

**AGREEMENT FOR RENTAL OF PROPERTY FOR A  
TEMPORARY CONSTRUCTION EASEMENT**

**Friant-Kern Raw Water Pipeline Project  
WC00038**

LILLI HEROLD AND LINDA E. CHENEY, AS TRUSTEES OF THE "LILLI HEROLD LIVING TRUST" DATED DECEMBER 18, 1997, FOR THE BENEFIT OF LILLI HEROLD DURING HER LIFETIME AND FOR OTHERS AFTER HER DEATH, hereinafter called the "Owner," without regard to number or gender, hereby agrees to rent to the CITY OF FRESNO, a municipal corporation, hereinafter called the "City," the right to use the hereinafter described property for a Temporary Construction Easement ("TCE") under the following terms and conditions:

1. The real property which is the subject of this Agreement is situated in the County of Fresno, State of California and may hereinafter for convenience be referred to as the "subject property," being a TCE within a portion of Assessor's Parcel Number 581-020-05, and which is more particularly described and depicted as:

Exhibits "A" and "B" for a Temporary Construction Easement attached hereto, and by reference made a part hereof.

2. The City shall pay to Owner Sixteen Thousand Four Hundred and Twenty-Five dollars (\$16,425) per year, or any portion thereof, as rent for a temporary construction easement ("TCE Rent"), subject to monthly proration as needed, for the duration of the City's use of the TCE. The first year of TCE Rent will be paid in advance and received by Owner within thirty (30) days of the City's issuance of the Notice to Proceed. If more than one year of TCE rental is required, the remainder of the TCE Rent due to Owner will be paid upon completion of the project, prorated, per the conditions set forth above.

3. It is understood and agreed by and between the parties hereto that the TCE granted to the City in this transaction is for the purpose of allowing the City or its authorized Contractor to enter upon the property of Owner, where necessary, within the TCE area, and to use equipment and materials thereon. Said easement imposes upon the City the obligation to exercise such rights where required by the construction project and to leave Owner's remaining property in like condition as found, or better. The City's rental of the TCE shall commence upon issuance of a Notice to Proceed to the City's contractor to start construction, and shall terminate when the City provides written notice to Owner that the use of the TCE is no longer necessary.

4. It is agreed and confirmed by the City and the Owner that notwithstanding other provisions in this Agreement, the right of entry and use of property for the TCE by the City, shall commence upon the City's issuance of the Notice to Proceed. The TCE Rent includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date. The terms for payment of TCE Rent are set forth in Paragraph 2, above.

5. Owner represents and warrants that they have the authority to accept the offer herein made, and that they hold fee title to said real property and may convey use of the subject property.

6. Miscellaneous Provisions:

a. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provision of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

b. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement any rights and duties hereunder shall be in Fresno, California.

c. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

d. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability or any one provision in this Agreement shall not affect the other provisions.

e. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

f. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

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

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

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

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

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

8. City Contractor shall be aware that there is existing water well within the easement area and shall protect the well from damage. Contractor shall repair or replace any damage to the well incurred during construction, to its preconstruction condition or better.

9. Environmental Indemnity. The Owner has not stored, discharged or abandoned any hazardous substances, as such term is defined by federal or state law, on, in, or under the easement area, and to the best of the Owner's knowledge, there are no hazardous substances on, in or under said easement area. Owner shall indemnify, hold harmless, and defend the Renter, its officers, agents, employees, and volunteers from any liability, loss, fines, penalties, forfeitures, claims, expenses, and costs, whether incurred by the Owner, Renter, or any other third party, arising directly or indirectly from the release, presence or disposal of any hazardous substances or materials (as now or hereafter defined in any law, regulation, or rule) in, on, or about the Property on or before work is completed. 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. Costs or losses covered will include, without limitation, consultants, engineering, investigator fees, clean up or disposal costs and attorneys' fees, and damages. Upon written notice from the Renter, the Owner, at Owner's sole cost and expense, shall immediately assume the defense of any claims, suit or action brought against the City by any public body, individual, partnership, corporation or other legal entity, relating to any matter covered by this paragraph.

10. Owner Indemnification. City shall indemnify, defend and hold the Owner, Owner's heirs, assigns and successors in interest harmless from any and all costs, liabilities, damages, losses, claims, actions, or proceedings whatsoever, including, without limitation, for injury to persons (including death) which may be claimed to have arisen out of (i) any damage, accident, injury, or other similar occurrences in the Easement Area due to City's negligence or misconduct; or (ii) the negligent use, maintenance, or repair of the Easement Area by City, its guests, invitees, agents, or contractors. It is expressly understood and agreed that, notwithstanding anything in this Agreement to the contrary, the liability of Owner, to the extent any exists, shall be limited solely and exclusively to the interest of Owner, Owner's heirs, assigns and successors in interest in and to the Owner Property. Owner agrees that this Agreement shall in no way act to abrogate or waive any immunity available to City under the Tort Claims Act of the State of California.


