

**AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY
AND ESCROW INSTRUCTIONS**

**Assessor Parcel Numbers: 426-253-17 and 426-253-19
4343 and 4323-4333 N. Blackstone Avenue**

This Agreement for Purchase and Sale of Real Property and Escrow Instructions (Agreement) is entered into by and between the CITY OF FRESNO, a municipal corporation, (City) and the owners listed on Schedule 1 attached hereto (Owner 1) and on Schedule 2 attached hereto (Owner 2). Owner 1 and Owner 2 are collectively referred to herein as "Seller." City and Seller are collectively referred to herein as "the Parties."

RECITALS

- A. Owner 1 is the owner in fee of that certain real property commonly referred to as 4343 N. Blackstone Avenue, Fresno, California 93725, APN 426-253-17, and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (Property 1).
- B. Owner 2 is the owner in fee of that certain real property commonly referred to as 4323-4333 N. Blackstone Avenue, Fresno, California 93725, APN 426-253-19, and more particularly described in Exhibit "B" attached hereto and incorporated herein by reference (Property 2). Property 1 and Property 2 are contiguous and referred to herein together as the "Subject Property."
- C. The City desires to purchase Subject Property for the development of a senior center.
- D. City wishes to purchase from Seller and Seller wishes to sell to City the Subject Property subject to the terms and conditions herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. **Subject Property.** The Subject Property is approximately 5.51 acres in size, which includes fixtures and improvements located on the property and all rights, privileges, and appurtenances including any permits and easements. The legal description of the Subject Property is described in Exhibit "A" (Property 1) and Exhibit "B" (Property 2) collectively attached hereto and incorporated herein by reference.

The Subject Property under this Agreement includes, without limitation, all of Owner 2's right, title and interest in and to those certain existing commercial leases listed on Exhibit "D" attached hereto and incorporate herein by reference (collectively, the Leases) with regard to Property 2.

2. **Environmental Assessment Stipulation.** The Parties hereby stipulate and agree that no compensation, including but not limited to deposits in Escrow and/or any portion of the Purchase Price shall be paid for the Subject Property unless and until an Environmental Assessment of the Subject Property is satisfactorily

completed to the standards of the Community Development Block Grant (CDBG) Program, administered by the U.S. Department of Housing and Urban Development (HUD). The Parties further stipulate that Seller shall have no legal claim to any amount of CDBG Program Funds, including but not limited to deposits in Escrow and/or any portion of the Purchase Price unless and until an Environmental Assessment of the Subject Property is satisfactorily completed pursuant to the CDBG Program and administered by HUD.

3. **Fee Title.** Seller shall grant the Subject Property to City in fee, free and clear of all liens, encumbrances, leasehold, and restrictions of record, except for the Permitted Encumbrances (as defined below).

As used in this Agreement, the term "Permitted Encumbrances" means (i) the preprinted standard exceptions in a CLTA standard owner's policy of title insurance, (ii) exceptions approved or deemed approved by the City pursuant to Section 8(d) below, (iii) the Leases, (iv) non-delinquent real property taxes and special assessments, (v) any exceptions arising from the City's actions and (vi) any matters which would be disclosed by an accurate survey or physical inspection of the Subject Property.

City at its discretion may prepare and deliver to Fidelity National Title Company an ALTA survey of the Subject Property, at the City's expense. If the City elects to obtain extended coverage in excess of a standard CLTA policy, then City shall pay the additional premium for extended coverage and such extended coverage shall not be a condition to the Close of Escrow.

4. **Purchase Price.** City shall pay Seller Six Million Four Hundred Sixty Thousand and No/100 Dollars (\$6,460,000) (Purchase Price) for the Subject Property.

Seller and City agree that the total Purchase Price shall be allocated between Property 1 and Property 2 as follows: (a) \$3,876,000 for Property 1 and (b) \$2,584,000 for Property 2. Seller and City agree to reflect such agreed upon allocation of the Purchase Price in all statements and submissions concerning the value of the Subject Property to local, state or federal agencies, or in any court or other judicial or administrative body. The provisions of this Paragraph 4 shall survive the Close of Escrow.

5. **Effective Date.** This Agreement shall not be binding and in full force and effect unless and until it is fully executed by the City and by the Seller. If Seller first executes and delivers the Agreement to the City, then the "Effective Date" of this Agreement shall be upon its duly authorized execution by the City after City Council approval.

6. **Right to Sell.**

- a. **Seller's Authority.** Seller has the full power and authority to enter into this Agreement and to perform this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly and validly authorized by all necessary action on the part of Seller and all required consents and approvals have been duly obtained. All requisite action has been taken by Seller in connection with the entering into this Agreement

and the instruments referenced herein and the consummation of the transactions contemplated hereby. The individual(s) executing this Agreement and the instruments referenced herein on behalf of Seller have the legal power, right and actual authority to bind Seller to the terms and conditions hereof and thereof.

- b. **City's Authority.** City has full power and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby. All requisite action has been taken by the City in connection with the entering into this Agreement and the instruments referenced herein, and the consummation of the transactions contemplated hereby. The individuals executing this Agreement and the instruments referenced herein on behalf of the City have the legal power, right and actual authority to bind City to the terms and conditions hereof and thereof.

- 7. **Escrow Instructions.** The sale shall be completed through an External Escrow to be opened at Fidelity National Title Company located at 7475 N. Palm Avenue, Suite 107, and processed by Bernadette Watson, Escrow Officer who can be reached at (559) 431-8050 (Escrow Holder). Said escrow shall be opened upon the following terms and conditions, and the Seller and City by their signature to this Agreement make this paragraph their escrow instructions:

- a. **Two Escrow Accounts.** Escrow Holder shall open two (2) separate escrow accounts for the transaction: (i) an escrow account solely for the Purchase Price, deposits and prorations related to Property 1, and (ii) an escrow account solely for the Purchase Price, deposits and prorations related to Property 2. These escrows shall close concurrently in accordance with the terms and conditions of this Agreement.

- b. **Deposits.** The City shall deposit the sums specified in Paragraph 4 of this Agreement and the closing costs in escrow upon receipt of a demand and statement from said title company as follows:

- i. Initial Deposit. Within ten (10) days of the Effective Date, City shall deposit with Escrow Holder the sum of Forty Thousand and No/100 Dollars (\$40,000) (the Initial Deposit). The Initial Deposit shall be allocated between the escrow accounts, and deposited, as follows: (A) \$24,000 to the escrow account for Property 1, and (B) \$16,000 to the escrow account for Property 2. The Initial Deposit shall be applied to the Purchase Price at Close of Escrow subject to the Parties' Stipulation set forth in Paragraph 2 of this Agreement. Prior to the Close of Escrow, any City deposit made in excess of the Initial Deposit shall be refundable at all times and returned to the City, upon request.
- ii. Balance of Purchase Price. City shall pay the balance of the Purchase Price, less the Initial Deposit to Seller, in good funds through Escrow, not later than the close of business on the day before the Close of Escrow, subject to the Parties' Stipulation set

forth in Paragraph 2 of this Agreement. The escrow account for Property 1 shall be funded with the allocated Purchase Price for Property 1, plus or minus application prorations related to Property 1 and with the allocated portion of the Initial Deposit for Property 1 applied thereto. The escrow account for Property 2 shall be funded with the allocated Purchase Price for Property 2, plus or minus application prorations related to Property 2 and with the allocated portion of the Initial Deposit for Property 2 applied thereto. Escrow Holder will forward to both City and Seller a separate accounting of all funds received and disbursed for each party, with respect to each of the two escrows, and copies of all signed and recorded documents deposited into Escrow, with the recording and filing date and information endorsed thereon.

Payment of said sums, less Seller's cost to clear title of any Monetary Liens (as defined in Paragraph 9 below), if any, may be made to Seller only when Escrow Holder possesses fully executed and acknowledged and recorded Deeds (as defined in Paragraph 14(a) below) from the Seller in recordable form sufficient to convey the Subject Property to City free and clear of all liens, encumbrances, and restrictions of record other than the Permitted Encumbrances.

8. **Feasibility Period.** City shall have the right to examine the feasibility of the Subject Property for a period of up to the earlier of (i) 60 days after the parties have executed this Agreement or (ii) October 31, 2022 (the Feasibility Period). City, in its sole and absolute discretion, shall have the authority to waive all, or any portion of the Feasibility Period at any time prior to expiration of the Feasibility Period by providing written notice to Escrow Holder and Seller.
 - a. **Access.** Subject to the terms and conditions of this Agreement, City shall have the right to access the Subject Property, at all times during normal business hours, following execution of this Agreement by the parties, for the purpose of conducting all studies, inspections, evaluations, tests, or surveys of the Subject Property that City elects to have performed upon reasonable notice to Seller. Reasonable notice shall be defined as providing Seller, or its agent, with twenty-four hours' notice, in writing, including electronic mail, prior to entry; provided, however, that for access to the interior of any tenant-occupied space on Property 2, reasonable notice shall mean at least seventy-two hours' notice, in writing, including electronic mail, prior to entry. When necessary, Seller shall provide notice to its tenants. City shall conduct any such inspections or testing at a time and manner to minimize disruption or interference with any tenants on Property 2. Notwithstanding anything to the contrary, the City shall have the right to perform the following investigations without Seller's consent, but with prior written notice to the Seller: boundary and topographic surveys; soil, engineering tests; lead-based paint testing, asbestos testing, Phase I environmental assessments; and commercial building inspection (including roofing, structural integrity, electrical, plumbing, and HVAC), collectively "the Permitted Inspections."

Notwithstanding the foregoing, any environmental investigations for hazardous substances or materials (as now or hereafter defined in any law, regulation or rule) on the Subject Property (i) involving soil borings, soil vapor testing, PID screening and related soil and soil gas testing shall be subject to Seller's approval, not to be unreasonably withheld, as to the scope and methodology of the testing and the location of any soil borings on the Subject Property (which scope, methodology and location must be reasonably recommended by the City's environmental consultants and must minimize any interference with the operations of existing tenants on Property 2), and (ii) involving the testing of groundwater and/or of indoor air sampling shall be subject to Seller's approval, which shall not be unreasonably withheld if the recommendation for such testing and/or sampling by the City's environmental consultant is confirmed by an independent third-party environmental consultant mutually agreed upon by both the City and Seller. If any of the Permitted Inspections or environmental investigations set forth in this Paragraph 8(a) indicate that further inspection is necessary, the City may conduct such further inspections, subject to the terms and conditions of this Agreement. City shall repair all damage caused by any such inspections and restore the portions of the Subject Property to the same condition or better than existing immediately prior to such inspection. Prior to conducting any testing, City or its testing consultants, shall deliver to Seller a certificate of insurance naming Seller as additional insured (on a primary, non-contributing basis) evidencing commercial general liability and property damage insurance with limits of not less than Two Million Dollars (\$2,000,000) in the aggregate for liability coverage and not less than One Million Dollars (\$1,000,000) in the aggregate for property damage. City agrees to indemnify and hold Seller free and harmless from any and all liability, loss, cost, damage, or expense that Seller may sustain or incur by reason of or in connection with such entry, studies, inspections, evaluations, tests, or surveys conducted by City during the Feasibility Period; provided, however, that City shall not be responsible for indemnifying Seller with respect to (a) any pre-existing conditions which City merely discovers through City's investigation of the Subject Property (including, but not limited to, any environmental contamination or matters), except solely to the extent that City exacerbates the same and (b) any claims, damages or liability resulting from a negligent act or omission of Seller or Seller's agent, contractors, subcontractors, employees or consultants. Such indemnity shall survive termination of this a Agreement for a period of one (1) year.

