52°50'02" West, a distance of 119.90 feet; (7) thence South 58°43'21" West, a distance of 32.91 feet; (8) thence South 67°32'47" West, a distance of 79.19 feet; (9) thence South 70°47'25" West, a distance of 185.67 feet; (10) thence South 57°07'22" West, a distance of 187.40 feet; (11) thence South 69°26'18" West, a distance of 206.48 feet; (12) thence South 73°38'53" West, a distance of 80.38 feet; (13) thence South 84°21'26" West, a distance of 103.14 feet; (14) thence North 89°42'53" West, a distance of 104.99 feet; (15) thence North 89°34'43" West, a distance of 375.76 feet to the Southeast corner of the property described by the deed recorded July 22, 1966 in Book 5339, page 451, Fresno County Records; thence North 0°04'26" West, parallel with and 68.00 feet East of the West line of said Section 4, a distance of 291.87 feet to a point 881.13 feet South of the North line of said Southwest Quarter; thence North 0°14'31" East, a distance of 362.55 feet to a point 518.58 feet South of said North line; thence North 0°04'26" West, parallel with and 70.00 feet East of said West line, a distance of 329.81 feet; thence North 0°04'33" West, parallel with and 70.00 feet East of said West line, a distance of 1641.02 feet to a point which bears South 0°04'33" East, a distance of 1000.00 feet and North 89°55'27" East, a distance of 70.00 feet from the Northwest corner of said Section 4; thence North 8°30'31" East, a distance of 90.43 feet to the TRUE POINT OF BEGINNING.

EXHIBIT B

SITE MAP

[See Attached]

13


SCALE 1" = 200'
NORTH
22'
MANILA
AVENUE
22'
R=50'
SOUTH ARGYLE AVENUE
TULARE AVENUE
25' P.G.&E. EASEMENT
AVENUE
FANCHER CREEK DRIVE
TULARE
NORTH SARRE AVENUE
STREET EASEMENT DEDICATION
STREET RIGHT OF WAY TO BE VACATED
PUBLIC COMMUNITY TRAIL EASEMENT
COMMUNITY PARK AND LAKE TO BE PRIVATELY MAINTAINED
PRIVATE STREET WITH COVENANT TO REMAIN OPEN FOR PUBLIC TRAFFIC
FANCHER CREEK
CLOVIS
AVENUE
TULARE AVENUE
DATE 4/27/08