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


**Signature Page**

IN WITNESS WHEREOF the Owner and Renter have signed this Agreement on the dates and in the year set forth below.

RECOMMENDED FOR APPROVAL

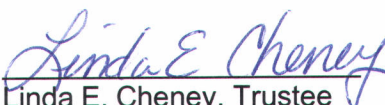
OWNER, "LILLI HEROLD LIVING TRUST"  
DATED DECEMBER 18, 1997

BY   
Michael Carbajal  
Chief Engineering Technician  
City of Fresno-DPU-Water Division

  
Lilli Herold, Trustee

Date 4-30-2015

Date 5-22-15

  
Linda E. Cheney, Trustee

Date 4-30-15

BUYER:  
CITY OF FRESNO:  
a municipal corporation

Address of Owner:

BY \_\_\_\_\_  
Thomas C. Esqueda  
Director, Department of Public Utilities

912 E. Green Acres Drive  
Fresno, CA 93720

Date \_\_\_\_\_

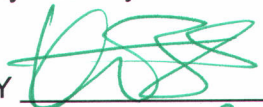
Address of City:

City of Fresno  
Water Division  
1910 E. University Avenue  
Fresno, CA 93703-2927

ATTEST:  
Yvonne Spence, CMC  
City Clerk

APPROVED AS TO FORM:  
Douglas T. Sloan  
City Attorney

BY \_\_\_\_\_  
Deputy

BY   
Deputy DOERR

Attachments:  
Exhibit A: Legal Description – Temporary Easement  
Exhibit B: Temporary Easement Depiction  
Exhibit C: Litigation Guarantee

EXHIBIT "A"

Page 1 of 1

APN: 581-020-05 (Portion)  
Construction Easement

A portion of Lot 52 of Tract No. 2137 "Appaloosa Acres", recorded in Volume 23 of Plats, at Pages 66-67, Fresno County Records, situated in the northwest quarter of Section 4, Township 12 South, Range 21 East, Mount Diablo Base and Meridian, situate in the County of Fresno, State of California, according to the official United States Government Township Plat thereof, being more particularly described as follows:

An easement for construction purposes more particularly described as follows:

The northerly 150.00 feet of said Lot 52.

Containing an area of 2.19 acres, more or less.

END OF DESCRIPTION



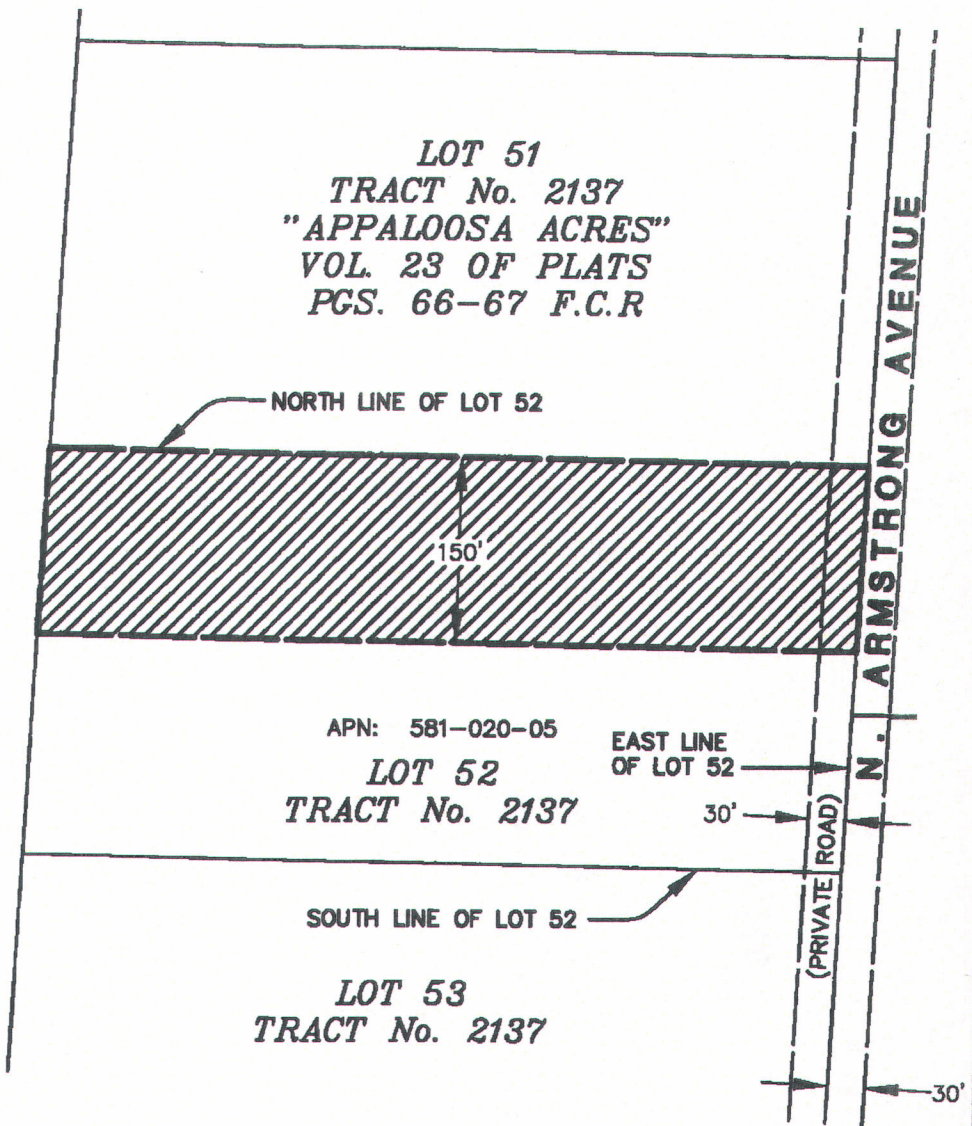
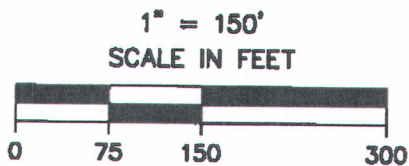
Date  
Signed 2/17/14