- b. **Feasibility Package.** Seller shall deliver to City a feasibility package within ten (10) days of execution of this Agreement. The following shall be included as due diligence in the package to the extent in the possession or control of Seller (collectively, the "Due Diligence Documents"):
 - i. Any documents relating to special assessment or bonds pertaining to the Subject Property for the last two (2) fiscal tax years;
 - ii. All known current litigation affecting the Subject Property;

- iii. All environmental reports for the Subject Property issued this calendar year or in the prior three (3) calendar years;
- iv. Copies of the Leases and a current rent roll for Property 2 that will include a list of all tenants more than 30 days behind in rent and the amount of accrued rent;
- v. 2019 and 2020 CAM reconciliations under the Leases (and, when available, 2021 CAM Reconciliations);
- vi. Copies of any maintenance or service contracts for the Subject Property;
- vii. Copy of all current operating expenses and fees paid on a monthly basis; and
- viii. Copies of any and all Plans for the improvements on the Subject Property and any history on repairs/maintenance made this year or within the prior three (3) calendar years.

The parties agree the City may reasonably request additional documentation from the Seller based upon review of the Feasibility Package and findings during the Feasibility Period, which request shall not be unreasonably denied by Seller. The parties agree the additional documentation shall be produced by Seller, to the extent in Seller's possession, within 10 days of City's request.

- c. **Expiration of Feasibility Period.** Subject to the stipulation of the Parties as set forth in Section 2 of this Agreement, if City has not given notice of termination and cancellation on or before the expiration of the Feasibility Period, the Initial Deposit shall be non-refundable to the City and shall either (A) serve as liquidated damages in accordance with Paragraph 18(a) below in the event of a default by the City where the Close of Escrow fails to occur, or (B) be applied against the Purchase Price at Close of Escrow in accordance with Paragraph 7 above. Prior to the Close of Escrow, any City deposit made in excess of the Initial Deposit shall be refundable at all times and returned to the City, upon request.
 - d. **Termination and Cancellation of Agreement.** If City, in its sole and absolute discretion, decides to terminate and cancel this Agreement by timely delivery of a termination and cancellation notice on or before expiration of the Feasibility Period, then the entire Initial Deposit along with any additional deposits, and any accrued interest thereon, shall be immediately refunded to City by Escrow Holder without the need for further instruction, notice, or demand from either party.
9. **Title Review.** Within ten (10) days after the Effective Date, Seller shall cause Title Company to deliver to City a preliminary title report for the Subject Property (the "PTR"), and copies of all underlying title documents described in the PTR. City shall have until ten (10) business days prior to the expiration of the Feasibility Period (the "Interim Date") to provide written notice (the "Title Notice") to Seller of any matters shown by the PTR which are not satisfactory to the City. If Seller and

Escrow Holder have not received the Title Notice from the City by the Interim Date, then the City shall be deemed to have approved the title matters in the PTR other than any Monetary Liens (as defined below). Except with respect to any liens secured by deeds of trust securing loans made to Seller, mechanics' liens relating to work authorized by Seller, judgment liens against Seller, and liens for delinquent taxes (herein, collectively, "Monetary Liens") which Seller agrees to have removed from the Subject Property on or before the Close of Escrow, Seller shall have no obligation whatsoever to expend or agree to expend any funds, to undertake or agree to undertake any obligations or otherwise to cure or agree to cure any title objections. Within three (3) business days of receipt of a Title Notice, Seller shall deliver written notice to the City and Escrow Holder identifying which disapproved items Seller shall undertake to cure or not cure ("Seller's Response"). If Seller does not deliver a Seller's Response within said three (3) business day period, Seller shall be deemed to have elected to not remove or otherwise cure any exceptions disapproved by the City other than any Monetary Liens. If Seller elects not to remove or otherwise cure an exception disapproved in the City's Title Notice, the City shall have until the expiration of the Feasibility Period to notify Seller and Escrow Holder, in writing, of the City's election to either waive the objection or terminate this Agreement and the Escrow. If Seller and Escrow Holder have not received written notice from the City prior to the expiration of the Feasibility Period, that shall be deemed the City's unconditional approval of the Seller Response. Except for Monetary Liens, all matters shown in the PTR and any survey of the Subject Property obtained by the City with respect to which the City fails to give a Title Notice on or before the Interim Date shall be deemed to be approved by the City as Permitted Encumbrances.

10. Financial Liabilities; Prorations.

- a. **Ad Valorem Taxes (Property 1 and Property 2).** All real estate and personal property taxes attributable to the Subject Property will be prorated at Close of Escrow. Seller shall be charged with all such taxes up to, but not including, the Closing Date. If Seller has paid property taxes for any portion of the Subject Property allocable to any period from and after the Closing Date, then Seller shall request a credit from the County of Fresno after the Close of Escrow. If the applicable tax rate and assessments for the Subject Property have not been established for the year in which Close of Escrow occurs, the proration of real estate and/or personal property taxes, as the case may be, will be based upon the rate and assessments for the preceding year. Real property tax refunds and credits received after the Close of Escrow which are attributable to a fiscal tax year prior to the Close of Escrow shall belong to Seller.
- b. **Operating Expenses (Property 1 and Property 2).** All utility service charges for electricity, heat and air conditioning service, other utilities, elevator maintenance, common area maintenance, taxes (other than real estate taxes such as rental taxes), other expenses incurred in operating the Subject Property that Seller customarily pays and that are not paid by tenants on an estimated or other basis, and any other costs incurred in the

ordinary course of business or the management and operation of the Subject Property not so paid by tenants, shall be prorated on an accrual basis. Seller shall pay all such expenses that accrue prior to the Close of Escrow and the City shall pay all such expenses accruing on the Close of Escrow and thereafter. Seller and the City shall obtain billings and meter readings as of the Close of Escrow to aid in such prorations.

- c. **Lease Rentals (Property 2).** All rents (including all accrued tax and operating expense pass-throughs), charges and revenue of any kind relating to Property 2 will be prorated on a cash received basis at Closing. Owner 2 will receive all rents (including all accrued tax and operating expense pass-throughs), charges and other revenue of any kind receivable from the Leases up to, but not including, the Closing Date. No proration will be made with respect to any delinquent rents of any kind receivable from the Leases for any period before the Closing Date. All amounts collected by the City subsequent to the Closing Date relating to rents which are delinquent by more than thirty (30) days will be promptly remitted to Owner 2, and Owner 2 shall continue to have the right to pursue claims against tenants for such amounts after the Close of Escrow, provided that Owner 2 shall not have the right after the Close of Escrow to file any unlawful detainer or eviction actions to dispossess tenants from Property 2 in connection with such claims. All amounts paid to Owner 2 subsequent to Closing relating to rents which are due and owing for the period prior to Closing Date shall solely belong to Owner 2. All amounts paid to Owner 2 subsequent to Closing Date relating to rents which are due and owing for the period after Closing shall belong to the City. Notwithstanding the foregoing, if any of such operating expenses and other charges and expenses are payable by tenants under the Leases on an estimated basis (collectively, the "Tenant Charges"), then Seller shall use commercially reasonable efforts to reconcile as of the Close of Escrow all Tenant Charges applicable to the period of time prior to the Close of Escrow against actual charges and expenses for such period based on the bills, statements and invoices then in Seller's possession, and Seller shall collect or refund applicable amounts from or to tenants in connection with such reconciliation.
- d. **Security Deposits (Property 2 only).** The City shall be credited and Owner 2 shall be charged with the balance of the security deposits then held by Owner 2 under the Leases.
- e. **Leasing Costs (Property 2 only).** If the Closing occurs, (a) Owner 2 shall be responsible and shall pay for the costs of tenant improvement work or allowances, third-party leasing commissions, legal fees and other leasing costs relating to the initial term of those Leases executed as of the Effective Date, if any, and (b) the City shall be responsible and shall pay for the Leasing Costs relating to or arising from (i) the exercise by any tenant, after the Effective Date, of a renewal, expansion or extension option contained in any of the Leases executed as of the Effective Date; and (ii) any new leases, or modifications to existing Leases in effect as of the Effective Date,

entered into after the Effective Date in accordance with the terms of Paragraph 23(b) below. Any Leasing Costs which are the responsibility of the City which are paid by Owner 2 prior to the Closing shall be reimbursed by the City to Owner 2 at the Close of Escrow through the Escrow. If, on the Close of Escrow, there are any outstanding or unpaid Leasing Costs which are the responsibility of Owner 2 as set forth herein, then on the Closing the City shall be entitled to a credit toward the payment of the Purchase Price at Closing for Property 2 in the amount of such unpaid Leasing Costs, and following the Closing the City shall assume and be responsible for the payment of such Leasing Costs to the extent of such credit.

- f. **Settlement Statement.** At least three (3) business days prior to the Close of Escrow, the parties shall agree upon all of the prorations to be made and submit a separate statement for each of Property 1 and Property 2 to Escrow Holder setting forth the same. In the event that any prorations, apportionments or computations made under this Paragraph 10(f) shall require final adjustment, then the Parties shall make the appropriate adjustments promptly when accurate information becomes available and either Party hereto shall be entitled to an adjustment to correct the same, but in no event shall such final adjustment occur later than the end of the Reconciliation Period. Any corrected adjustment or proration shall be paid in cash to the party entitled thereto. The provisions of this Paragraph 10(f) shall survive the Close of Escrow for a period of ninety (90) days.
- 11. **Costs.** The escrow fee, cost of policy of title insurance, transfer tax and recording fees (if any) shall be paid by the City. City shall pay outside of Escrow all costs and expenses related to the due diligence investigations (including but not limited to any environmental reports or ALTA surveys contracted for by the City), and all legal and professional fees and costs of attorneys and other consultants and agents retained by the City. Seller shall pay outside of Escrow all legal and professional fees and costs of attorneys and other consultants and agents retained by Seller.
- 12. **Disbursement.** Disbursements of the Purchase Price shall be in the amounts, at the times, and in all respects in accordance with the terms and conditions and subject to the limitations of this Agreement, including the Stipulation of the Parties in Section 2 of this Agreement.
- 13. **Close of Escrow.** Close of Escrow for the purchase and sale of the Subject Property shall occur no later than 30 days from the expiration or waiver of the Feasibility Period. For purposes of this Agreement, the "Close of Escrow" or the "Closing" shall mean the date on which the Deeds are submitted for recording in the Official Records of the County where Subject Property is located. The Close of Escrow shall occur on the "Closing Date".

The expiration or waiver of the Feasibility Period by the City shall mean the City's approval of all investigations and contingencies set forth in Paragraphs 8 and 9, including, but not limited to:

- a. City's approval of contents of PTR and the Permitted Encumbrances in accordance with Paragraph 9 above;
- b. City's approval of the Due Diligence Documents and any engineering reports in accordance with Paragraph 8(c) above;
- c. City's approval of physical inspection of the Subject Property in accordance with Paragraph 8(c) above;
- d. City's completion, approval or waiver of the Feasibility Study; and
- e. Approval of this Agreement by the City Council of the City of Fresno prior to execution by City.

14. **Conditions to Closing.**

- a. **Conditions Precedent to the City's Obligations.** The Close of Escrow and the City's obligations with respect to the transactions contemplated by this Agreement are subject to the timely satisfaction or waiver of the following conditions:
 - i. **Title Policy.** On or before the expiration of the Inspection Period, Title Company shall have committed to issue to the City the Title Policy described in Paragraph 3 above.
 - ii. **Seller's Performance.** Seller shall have duly performed in all material respects each and every covenant of Seller hereunder, including, without limitation, Seller shall have delivered to Escrow Holder good and sufficient grant deeds, duly executed by Seller, in the forms attached hereto as Exhibit "C" (the "Deeds").
 - iii. **No Litigation or Material Adverse Violations.** There shall be no pending litigation against Subject Property, and no notices of violation of law, that in either case would materially and adversely affect the condition, value or use of the Subject Property.
 - iv. **Destruction, Damage or Loss.** Subsequent to the expiration of the Feasibility Period and prior to the Closing, there shall not have occurred a destruction, or damage, or loss to, the Subject Property, or any portion thereof, from any cause whatsoever (other than caused by the City), which would cost more than \$50,000 to repair or cure. If the cost to repair is \$50,000 or less, then the City shall not have a right to terminate this Agreement in connection with such destruction, damage or loss, and the City shall be entitled to any insurance proceeds applicable to such loss but shall purchase the Subject Property notwithstanding such loss and without deduction or offset against the Purchase Price. If the cost to repair or cure is more than \$50,000, and the City has not elected to terminate this Agreement, then the City shall be entitled to any insurance proceeds applicable to such loss but shall purchase the Subject Property notwithstanding such loss and without deduction or offset against the Purchase Price.

- v. **Failure of Conditions Precedent to City's Obligations.** The City's obligations with respect to the transactions contemplated by this Agreement are subject to the satisfaction of the conditions precedent to such obligations for the City's benefit set forth in Paragraph 14(a). If the City terminates this Agreement by notice to Seller because of the failure of a condition precedent under Paragraph 14(a), then Escrow Holder shall return the Initial Deposit to the City (and any other additional funds deposited by the City), and the City shall pay any Escrow cancellation fees or charges, and except for the City's indemnity and confidentiality obligations under the Agreement which expressly survive termination of the Agreement, the parties shall have no further rights or obligations to one another under this Agreement; provided, however, that if the failure of a condition under this Paragraph 14(a) is the result of a default by Seller under this Agreement, then Buyer shall also have all rights and remedies under Paragraph 18(b) below and Seller pay the Escrow cancellation fees or charges.
- b. **Conditions Precedent to the Seller's Obligations.** The Close of Escrow and Seller's obligations with respect to the transactions contemplated by this Agreement are subject to the timely satisfaction or waiver of the following conditions:
 - i. **City's Performance.** The City shall have duly performed in all material respects each and every covenant of City hereunder.
 - ii. **Funding Escrow.** On or before the applicable time set forth in this Agreement, the City shall have delivered to Escrow Holder the funds and documents described in this Agreement including but not limited the timely delivery of the Purchase Price pursuant to the provisions of Paragraph 3 above and all requirements for release of such funds under Paragraph 2 above shall have been satisfied.
 - iii. **Failure of Conditions Precedent to Seller's Obligations.** The Seller's obligations with respect to the transactions contemplated by this Agreement are subject to the satisfaction of the conditions precedent to such obligations for Seller's benefit set forth in Paragraph 14(b). If the Seller terminates this Agreement by notice to the City because of the failure of a condition precedent under Paragraph 14(b), then such failure shall constitute a default by the City, and Seller shall have its rights and remedies under Paragraph 18(a) below.
- c. **Effect of Closing.** The occurrence of the Close of Escrow shall constitute conclusive evidence that Seller and the City have respectively waived any conditions which are not satisfied as of the Close of Escrow other than those conditions or covenants that expressly survive the Close of Escrow as provided in this Agreement.

15. **Possession.** Sole and exclusive possession of the Subject Property shall be delivered to City on the Closing Date, free of all claims from Seller or any third persons under leases or otherwise, except for the Permitted Encumbrances.
16. **Deliveries to Escrow Holder.**
- a. **Seller's Deliveries.** Seller hereby covenants and agrees to deliver or cause to be delivered to Escrow Holder at least one (1) business day prior to the Closing Date (or other date specified) the following funds, instruments and documents, the delivery of each of which shall be a condition to the Close of Escrow:
 - i. **Deeds.** The Deeds in the form of Exhibit "C" attached hereto, duly executed and acknowledged in recordable form by the applicable Seller (i.e., Owner 1 or Owner 2, depending on the portion of the Subject Property conveyed), conveying Seller's interest in the Subject Property to the City;
 - ii. **Assignment of Leases.** Two (2) counterparts of the Assignment of Leases in the form of Exhibit "E" attached hereto pursuant to which Owner 2 shall assign to the City all of Owner 2's right, title and interest in, under and to the Leases (the "Lease Assignment");
 - iii. **General Assignment.** Two (2) counterparts of a General Assignment duly executed by Seller in the form of Exhibit "F" attached hereto (the "General Assignment");
 - iv. **Tenant Letter.** A letter signed by Owner 2 (or its property manager) addressed to the tenants under the Leases advising such tenants of the sale of the Subject Property to the City, the transfer of such tenant's security deposit to the City, and directing that all future rent payments and other charges under the Leases be forwarded to the City at an address to be supplied by the City. Notwithstanding the foregoing, the City and Seller may agree that such letters may be sent directly by Seller to the tenants and not delivered through the Escrow; and
 - v. **Proof of Authority.** Such proof of Seller's authority and authorization to enter into this Agreement and the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of Seller to act for and bind Seller, as may be reasonably required by Title Company. Seller shall also comply with all reasonably related signature authority guidelines provided by the City.
 - b. **City's Deliveries.** The City hereby covenants and agrees to deliver or cause to be delivered to Escrow Holder at least one (1) business day prior to the Closing Date the following funds, instruments and documents, the delivery of each of which shall be a condition to the Close of Escrow:

- i. The City's Funds. The balance of the Purchase Price, and such additional funds, if any, necessary to comply with the City's obligations under this Agreement regarding prorations, credits, costs and expenses;
- ii. Lease Assignment. Two (2) counterparts of the Lease Assignment duly executed by the City;
- iii. General Assignment. Two (2) counterparts of the General Assignment duly executed by the City; and
- iv. PCORs. An original Preliminary Change of Ownership Report for each of the Deeds for filing with the County assessor's office.
- v. Proof of Authority. Such proof of the City's authority and authorization to enter into this Agreement and the transactions contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents or certificates on behalf of the City to act for and bind the City, as may be reasonably required by Title Company.

17. **Relocation.** The Parties shall take all legally required steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations and farms) as a result of the City's planned use of the Subject Property and services rendered in pursuit thereof. Seller shall not have any obligation to displace, evict and/or relocate any tenants under existing Leases on Property 2.

The parties acknowledge and agree, that under applicable law a displaced person must be provided relocation assistance in accordance with regulations implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655.) If and to the extent that City's intended use of the Subject Property after the Close of Escrow results in the permanent or temporary displacement of persons, the Parties shall comply with all applicable local, State and federal statutes and regulations with respect to relocation planning, advisory assistance and payment of monetary benefits, to the extent owed.

City agrees to indemnify and hold Seller free and harmless from any and all liability, loss, cost, damage, or expense that Seller may sustain or incur by reason of, or in connection with any the displacement of persons (families, individuals, businesses, nonprofit organizations and farms) after the Close of Escrow as a result of the City's planned use of the Subject Property and any services rendered in pursuit thereof. City's indemnification obligations under this paragraph shall survive the Close of Escrow.

18. **Default and Remedies.**

- a. **CITY'S DEFAULT.** SUBJECT TO THE PARTIES' STIPULATION SET FORTH IN PARAGRAPH 2 OF THIS AGREEMENT, IF CLOSE OF ESCROW SHALL FAIL TO OCCUR BECAUSE OF THE CITY'S DEFAULT UNDER THIS AGREEMENT, SELLER'S SOLE AND EXCLUSIVE REMEDY SHALL BE TO RETAIN THE CITY'S INITIAL DEPOSIT

TOGETHER WITH ALL ACCRUED INTEREST THEREON. ANY CITY DEPOSIT MADE IN EXCESS OF THE INITIAL DEPOSIT SHALL BE REFUNDABLE AT ALL TIMES AND RETURNED TO THE CITY, UPON REQUEST. CITY AND SELLER AGREE THAT IT WOULD BE IMPRACTICAL AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES WHICH SELLER MAY SUFFER. THEREFORE CITY AND SELLER DO HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL NET DETRIMENT THAT SELLER WOULD SUFFER IN THE EVENT THAT CITY DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE SUBJECT PROPERTY IS AND SHALL BE AN AMOUNT EQUAL TO THE INITIAL DEPOSIT, TOGETHER WITH THE ACCRUED INTEREST THEREON. NOTHING CONTAINED IN THIS PARAGRAPH SHALL LIMIT SELLER'S RIGHT TO RECEIVE REIMBURSEMENT FOR COSTS AND EXPENSES PURSUANT TO PARAGRAPH 25(f) BELOW, NOR WAIVE OR AFFECT CITY'S INDEMNITY AND CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT.

- b. **SELLER'S DEFAULT.** IF THE CLOSE OF ESCROW SHALL FAIL TO OCCUR BECAUSE OF SELLER'S DEFAULT UNDER THIS AGREEMENT, CITY MAY, AT ITS OPTION AND AS ITS SOLE AND EXCLUSIVE REMEDIES HEREUNDER, EITHER (1) TERMINATE THIS AGREEMENT AND PURSUE ANY ACTUAL DAMAGES SUFFERED BY THE CITY SUBJECT TO THE FLOOR AMOUNT AND CAP AMOUNT DESCRIBED IN PARAGRAPH 18(c) BELOW, IN WHICH EVENT THE ENTIRE INITIAL DEPOSIT PREVIOUSLY MADE BY CITY AND ALL OTHER FUNDS DEPOSITED BY CITY SHALL BE RETURNED TO CITY AND THE PARTIES SHALL THEREAFTER HAVE NO OBLIGATIONS UNDER THIS AGREEMENT OR ADDITIONAL LIABILITY TO ONE ANOTHER (EXCEPT FOR ANY OBLIGATIONS UNDER THIS AGREEMENT THAT EXPRESSLY SURVIVE TERMINATION); OR (2) MAINTAIN THIS AGREEMENT IN EFFECT AND PURSUE AN ACTION FOR SPECIFIC PERFORMANCE; PROVIDED, HOWEVER, CITY MUST COMMENCE AND FILE SUCH SPECIFIC PERFORMANCE ACTION IN THE APPROPRIATE COURT NOT LATER THAN NINETY (90) DAYS FOLLOWING THE FAILURE TO TIMELY CLOSE ESCROW. EXCEPT AS SPECIFICALLY SET FORTH IN THIS PARAGRAPH 18(b), CITY DOES HEREBY SPECIFICALLY WAIVE ANY RIGHT TO PURSUE ANY OTHER REMEDIES THAT MAY EXIST IN REMEDY AT LAW OR EQUITY FOR SUCH DEFAULT OF SELLER, INCLUDING, BUT NOT LIMITED TO AN ACTION FOR LOST PROFITS, PUNITIVE DAMAGES OR CONSEQUENTIAL DAMAGES. CITY SHALL NOT BE ENTITLED TO RECORD A LIEN OR LIS PENDENS AGAINST THE SUBJECT PROPERTY OTHER THAN IN CONNECTION AND CONCURRENTLY WITH THE FILING OF SUCH SPECIFIC PERFORMANCE ACTION.
- c. **Limited Liability.** Notwithstanding anything to the contrary contained herein: (a) the maximum aggregate liability of Seller, and the maximum

aggregate amount which may be awarded to and collected by the City (including, without limitation, for any breach of any representation, warranty and/or covenant of Seller) under this Agreement or any documents executed pursuant hereto or in connection herewith, shall, under no circumstances whatsoever, exceed \$350,000 (the "CAP Amount"); (b) no claim by the City alleging a breach by Seller of any representation, warranty and/or covenant of Seller contained herein or any documents executed pursuant hereto or in connection herewith may be made, and Seller shall not be liable for any judgment in any action based upon any such claim, unless and until such claim, either alone or together with any other claims by the City alleging a breach by Seller of any such representation, warranty and/or covenant, is for an aggregate amount in excess of \$20,000.00 (the "Floor Amount"), in which event Seller's liability respecting any final judgment concerning such claim or claims shall only be subject to the CAP Amount set forth in clause (a) above; (c) each tenant-in-common owner (shown on Schedule 1 and Schedule 2 attached hereto) constituting Seller shall only be liable under this Agreement for such claims pertaining to a breach of the representations, warranties and covenants made by Seller with respect to its percentage tenancy-in-common interest in that portion of the Subject Property owned by such party (for example, an owner of Property 1, who is not also an owner of Property 2, shall be only liable with respect to claims related to Property 1 and only to the extent of its percentage tenancy-in-common interest of the Cap Amount); and (d) in no event shall Seller (or any tenant-in-common owner constituting Seller) be liable to the City for indirect, special, consequential (including lost profits) or punitive damages arising out of or in connection with this Agreement.

19. **Indemnity.** Seller shall indemnify, hold harmless, and defend the City, its officers, agents, employees, and volunteers from any liability, loss, fines, penalties, forfeitures, claims, expenses, and costs, whether incurred by the Seller, City, or any other third party, arising directly or indirectly from the release, presence or disposal of any hazardous substances or hazardous materials (as now or hereafter defined in any law, regulation or rule) in, on, or under the Subject Property that occurred on or before the effective date of this Agreement. This indemnity shall include, without limitation, any claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), or any other federal, state, or local law whether statutory or common law, ordinance, or regulation in effect as of the effective date of this Agreement. Costs or losses covered will include, without limitation, consultants, engineering, investigator fees, clean up or disposal costs and reasonable attorneys' fees, and actual damages. The Seller's obligation herein to indemnify and hold harmless the City shall be subject to the limitations set forth in Paragraph 18(c) above and shall only survive the Close of Escrow for a period of one (1) year after the Closing Date. Notwithstanding anything herein to the contrary, Seller shall not have any obligation in this Paragraph to the extent any existing condition on the Subject Property is exacerbated by the City, its officers, agents, employees, contractors and/or volunteers.

20. **Notices.** All notices, demands, consents, requests or other communications required to or permitted to be given pursuant to this Agreement shall be in writing, shall be given only in accordance with the provisions of this Section, shall be addressed to the parties in the manner set forth below, and shall be conclusively deemed to have been properly delivered: (a) upon receipt when hand delivered during normal business hours (provided that, notices which are hand delivered shall not be effective unless the sending party obtains a signature of a person at such address that the notice has been received); (b) upon receipt when sent by facsimile if sent before 5:00 p.m. on a business day to the number set forth below with written confirmation of a successful transmission by the sender's facsimile machine; (c) upon the day of delivery if the notice has been deposited in an authorized receptacle of the United States Postal Service as first-class, registered or certified mail, postage prepaid, with a return receipt requested (provided that, the sender has in its possession the return receipt to prove actual delivery); or (d) one (1) business day after the notice has been deposited with either Golden State Overnight, FedEx or United Parcel Service to be delivered by overnight delivery (provided that, the sending party receives a confirmation of actual delivery from the courier). The addresses of the parties to receive notices are as follows:

TO SELLER: c/o N & K Commercial Property, Inc.
3424 Carson Street, Suite 280
Torrance, CA 90503
Attention: Ken Miyake
Phone No.: (310) 214-0115
Fax No.: (310) 214-3841
Email: KenM@nkproperty.com

With a copy to: Greenberg Glusker LLP
2049 Century Park East, 26th Floor
Los Angeles, CA 90067
Attention: Kevin A. Sher, Esq.
Phone No.: (310) 785-6834
Fax No.: (310) 201-4449
Email: KSher@greenbergglusker.com

With a copy by email to: Craig Holdener of Newmark Pearson
Commercial
Email: choldener@Pearsonrealty.com

TO CITY: CITY OF FRESNO
Attention: City Manager
2600 Fresno Street
Fresno, CA 93721
Telephone: (559) 621-8000

TO ESCROW HOLDER:

Fidelity National Title Company
7475 N. Palm Avenue, Suite 107
Fresno, California 93711
Attention: Bernadette Watson
Telephone: (559) 261-8929
Facsimile: (559) 451-0701

Each party shall make an ordinary, good faith effort to ensure that it will accept or receive notices that are given in accordance with this Section, and that any person to be given notice receives such notice. If any notice is refused, the notice shall be deemed to have been delivered upon such refusal. Any notice delivered after 5:00 p.m. (recipient's time) or on a non-business day shall be deemed delivered on the next business day. A party may change or supplement the addresses given above, or designate additional addressees, for purposes of this Section by delivering to the other party written notice in the manner set forth above.

21. **Condition and Inspection of the Property.** Notwithstanding any other provision of this Agreement to the contrary, neither Seller nor any employee or agent of Seller has made or will make, either expressly or impliedly, any representations, guaranties, promises, statements, assurances or warranties of any kind concerning the Subject Property including without limitation, the following matters (collectively referred to herein as the Subject Property Conditions): (i) the suitability or condition of the Subject Property for any purpose or its fitness for any particular use, (ii) the profitability and/or feasibility of owning, developing, operating and/or improving the Subject Property, (iii) the physical or environmental condition of the Subject Property, including, without limitation, the current or former presence or absence of environmental hazards or hazardous materials, asbestos, radon gas, underground storage tanks, electromagnetic fields, petroleum-based substances or other substances or conditions which may affect the Subject Property or its current or future uses, habitability, value or desirability, (iv) the rentals, incomes, costs or expenses thereof, (v) the net or gross acreage, usable or unusable, contained therein, (vi) the zoning of the Subject Property, (vii) the condition of title, (viii) the compliance by the Subject Property with applicable zoning or building laws, codes, or ordinances, or other laws, rules and regulations, including, without limitation, environmental and similar laws governing or relating to environmental hazards or hazardous materials, asbestos, radon gas, underground storage tanks, electromagnetic fields, petroleum-based substances or other substances or conditions which may affect the Subject Property or its current or futures uses, habitability, value or desirability, (ix) water or utility availability or usage restrictions, (x) geologic/seismic conditions, soil and terrain stability, or drainage, (xi) sewer, septic, and well systems and components, (xii) other neighborhood or Subject Property conditions including schools, proximity and adequacy of law enforcement and fire protection, crime statistics, noise or odor from any sources, landfills, proposed future developments, or other conditions or influences which may be significant to certain cultures or religions, or (xiii) any other past, present or future matter relative to the Subject Property which may affect the Subject Property or its

current or future use, habitability, value or desirability. Seller has not conducted any investigation regarding the condition of the Subject Property and the Subject Property is sold AS-IS, WHERE-IS, WITH ALL FAULTS, AND THERE IS NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE CONDITION OF THE SUBJECT PROPERTY. City hereby represents and warrants that City is relying solely upon, and as of the expiration of the Feasibility Period will have conducted its own independent inspection, investigation, and analysis of the Subject Property as it deems necessary or appropriate in so acquiring the Subject Property from Seller, including, without limitation, any and all of the Subject Property Conditions. Seller would not sell the Subject Property to City without the foregoing provision.

- a. **Release of Claims.** As of the Close of Escrow, the City and its employees, agents, officers, directors, managers, attorneys (collectively, the "City Parties") hereby fully and irrevocably release the Seller and its trustees, partners, officers, directors, employees, agents, affiliates, successors or assigns (collectively, the "Seller Group") from any and all claims that the City Parties may have or thereafter acquire against any one or more of the Seller Group for any cost, loss, liability, damage, expense, demand, action or cause of action ("Claims") arising from or related to any matter of any nature relating to, and condition of, the Subject Property including, without limitation, the Subject Property Conditions described above, or any other condition or circumstance affecting the Subject Property, its financial viability, use or operation, or any portion thereof. This release includes claims of which the City is presently unaware or which the City does not presently suspect to exist in its favor which, if known by the City, would materially affect the City's release of the Seller Group. In connection with the general release set forth in this Paragraph 21(a), the City specifically waives the provisions of California Civil Code Section 1542, which provides as follows:

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or the released party."

Initials by City Authorized Signers

Notwithstanding anything to the contrary set forth in this Paragraph 21(a), the foregoing release is not intended to and does not cover any Claims arising from or relating to (i) fraud by Seller, (ii) Seller's breach of any disclosure obligations required by applicable law, (iii) Seller's breach of any of Seller's express representations or warranties set forth in this Agreement or (iv) any other breach by Seller of an express obligation of Seller under this Agreement which by its terms survives the Close of Escrow (herein collectively the "Excluded Claims").

22. **Natural Hazard Disclosure.** The City and Seller acknowledge that Seller or

Seller's Broker is required to disclose if any of the Subject Property lies within the following natural hazardous areas or zones: (i) a special flood hazard area (any type Zone "A" or "V") designated by the Federal Emergency Management Agency (Cal. Gov. Code §8589.3); (ii) an area of potential flooding shown on a dam failure inundation map designated pursuant to Cal. Gov. Code § 8589.5 (Cal. Gov. Code §8589.4); (iii) a very high fire hazard severity zone designated pursuant to Cal. Gov. Code § 51178 or 51179 (in which event the owner maintenance obligations of Cal. Gov. Code § 51182 would apply) (Cal. Gov. Code §51183.5); (iv) a wildland area that may contain substantial forest fire risks and hazards designated pursuant to Cal. Pub. Resources Code § 4125 (in which event (x) the Subject Property owner would be subject to maintenance requirements of Cal. Pub. Resources Code § 4291 and (y) it would not be the State's responsibility to provide fire protection services to any building or structure located within the wildland area except, if applicable, pursuant to Cal. Pub. Resources Code § 4129 or pursuant to a cooperative agreement with a local agency for those purposes pursuant to Cal. Pub. Resources Code §4142) (Pub. Resources Code § 4136); (v) an earthquake fault zone (Pub. Resources Code § 2621.9); or (vi) a seismic hazard zone (and, if applicable, whether a landslide zone or liquefaction zone) (Pub. Resources Code § 2694). As contemplated in California Civil Code Section 1103.2(b), if an earthquake fault zone, seismic hazard zone, very high fire hazard severity zone or wildland fire area map or accompanying information is not of sufficient accuracy of scale for the third party natural hazard expert (Natural Hazard Expert) to determine if the Subject Property is within the respective natural hazard zone, then for purposes of the disclosure the Subject Property shall be considered to lie within such natural hazard zone. The City acknowledges and agrees that the written report prepared by the Natural Hazard Expert regarding the results of its examination fully and completely discharges Seller and Seller's Broker for errors or omission not within their personal knowledge and the Natural Hazard Expert shall be deemed to be an expert, dealing with matters within the scope of its expertise with respect to the examination and written report regarding the natural hazards referred to above. The obligations of Seller and Seller's Broker are several (and not joint and not joint and several) and, without limitation, in no event shall Seller have any responsibility for matters not actually known to Seller. THESE HAZARDS MAY LIMIT THE CITY'S ABILITY TO DEVELOP THE SUBJECT PROPERTY, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER. THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ON ESTIMATES WHERE NATURAL HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. THE CITY MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE SUBJECT PROPERTY. The provisions of this Paragraph 22 shall survive the Closing.

23. **Covenants of Seller.** Seller hereby covenants with the City, as follows:

- a. **Contracts.** As of the Effective Date, Seller has not entered into any maintenance or service contracts with respect to the Subject Property that will be in effect as of the Close of Escrow; provided, however, there are

vendors performing maintenance and services on a month-to-month basis as listed on Exhibit "G" attached hereto. From and after the Effective Date, Seller shall not enter into any new service contracts or agreements for maintenance, operation or security at the Subject Property that is not cancellable upon not more than thirty (30) days prior written notice without the City's prior written consent, which consent may be withheld in the City's reasonable discretion, and which consent will be deemed to have been given by the City if the City does not notify Seller in writing to the contrary within five (5) business days after Seller provides written notice to City of such new contract or agreement.

- b. **Leases.** Seller will provide the City with copies of all lease proposals and letters of intent upon the delivery or receipt thereof. From and after the Effective Date, Seller will not enter into any new leases or amendments, modifications or renewals of existing Leases (except for amendments expressly contemplated in such existing Leases, such as amendments to memorialize the exercise of an extension option) without the City's prior written consent, which consent may be withheld in the City's reasonable discretion, and which consent will be deemed to have been given by the City if the City does not notify Seller in writing to the contrary within five (5) business days after Seller provides written notice to the City of such new leases or amendments, modifications or renewals of existing Leases.
- c. **Operation in the Ordinary Course.** Subject to Sections 18(a) and 18(b) above, from the date of this Agreement until the Close of Escrow, Seller shall (i) operate and manage the Subject Property in the ordinary course and consistent with Seller's past practices, (ii) maintain the Subject Property in good condition, repair and working order (but Seller shall not be required to make any capital improvements), (iii) perform when due, and otherwise comply with, all of Seller's material obligations and duties under the Leases and any existing contracts, and (iv) maintain the insurance covering the Subject Property currently maintained by Seller as of the Effective Date.

24. **Broker Commissions.** Upon the Close of Escrow, Seller shall pay a real estate brokerage commission to the Newmark Pearson Commercial ("Broker") with respect to this Agreement pursuant to a separate written agreement with Broker. Seller represents and warrants to the City, and the City represents and warrants to Seller, that no other broker or finder, other than the Broker, respectively, has been engaged in connection with any of the transactions contemplated by this Agreement. In the event of any additional claims for brokers' or finders' fees or commissions in connection with the negotiation, execution or consummation of this Agreement, then as a covenant which shall survive the termination of this Agreement or the Close of Escrow, the City shall indemnify, save harmless and defend Seller from and against such claims if they shall be based upon any statement or representation or agreement by the City, and Seller shall indemnify, save harmless and defend the City if such claims shall be based upon any statement, representation or agreement made by Seller.

25. **Miscellaneous Provisions:**

- a. **Waiver.** The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provision of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
- b. **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement any rights and duties hereunder shall be Fresno, California.
- c. **Headings.** The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Agreement.
- d. **Severability.** The provisions of this Agreement are severable. The invalidity, or unenforceability or any one provision in this Agreement shall not affect the other provisions.
- e. **Interpretation.** The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.
- f. **Attorney's Fees.** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
- g. **Precedence of Documents.** In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment.
- h. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- i. **Exhibits and Attachments.** Each Exhibit and Attachment referenced herein is by such reference incorporated into and made a part of this Agreement for all purposes.
- j. **Non-Material Changes.** The City Manager of the City, or designee, may execute any supplemental escrow instructions and may make minor

modifications to this Agreement, the exhibits, and the documents referenced herein, on behalf of the City, and by virtue of an amendment mutually signed by Seller, provided such modifications do not constitute a material change to this Agreement.

- k. **Extent of Agreement.** Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Seller.
- l. **Assignment.** The City may not assign, transfer or convey its rights and obligations under this Agreement or in the Subject Property without the prior written consent of Seller, and no such approved assignment shall relieve the City from its liability under this Agreement until the City's assignee has fully performed all of the City's obligations hereunder and Close of Escrow has occurred, at which time the City shall be released from any further obligations or responsibilities under this Agreement
- m. **Time of Essence/Business Days.** Seller and the City hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform. Unless the context otherwise requires, all periods terminating on a given day, period of days, or date shall terminate at 5:00 p.m. (Pacific time) on such date or dates, and references to "days" shall refer to calendar days except if such references are to "business days" which shall refer to days which are not Saturday, Sunday or a legal holiday. Notwithstanding the foregoing, if any period terminates on a Saturday, Sunday or a legal holiday, under the laws of the State of California, the termination of such period shall be on the next succeeding business day.
- n. **Exchange.** Upon the request of a party hereto (the "Requesting Party"), the other party (the "Cooperating Party") shall cooperate with the Requesting Party in Closing the sale of the Subject Property, or any portion thereof, in accordance with this Agreement so as to qualify such transaction as an exchange of like-kind property; provided, however, the Cooperating Party shall not be required to take title to any exchange property and the Cooperating Party will not be required to agree to or assume any covenant, obligation or liability in connection therewith, the Closing hereunder shall not be delayed as a result of, or conditioned upon, such exchange, the Requesting Party shall pay all costs associated with such exchange, and the Requesting Party shall remain primarily liable under this Agreement and indemnify the Cooperating Party from any liability in connection with such exchange.

- o. **Confidentiality.** To the extent allowed under California law, City and its representatives shall hold in strictest confidence all data and information obtained with respect to the Subject Property or Seller or its business, whether obtained before or after the execution and delivery of this Agreement, and shall not use this information or disclose the same to others. In the event this Agreement is terminated or City fails to perform hereunder, City shall promptly return to Seller any statements, documents, schedules, exhibits or other written information obtained from Seller in connection with this Agreement or the transaction contemplated herein. The provisions of this Paragraph 25(o) shall survive any termination of this Agreement but shall not survive the Closing.
- p. **No Third Party Beneficiaries.** This Agreement is solely for the benefit of Seller and the City, and nothing contained in this Agreement shall be deemed to confer upon anyone other than Seller and the City any rights or privileges (including, without limitation, any right to insist upon or to enforce the performance of any of the obligations set forth in this Agreement).
- q. **Counterparts.** This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument.

(SIGNATURE PAGE TO FOLLOW)

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the Effective date of this Agreement as defined above.

CITY OF FRESNO,
a California municipal corporation

By: _____
Scott L. Mozier, PE Date
Public Works Director

RECOMMENDED FOR APPROVAL:

By: _____
Victoria Gonzales Date
Senior Real Estate Agent

By: _____
R. Scott Beyelia Date
Supervising Real Estate Agent

APPROVED AS TO FORM:
RINA M. GONZALES
Interim City Attorney

By: Tracy N. Parvanian
Tracy N. Parvanian Date
Supervising Deputy City Attorney

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Date

Deputy
Attachments:

1. Exhibit A – Legal Description
2. Exhibit B – Exhibit Map
3. Exhibit C – Grant Deeds
4. Exhibit D – Leases
5. Exhibit E – Assignment of Leases
6. Exhibit F – General Assignment
7. Exhibit G - Vendors
8. Schedule 1 – Owner 1 Parties
9. Schedule 2 – Owners 2 Parties

[OWNER Signatures Continued on Next Page]

SCHEDULE 1
"OWNER 1"

Robert Mochizuki
Robert Mochizuki, Trustee of The Mochizuki
Family Trust, Dated November 20, 2000

Susan M. Mochizuki
Susan M. Mochizuki, Trustee of The Mochizuki
Family Trust, Dated November 20, 2000

Gregory G. Miyake
Gregory G. Miyake, Trustee of The Miyake
Family Trust, dated February 6, 2009

Patricia S. Miyake
Patricia S. Miyake, Trustee of The Miyake Family
Trust, dated February 6, 2009

Douglas Kenneth Miyake

Harry Miya
Harry Miya, Trustee of the Harry Miya and
Nancy Miya Family Revocable Trust of May 19, 1992

Nancy Miya
Nancy Miya, Trustee of the Harry Miya and
Nancy Miya Family Revocable Trust of May 19, 1992

Michael K. Miya
Michael K. Miya, Trustee of the Miya Family
Revocable Trust dated August 7, 2007

Melynda K. Miya
Melynda K. Miya, Trustee of the Melynda K.
Miya Revocable Trust dated February 11, 2008

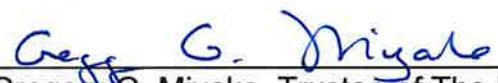
Mark K. Miya
Mark K. Miya, Trustee of the Mark K. Miya
Revocable Trust dated February 28, 2008

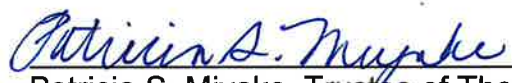
[OWNER Signatures Continued on Next Page]

SCHEDULE 1
"OWNER 1"

Robert Mochizuki, Trustee of The Mochizuki
Family Trust, Dated November 20, 2000

Susan M. Mochizuki, Trustee of The Mochizuki
Family Trust, Dated November 20, 2000


Gregory G. Miyake, Trustee of The Miyake
Family Trust, dated February 6, 2009


Patricia S. Miyake, Trustee of The Miyake Family
Trust, dated February 6, 2009

Douglas Kenneth Miyake

Harry Miya, Trustee of the Harry Miya and
Nancy Miya Family Revocable Trust of May 19, 1992

Nancy Miya, Trustee of the Harry Miya and
Nancy Miya Family Revocable Trust of May 19, 1992

Michael K. Miya, Trustee of the Miya Family
Revocable Trust dated August 7, 2007

Melynda K. Miya, Trustee of the Melynda K.
Miya Revocable Trust dated February 11, 2008

Mark K. Miya, Trustee of the Mark K. Miya
Revocable Trust dated February 28, 2008

[OWNER Signatures Continued on Next Page]

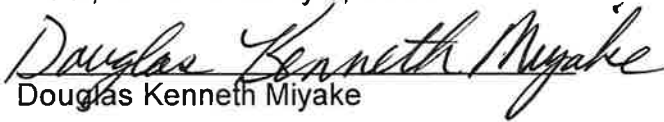
SCHEDULE 1
"OWNER 1"

Robert Mochizuki, Trustee of The Mochizuki
Family Trust, Dated November 20, 2000

Susan M. Mochizuki, Trustee of The Mochizuki
Family Trust, Dated November 20, 2000

Gregory G. Miyake, Trustee of The Miyake
Family Trust, dated February 6, 2009

Patricia S. Miyake, Trustee of The Miyake Family
Trust, dated February 6, 2009


Douglas Kenneth Miyake

Harry Miya, Trustee of the Harry Miya and
Nancy Miya Family Revocable Trust of May 19, 1992

Nancy Miya, Trustee of the Harry Miya and
Nancy Miya Family Revocable Trust of May 19, 1992

Michael K. Miya, Trustee of the Miya Family
Revocable Trust dated August 7, 2007

Melynda K. Miya, Trustee of the Melynda K.
Miya Revocable Trust dated February 11, 2008

Mark K. Miya, Trustee of the Mark K. Miya
Revocable Trust dated February 28, 2008

[OWNER Signatures Continued on Next Page]

SCHEDULE 1
"OWNER 1"

Robert Mochizuki, Trustee of The Mochizuki
Family Trust, Dated November 20, 2000

Susan M. Mochizuki, Trustee of The Mochizuki
Family Trust, Dated November 20, 2000

Gregory G. Miyake, Trustee of The Miyake
Family Trust, dated February 6, 2009

Patricia S. Miyake, Trustee of The Miyake Family
Trust, dated February 6, 2009

Douglas Kenneth Miyake

Harry Miya
Harry Miya, Trustee of the Harry Miya and
Nancy Miya Family Revocable Trust of May 19, 1992

Nancy Miya
Nancy Miya, Trustee of the Harry Miya and
Nancy Miya Family Revocable Trust of May 19, 1992

Michael K. Miya
Michael K. Miya, Trustee of the Miya Family
Revocable Trust dated August 7, 2007

Melynda K. Miya
Melynda K. Miya, Trustee of the Melynda K.
Miya Revocable Trust dated February 11, 2008

Mark K. Miya
Mark K. Miya, Trustee of the Mark K. Miya
Revocable Trust dated February 28, 2008

[OWNER Signatures Continued on Next Page]

SCHEDULE 1
"OWNER 1"

**Robert Mochizuki, Trustee of The Mochizuki
Family Trust, Dated November 20, 2000**

**Susan M. Mochizuki, Trustee of The Mochizuki
Family Trust, Dated November 20, 2000**

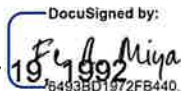
**Gregory G. Miyake, Trustee of The Miyake
Family Trust, dated February 6, 2009**

**Patricia S. Miyake, Trustee of The Miyake Family
Trust, dated February 6, 2009**

Douglas Kenneth Miyake

**Harry Miya, Trustee of the Harry Miya and
Nancy Miya Family Revocable Trust of May 19, 1992**

**Nancy Miya, Trustee of the Harry Miya and
Nancy Miya Family Revocable Trust of May 19, 1992**

DocuSigned by:

191992Miya
764933501972FB440...

**Michael K. Miya, Trustee of the Miya Family
Revocable Trust dated August 7, 2007**

**Fe A. Miya, Trustee of the Miya Family
Revocable Trust dated August 7, 2007**

**Melynda K. Miya, Trustee of the Melynda K.
Miya Revocable Trust dated February 11, 2008**

**Mark K. Miya, Trustee of the Mark K. Miya
Revocable Trust dated February 28, 2008**

[OWNER Signatures Continued on Next Page]

SCHEDULE 2
"OWNER 2"



Robert Mochizuki, Trustee of The Mochizuki
Family Trust, Dated November 20, 2000



Susan M. Mochizuki, Trustee of The Mochizuki
Family Trust, Dated November 20, 2000

Gregory G. Miyake, Trustee of The Miyake
Family Trust, dated February 6, 2009

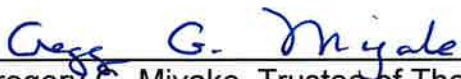
Patricia S. Miyake, Trustee of The Miyake Family
Trust, dated February 6, 2009

Douglas Kenneth Miyake

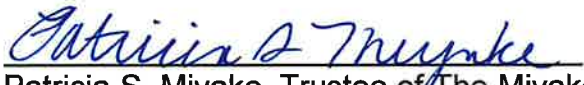
SCHEDULE 2
"OWNER 2"

Robert Mochizuki, Trustee of The Mochizuki
Family Trust, Dated November 20, 2000

Susan M. Mochizuki, Trustee of The Mochizuki
Family Trust, Dated November 20, 2000



Gregory G. Miyake, Trustee of The Miyake
Family Trust, dated February 6, 2009



Patricia S. Miyake, Trustee of The Miyake Family
Trust, dated February 6, 2009

Douglas Kenneth Miyake

SCHEDULE 2
"OWNER 2"

Robert Mochizuki, Trustee of The Mochizuki
Family Trust, Dated November 20, 2000

Susan M. Mochizuki, Trustee of The Mochizuki
Family Trust, Dated November 20, 2000

Gregory G. Miyake, Trustee of The Miyake
Family Trust, dated February 6, 2009

Patricia S. Miyake, Trustee of The Miyake Family
Trust, dated February 6, 2009

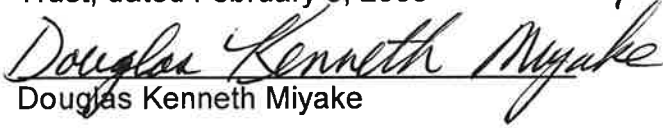

Douglas Kenneth Miyake

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY 1

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

APN: 426-253-17

All that portion of the North half of the Southeast quarter of the Southeast quarter of Section 16, Township 13 South, Range 20 East, Mount Diablo Base and Meridian, in the City of Fresno, County of Fresno, State of California, according to the Official Plat thereof, described as follows:

Commencing at the Southeast quarter of Lot 1 of Tract No. 1145, Del Mar Homesites No. 2, recorded in Book 15 Page 22 of Plats, Fresno County Records; thence $0^{\circ} 07'$ West, along the East line of said Tract No. 1145 and the Northerly prolongation thereof, 627.12 feet to a point on the North line of the North half of the Southeast quarter of the Southeast quarter of said Section 16; thence North $88^{\circ} 58'$ East, along said North line 450.10 feet to a point on a line 55.00 feet West of the East line of said Section 16; thence South $0^{\circ} 07' 30''$ East, along said line parallel with the said East line of Section 16, 427.00 feet more or less to a point on line 230.00 feet North of the South line of the North half of the Southeast quarter of the Southeast quarter of said Section 16; thence South $88^{\circ} 57'$ West along said line parallel with the South line of the North half of the Southeast quarter of the Southeast quarter of said Section 16, 418.28 feet to a point on a line 32.00 feet East of the said East line of Tract 1145; thence South $0^{\circ} 07'$ East, along said line parallel with the said East line of Tract 1145, 200.00 feet to a point on a line 30.00 feet North of the South line of the North half of the Southeast quarter of the Southeast quarter of said Section 16; thence South $88^{\circ} 57'$ West, along said line, 32.00 feet to the point of commencement.

EXHIBIT B

LEGAL DESCRIPTION OF PROPERTY 2

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

APN: 426-253-19

ALL THAT PORTION OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 13 SOUTH, RANGE 20 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE SAID NORTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16; THENCE SOUTH 88° 57' WEST, ALONG THE SOUTH LINE OF THE SAID NORTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16, A DISTANCE OF 366.0 FEET; THENCE NORTH 00° 07' 30" WEST, PARALLEL WITH THE EAST LINE OF SAID SECTION 16, A DISTANCE OF 30.00 FEET TO THE TRUE POINT OF THIS DESCRIPTION; THENCE FROM SAID POINT, SOUTH 88° 57' WEST, PARALLEL WITH THE SAID SOUTH LINE OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16, A DISTANCE OF 107.31 FEET TO A POINT 32.00 FEET EAST OF THE SOUTHEAST CORNER OF LOT 1 OF TRACT NO. 1145, DEL MAR HOMESITES NO. 2, AS SHOWN ON THE MAP THEREOF RECORDED IN BOOK 15, PAGE 22 OF PLATS, FRESNO COUNTY RECORDS; THENCE NORTH 00° 07' WEST ALONG A LINE 32.00 FEET EAST OF AND PARALLEL WITH THE EAST LINE OF SAID TRACT NO. 1145, A DISTANCE OF 200.00 FEET; THENCE NORTH 88° 57' EAST, PARALLEL WITH THE SAID SOUTH LINE OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16, A DISTANCE OF 418.28 FEET; THENCE SOUTH 00° 07' 30" EAST, ALONG A LINE 55.00 FEET WEST OF AND PARALLEL WITH THE SAID EAST LINE OF SECTION 16, A DISTANCE OF 100.00 FEET; THENCE SOUTH 88° 57' WEST, PARALLEL WITH THE SAID SOUTH LINE OF THE NORTH HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 16, A DISTANCE OF 311.00 FEET; THENCE SOUTH 00° 07' 30" EAST, PARALLEL WITH THE SAID EAST LINE OF SECTION 16, A DISTANCE OF 100.00 FEET TO THE TRUE POINT OF BEGINNING.

EXHIBIT C
GRANT DEEDS

Recording Requested By:
Public Works Department
City of Fresno
No Fee-Gov't. Code Sections 6103 and
27383

When Recorded, Mail To:
Public Works Department
City of Fresno
2600 Fresno Street
Fresno, CA. 93721-3623
ATTN: Right-of-way Section

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN 426-253-17

PW2021-16161

GRANT DEED

For a valuable consideration, receipt of which is hereby acknowledged, Harry Miya and Nancy Miya, Co-Trustees of the Harry Miya & Nancy Miya Living Trust, dated May 19, 1992; Michael K. Miya, as Trustee of the Miya Family Revocable Trust of August 7, 2007; Melynda K. Miya, as Trustee of the Melynda K. Miya Revocable Trust of February 11, 2008; Mark K. Miya, as Trustee of the Mark K. Miya Revocable Trust of February 28, 2008; Douglas Kenneth Miyake (a/k/a Ken Miyake); Robert M. Mochizuki, M.D. and Susan M. Mochizuki, Co-Trustees of the Mochizuki Family Trust, dated November 20, 2000 and Robert M. Mochizuki, M.D. and Susan M. Mochizuki, Co-Trustees of the Mochizuki Family Trust, dated November 30, 2000; Gregory G. Miyake and Patricia S. Miyake, Co-Trustees of the Miyake Family Trust, dated February 6, 2009, GRANTORS, hereby GRANT to the City of Fresno, a municipal corporation, GRANTEE, all that real property situated in the City of Fresno, County of Fresno, State of California, more particularly described and shown as follows:

See Exhibits "A" and "B", which are attached and incorporated herein

Harry Miya and Nancy Miya, Co-Trustees of the Harry Miya & Nancy Miya Living Trust, dated May 19, 1992

By: _____
Harry Miya, Co-Trustee

Dated: _____

By: _____
Nancy Miya, Co-Trustee

Dated: _____

2021-204
15-A-10042
PLAT 1855
PC00240

SIGNATURE SHEET CONTINUED ON THE NEXT PAGE

SIGNATURE SHEET CONTINUED FROM THE LAST PAGE

Michael K. Miya, as Trustee of the Miya Family Revocable Trust of August 7, 2007

By: _____ Dated: _____
Michael K. Miya, Trustee

Melynda K. Miya, as Trustee of the Melynda K. Miya Revocable Trust of February 11, 2008

By: _____ Dated: _____
Melynda K. Miya, Trustee

Mark K. Miya, as Trustee of the Mark K. Miya Revocable Trust of February 28, 2008

By: _____ Dated: _____
Mark K. Miya, Trustee

By: _____ Dated: _____
Douglas Kenneth Miyake (a/k/a Ken Miyake)

SIGNATURE SHEET CONTINUED ON THE NEXT PAGE

SIGNATURE SHEET CONTINUED FROM THE LAST PAGE

Robert M. Mochizuki, M.D. and Susan M. Mochizuki, Co-Trustees of the Mochizuki Family Trust, dated November 20, 2000 and Robert M. Mochizuki, M.D. and Susan M. Mochizuki, Co-Trustees of the Mochizuki Family Trust, dated November 30, 2000

By: _____ Dated: _____
Robert M. Mochizuki, M.D., Co-Trustee

By: _____ Dated: _____
Susan M. Mochizuki, Co-Trustee

Gregory G. Miyake and Patricia S. Miyake, Co-Trustees of the Miyake Family Trust, dated February 6, 2009

By: _____ Dated: _____
Gregory G. Miyake, Co-Trustee

By: _____ Dated: _____
Patricia S. Miyake, Co-Trustee

EXHIBIT "A"

APN 426-253-17
Grant Deed

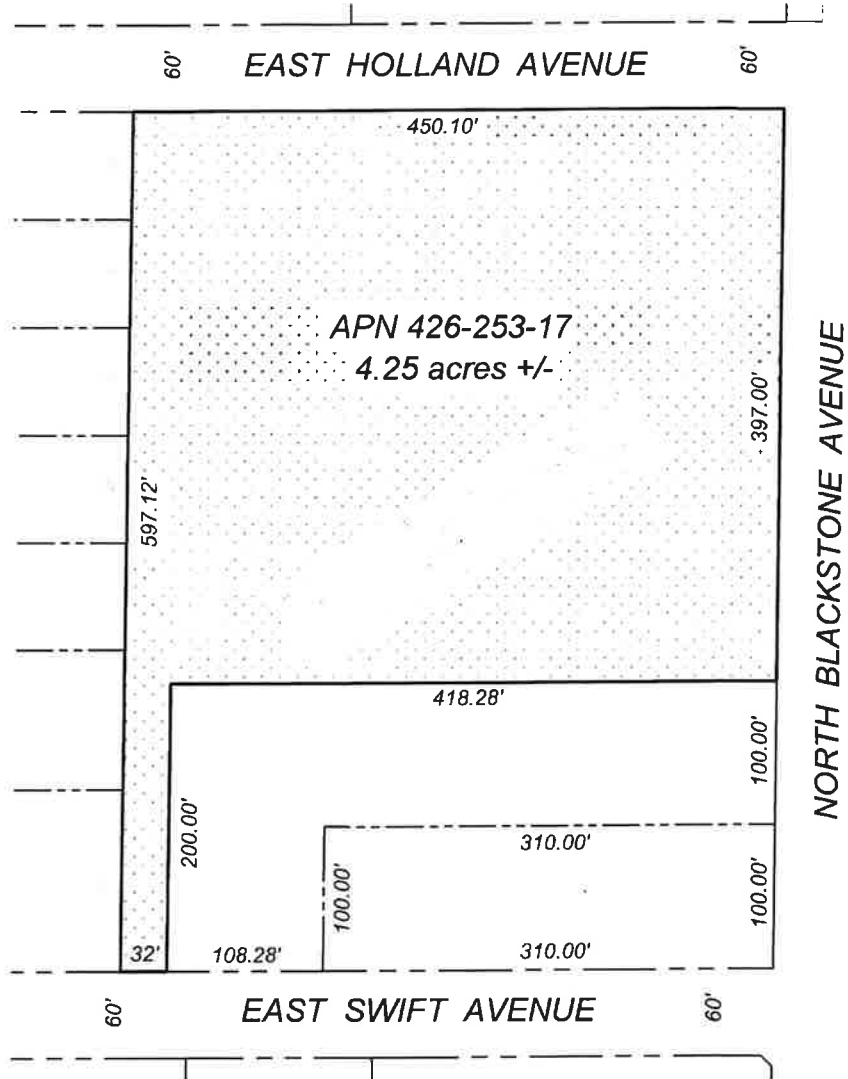
All that portion of the North half of the Southeast quarter of the Southeast quarter of Section 16, Township 13 South, Range 20 East, Mount Diablo Base and Meridian, in the City of Fresno, County of Fresno, State of California, according to the Official Plat thereof, described as follows:

BEGINNING at the Southeast quarter of Lot 1 of Tract No. 1145, Del Mar Homesites No. 2, recorded in Book 15 of Plats, at Page 22, Fresno County Records; thence North 0° 07' West, along the East line of said Tract No. 1145 and the northerly prolongation thereof, 627.12 feet to a point on the North line of the North half of the Southeast quarter of the Southeast quarter of said Section 16; thence North 88° 58' East, along said North line 450.10 feet to a point on a line 55.00 feet west of the East line of said Section 16; thence South 0° 07' 30" East, along said line parallel with the said East line of Section 16, 427.00 feet, more or less to a point on line 230.00 feet north of the South line of the North half of the Southeast quarter of the Southeast quarter of said Section 16; thence South 88° 57' West along said line parallel with the South line of the North half of the Southeast quarter of the Southeast quarter of said Section 16, 418.28 feet to a point on a line 32.00 feet east of the said East line of Tract No. 1145; thence South 0° 07' East, along said line parallel with the said East line of Tract No. 1145, 200.00 feet to a point on a line 30.00 feet north of the South line of the North half of the Southeast quarter of the Southeast quarter of said Section 16; thence South 88° 57' West, along said line, 32.00 feet to the **POINT OF BEGINNING**.

Containing an area of 4.25 acres, more or less.



EXHIBIT "B"



12-22-2021



INDICATES AREA BEING GRANTED IN FEE TO THE CITY OF FRESNO, CONTAINING AN AREA OF 4.25 ACRES ±

REF. & REV. 2021-204 15-A-10042 PLAT 1855	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS	PROJ ID <u>PC00240</u> RES TYPE <u>CTYSR</u> FUND NO <u>22702</u> ORG NO <u>179901</u>	SHEET NO. <u>1</u> OF <u>1</u> SHEETS
	AREA TO BE GRANT IN FEE TITLE TO THE CITY OF FRESNO	DR. BY <u>J.A.C</u> CH. BY <u>J.A.C</u> DATE <u>DEC. 22, 2021</u> SCALE <u>1" = 20'</u>	

CERTIFICATE OF ACCEPTANCE (Officer)

In accordance with Section 27281 of the Government Code, this is to certify that the interest in real property conveyed hereby is accepted by the undersigned officers on behalf of the Council of the City of Fresno pursuant to authority conferred by Resolution No. 92-219A of said Council, adopted June 9, 1992 and the grantee consents to the recordation thereof by its duly authorized officer.

Public Works Director
ACCEPTED:

By _____ Date _____
Andrew Benelli, Deputy

CERTIFICATE OF ACCEPTANCE (Council)

~~In accordance with Section 27281 of the Government Code, this is to certify that the interest in real property conveyed by this instrument to the City of Fresno, a municipal corporation, is hereby accepted by order of the Council of the City of Fresno made on the date hereafter set forth and the grantee consents to the recordation thereof by its duly authorized officer.~~

Item No./Reso. No. _____

Date of Council Order: _____

City Clerk

By _____ Date _____
DEPUTY

APPROVED AS TO FORM:
City Attorney

By _____ Date _____
DEPUTY

RECOMMENDED FOR ACCEPTANCE:

By: Jeff Bada
Title: Engineer II
Date: 12-22-2021
Log No. 2021-204 Drawing No. 15-A-10042

CHECKED:

By: [Signature]
Title: Chief Land Surveyor
Date: 12-22-2021

Recording Requested By:
Public Works Department
City of Fresno
No Fee-Gov't. Code Sections 6103 and
27383

When Recorded, Mail To:
Public Works Department
City of Fresno
2600 Fresno Street
Fresno, CA. 93721-3623
ATTN: Right-of-way Section

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN 426-253-19

PW2021-16162

GRANT DEED

For a valuable consideration, receipt of which is hereby acknowledged, Robert M. Mochizuki, M.D. and Susan M. Mochizuki, Co-Trustees of the Mochizuki Family Trust, dated November 20, 2000; Gregory G. Miyake and Patricia S. Miyake, Co-Trustees of the Miyake Family Trust, dated February 6, 2009; and Douglas Kenneth Miyake (a/k/a Ken Miyake), GRANTORS, hereby GRANT to the City of Fresno, a municipal corporation, GRANTEE, all that real property situated in the City of Fresno, County of Fresno, State of California, more particularly described and shown as follows:

See Exhibits "A" and "B", which are attached and incorporated herein

Robert M. Mochizuki, M.D. and Susan M. Mochizuki, Co-Trustees of the Mochizuki Family Trust, dated November 20, 2000;

By: _____
Robert M. Mochizuki, M.D., Co-Trustee

Dated: _____

By: _____
Susan M. Mochizuki, Co-Trustee

Dated: _____

2021-205
15-A-10043
PLAT 1855
PC00240

SIGNATURE SHEET CONTINUED ON THE NEXT PAGE

SIGNATURE SHEET CONTINUED FROM THE LAST PAGE

Gregory G. Miyake and Patricia S. Miyake, Co-Trustees of the Miyake Family Trust, dated February 6, 2009;

By: _____
Gregory G. Miyake, Co-Trustee

Dated: _____

By: _____
Patricia S. Miyake, Co-Trustee

Dated: _____

By: _____
Douglas Kenneth Miyake (a/k/a Ken Miyake)

Dated: _____

EXHIBIT "A"

APN 426-253-19
Grant Deed

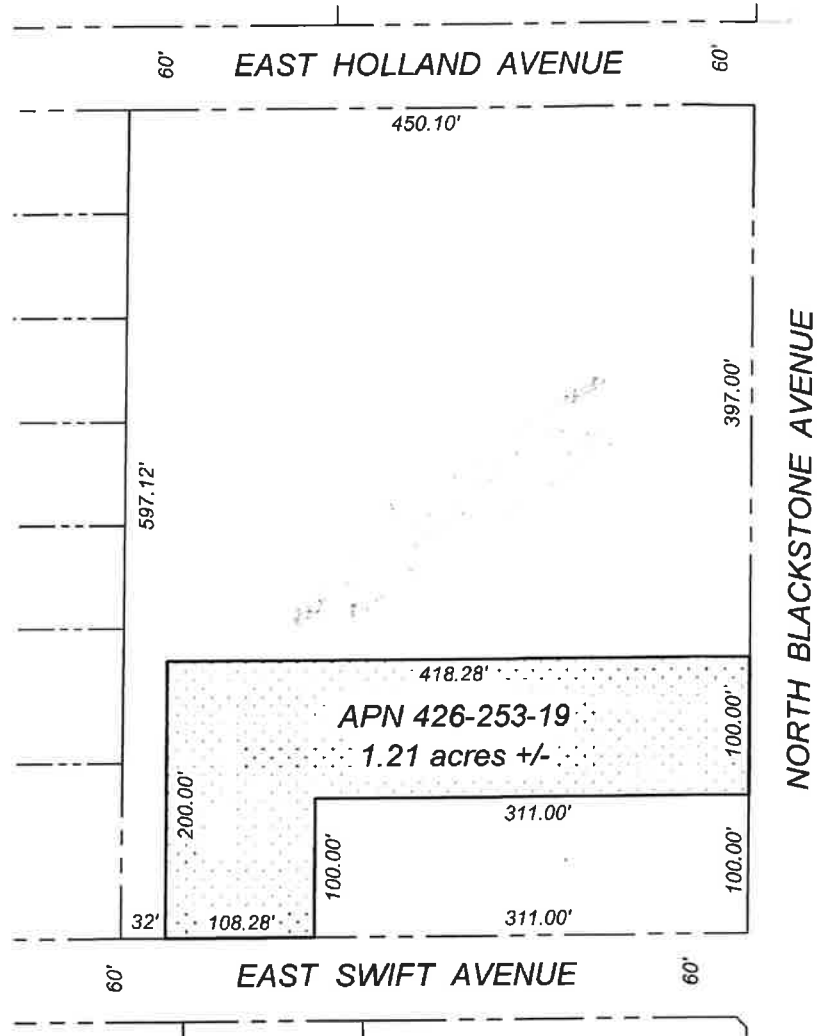
All that portion of the North half of the Southeast quarter of the Southeast quarter of Section 16, Township 13 South, Range 20 East, Mount Diablo Base and Meridian, in the City of Fresno, County of Fresno, State of California, according to the Official Plat thereof, described as follows:

COMMENCING at the Southeast corner of the said North half of the Southeast quarter of the Southeast quarter of Section 16; thence South $88^{\circ} 57'$ West, along the South line of the said North half of the Southeast quarter of the Southeast quarter of Section 16, a distance of 366.0 feet; thence North $00^{\circ} 07' 30''$ West, parallel with the East line of said Section 16, a distance of 30.00 feet to the **TRUE POINT OF BEGINNING** this description; thence from said point, South $88^{\circ} 57'$ West, parallel with the said South line of the North half of the Southeast quarter of the Southeast quarter of Section 16, a distance of 107.31 feet to a point 32.00 feet east of the Southeast corner of Lot 1 of Tract No. 1145, Del Mar Homesites No. 2, as shown on the map thereof recorded in Book 15, of Plats, at Page 22, Fresno County Records; thence North $00^{\circ} 07'$ West along a line 32.00 feet east of and parallel with the East line of said Tract No. 1145, a distance of 200.00 feet; thence North $88^{\circ} 57'$ East, parallel with the said South line of the North half of the Southeast quarter of the Southeast quarter of Section 16, a distance of 418.28 feet; thence South $00^{\circ} 07' 30''$ East, along a line 55.00 feet west of and parallel with the said East line of Section 16, a distance of 100.00 feet; thence South $88^{\circ} 57'$ West, parallel with the said South line of the North half of the Southeast quarter of the Southeast quarter of Section 16, a distance of 311.00 feet; thence South $00^{\circ} 07' 30''$ East, parallel with the said East line of Section 16, a distance of 100.00 feet to the **TRUE POINT OF BEGINNING**.

Containing an area of 1.21 acres, more or less.



EXHIBIT "B"



12-22-2021



INDICATES AREA BEING GRANTED IN FEE TO THE CITY OF FRESNO, CONTAINING AN AREA OF 1.21 ACRES ±

REF. & REV. 2021-205 15-A-10043 PLAT 1855	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS AREA TO BE GRANT IN FEE TITLE TO THE CITY OF FRESNO	PROJ. ID. PC00240	RES TYPE CTYSR
		FUND NO. 22702	
		ORG NO. 179901	
		DR. BY JAC	SHEET NO. 1
		CH. BY JAC	OF 1 SHEETS
		DATE DEC 22, 2021	
		SCALE 1" = 20'	

CERTIFICATE OF ACCEPTANCE (Officer)

In accordance with Section 27281 of the Government Code, this is to certify that the interest in real property conveyed hereby is accepted by the undersigned officers on behalf of the Council of the City of Fresno pursuant to authority conferred by Resolution No. 92-219A of said Council, adopted June 9, 1992 and the grantee consents to the recordation thereof by its duly authorized officer.

Public Works Director
ACCEPTED:

By _____ Date: _____
Andrew Benelli, Deputy

CERTIFICATE OF ACCEPTANCE (Council)

~~In accordance with Section 27281 of the Government Code, this is to certify that the interest in real property conveyed by this instrument to the City of Fresno, a municipal corporation, is hereby accepted by order of the Council of the City of Fresno made on the date hereafter set forth and the grantee consents to the recordation thereof by its duly authorized officer.~~

Item No./Reso. No. _____

Date of Council Order: _____

City Clerk

By _____ Date: _____
DEPUTY

APPROVED AS TO FORM:
City Attorney

By _____ Date: _____
DEPUTY

RECOMMENDED FOR ACCEPTANCE:

By: J. Benelli
Title Engineer II
Date 12-22-2021
Log No. 2021- 205 Drawing No. 15-A- 10043

CHECKED:

By: [Signature]
Title Chief Land Surveyor
Date 12-22-2021

EXHIBIT “C”

LEASES

Tenant	Premises	Square Footage
Grand Auto, Inc. (O'Reilly)	4323 N. Blackstone	Approximately 9,793
San Joaquin Veterinary	4333 N. Blackstone	Approximately 2,736
Camp Transformation Center	4323B N. Blackstone	Approximately 5,700
Central Sierra Insurance Services	4327 N. Blackstone	Approximately 1,077

EXHIBIT "D"

ASSIGNMENT OF LEASES

THIS ASSIGNMENT OF LEASES ("Assignment") is made this ____ day of _____, 2022 ("Assignment Date") by and between _____, a
_____, ("Assignor"), and _____, a
_____, ("Assignee").

WITNESSETH:

A. Assignor and Assignee entered into that certain Agreement for Purchase and Sale and Escrow Instructions, dated as of _____, 2022 ("Agreement"), respecting the sale of the Subject Property. Capitalized terms used herein and not separately defined have the meanings ascribed to them in the Agreement.

B. Under the Agreement, Assignor is obligated to assign to Assignee all of Assignor's right, title and interest in and to the Leases and security deposits paid by tenants ("Tenants") under the Leases to Assignor ("Deposits").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. Effective as of the Assignment Date, Assignor hereby assigns, sells, transfers, sets over and delivers unto Assignee all of Assignor's estate, right, title and interest in and to the Leases and the Deposits and Assignee hereby accepts such assignment. Notwithstanding the foregoing or anything to the contrary contained herein, Assignor shall retain all rights, title and interest in and to all rentals and other amounts payable by Tenants, and other rights and claims against any parties, under the Leases for the period of time prior to the Assignment Date.

2. Assignor hereby covenants that Assignor will, at any time and from time to time upon written request therefor, execute and deliver to Assignee, Assignee's successors, nominees or assigns, such documents as Assignee or they may reasonably request in order to fully assign and transfer to and vest in Assignee or Assignee's successors, nominees and assigns the Leases and the Deposits.

3. Assignee hereby assumes the performance of all of the terms, covenants and conditions imposed upon Assignor as landlord under the Leases accruing or arising on or after the Assignment Date.

4. In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other party arising out of this Assignment, then in that event the prevailing party shall be entitled to have and recover of and from the other party all costs and expenses of the action or suit, including reasonable attorneys' fees.

5. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

6. This Assignment shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of all the respective parties hereto.

7. This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California, without regard to conflict in laws.

8. Nothing herein shall be deemed or construed as relieving the Assignor or Assignee of their respective duties or obligations under the Purchase Agreement. In addition, notwithstanding anything to the contrary contained in this Assignment, it is expressly understood and agreed by the parties thereto that any liability of Assignor hereunder shall be limited as set forth in Paragraph 18(c) of the Purchase Agreement.

[Signature page follows]

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered this Assignment as of the day and year first written above.

“Assignor”

By:
Name:
Title:

“Assignee”

By:
Name:
Title:

[EXHIBIT ONLY – DO NOT SIGN]

EXHIBIT "E"

GENERAL ASSIGNMENT

This General Assignment is made as of the ____ day of _____, 2022 ("Assignment Date"), by _____, a _____ (the "Assignor"), and _____, a _____ (the Assignee").

Pursuant to that certain Agreement for Purchase and Sale and Escrow Instructions dated as of _____, 2022 (the "**Purchase Agreement**"), Assignee has this day acquired from Assignor the Subject Property. Capitalized terms used herein shall have the meanings ascribed to them in the Purchase Agreement.

In consideration of the acquisition of the Subject Property by Assignee and other good and valuable consideration, the mutual receipt and legal sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment. Assignor hereby assigns, transfers and sets over unto Assignee, without representation or warranty of any kind, and Assignee hereby accepts from Assignor, any and all of Assignor's right, title and interest in and to (i) the contracts and agreements related to the Subject Property that are set forth in Schedule 1 attached hereto and made part hereof (the "**Contracts**"); (ii) all freely transferable warranties and guaranties (the "**Warranties and Guaranties**"), if any, with respect to the Subject Property and (ii) all freely transferable consents, authorizations, variances or waivers, licenses, permits and approvals ("**Approvals**") from any governmental or quasi-governmental agency, department, board, commission, bureau or other entity or instrumentality of any nature relating solely to the Subject Property; provided, however, such transfer, assignment and sale shall not include any rights or claims arising prior to the Assignment Date which Assignor may have against any person with respect to the Contracts, the Warranties and Guaranties and the Approvals.

2. Dispute Costs. In the event of any dispute between Assignor and Assignee arising out of the obligations of the parties under this Assignment or concerning the meaning or interpretation of any provision contained herein, the losing party shall pay the prevailing party's costs and expenses of such dispute, including, without limitation, reasonable attorneys' fees and costs. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor under this Assignment shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this Assignment and to survive and not be merged into any such judgment.

3. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original, and all of which taken together shall be deemed one document.

4. Survival. This Assignment and the provisions hereof shall inure to the benefit of and be binding upon the parties to this Assignment and their respective successors, heirs and permitted assigns.

5. No Third-Party Beneficiaries. Except as otherwise expressly set forth herein, Assignor and Assignee do not intend, and this Assignment shall not be construed, to create a third-party beneficiary status or interest in, nor give any third-party beneficiary rights or remedies to, any other person or entity not a party to this Assignment.

6. Governing Law. This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of California, without regard to conflict in laws.

7. Liability; Survival. Nothing herein shall be deemed or construed as relieving the Assignor or Assignee of their respective duties or obligations under the Purchase Agreement. In addition, notwithstanding anything to the contrary contained in this Assignment, it is expressly understood and agreed by the parties thereto that any liability of Assignor hereunder shall be limited as set forth in Paragraph 18(c) of the Purchase Agreement.

[Signature page follows]

IN WITNESS WHEREOF, Assignor and Assignee have caused this instrument to be executed as of the date above-written.

“ASSIGNOR”

a

By:
Name:
Title:

“ASSIGNEE”

a

By:
Name:
Title:

[EXHIBIT ONLY – DO NOT SIGN]

Changes Made:

EXHIBIT "G"

LIST OF VENDORS AND UTILITIES

None, all vendors are currently month-to-month based on invoices. The month-to-month vendors include:

PROPERTY 1

- 1) PG&E
- 2) Matson Alarm
581 W. Fallbrook Ave., Ste 100
Fresno, Calif 93711
- 3) Geil Enterprises / CIS Security
1945 N Helm Ave, Ste 102
Fresno, Calif 93727
- 4) ~~California Turf~~ > Changed to: Manuel Garcia Landscaping
 ~~9287 N Fowler Ave~~ 8426 E Hedges Ave
 ~~Clovis, Calif 93619~~ Fresno, Ca 93737
- 5) A.T. Cleanup (as needed)
1515 E. Jensen Ave. #201
Fresno, Calif 93706
- 6) City of Fresno Utilities
Utilities Billing & Collection Division
2600 Fresno St.
Fresno, Calif 93721
- 7) George Rivera - Parking Lot Trash Removal
6704 East Olive Ave
Fresno, Cal 93727

PROPERTY 2

O'reilly Center Only:

Commercial Cleaning Systems - CCS https://ccsbts.com/fresno/ info@ccsbts.com 559-348-1090	\$220/month	Parking lot Sweeping Windows General Cleanup
Republic Services https://www.republicservices.com/ 559-275-1551	\$104/month > \$162/Month	Trash
George Rivera 6704 East Olive Fresno, California 93727 559-709-5817	\$250/month	Landscaping
City of Fresno	\$6.40/month > \$7.12/Month	Utilities
Lees Air	\$200/Quarterly Service	HVAC

SCHEDULE 1

OWNER 1 PARTIES

<u>Property 1 Co-Owners</u>
Robert M. Mochizuki, M.D. and Susan M. Mochizuki, Co-Trustees of The Mochizuki Family Trust, Dated November 20, 2000
Gregory G. Miyake and Patricia S. Miyake, Co-Trustees of The Miyake Family Trust, dated February 6, 2009
Kenneth (Douglas) Miyake, as his sole and separate property
Harry Miya and Nancy Miya, Trustees of the Harry Miya and Nancy Miya Family Revocable Trust of May 19, 1992
Michael K. Miya, Trustee of the Miya Family Revocable Trust dated August 7, 2007
Melynda K. Miya, Trustee of the Melynda K. Miya Revocable Trust dated February 11, 2008
Mark K. Miya, Trustee of the Mark K. Miya Revocable Trust dated February 28, 2008

SCHEDULE 2

OWNER 2 PARTIES

<u>Property 2 Co-Owners</u>
Robert M. Mochizuki, M.D. and Susan M. Mochizuki, Co-Trustees of The Mochizuki Family Trust, Dated November 20, 2000
Gregory G. Miyake and Patricia S. Miyake, Co-Trustees of The Miyake Family Trust, dated February 6, 2009
Kenneth (Douglas) Miyake, as his sole and separate property