2010-115T  
15-A-8787T  
WJ NO. 5354

# EXHIBIT "B"



DATE SIGNED: 2/7/14



## LEGEND

 AREA FOR TEMPORARY CONSTRUCTION PURPOSES (2.19 ACRES)



JOB NO. 15810702  
DATE NO.   
200 WEST BROADWAY AVENUE  
FRESNO, CALIFORNIA 93701-2000  
559/485-2222 FAX 559/485-2770  
www.ppsps.com

|                          |  |                          |                    |
|--------------------------|--|--------------------------|--------------------|
| REF. & REV.<br>2010-115T | CITY OF FRESNO<br>DEPARTMENT OF PUBLIC WORKS   | PROJ. ID. <u>WC00038</u> | SHEET NO. <u>1</u> |
|                          |  | FUND NO. <u>40118</u>    |                    |
| PLAT NO. 0002<br>WJ 5354 | PORTION of<br>SEC. 4, T.12 S., R.21 E., M.D.B. & M.<br>for TEMPORARY CONSTRUCTION PURPOSES | ORG. NO. <u>411501</u>   | 15-A-8787T         |
|                          |  | DR. BY <u>BMG</u>        |                    |
|                          |  | CH. BY <u>MDH</u>        |                    |
|                          |  | DATE <u>02/06/14</u>     |                    |

# CLTA LITIGATION

Issued By:



CHICAGO TITLE INSURANCE COMPANY

Guarantee Number:

**FWFM-TO14000368**

SUBJECT TO THE LIMITATIONS CONTAINED HEREIN, THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE.

## CHICAGO TITLE INSURANCE COMPANY

a corporation, herein called the Company

### GUARANTEES

the Assured named in Schedule A against loss not exceeding the liability amount stated in Schedule A which the Assured shall sustain by reason of any incorrectness in the assurance which the Company hereby gives that, according to the public records, as of Date of Guarantee shown in Schedule A:

1. The title to the herein described estate or interest is vested in the vestee named in Schedule A.
2. Except for the matters shown in Schedule B, there are no defects, liens, encumbrances or other matters affecting title to the estate or interest in the land shown in Schedule A, which matters are not necessarily shown in the order of their priority.
3. a) the current interest holders claiming some right, title or interest by reason of the matters shown in Part II of Schedule B are as shown therein. The vestee named in Schedule A and parties claiming to have some right, title or interest by reason of the matters shown in Part II of Schedule B may be necessary parties defendant in an action, the nature of which is referred to in Schedule A.  
b) the current interest holders claiming some right, title or interest by reason of the matters shown in Part I of Schedule B may also be necessary parties defendant in an action, the nature of which is referred to in Schedule A. However, no assurance is given hereby as to those current interest holders.
4. The return address for mailing after recording, if any, as shown on each and every document referred to in Part II of Schedule B by specific recording information, and as shown on the document(s) vesting title as shown in Schedule A are as shown in Schedule C.

THIS LITIGATION GUARANTEE IS FURNISHED SOLELY FOR THE PURPOSE OF FACILITATING THE FILING OF THE ACTION REFERRED TO IN SCHEDULE A. IT SHALL NOT BE USED OR RELIED UPON FOR ANY OTHER PURPOSE.

IN WITNESS WHEREOF, CHICAGO TITLE INSURANCE COMPANY has caused this Guarantee to be signed and sealed by its duly authorized officers.

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

Countersigned By:

Authorized Officer or Agent



Chicago Title Insurance Company

By:

President

Attest:

Secretary

## ISSUING OFFICE:

Title Officer: Laura Marquez  
 Chicago Title Company  
 2540 W. Shaw Lane, Suite 112  
 Fresno, CA 93711  
 Phone: (559)492-4217 Fax: (559)488-8530  
 Main Phone: (559)492-4208  
 Email: lmarquez@fnf.com

**SCHEDULE A**

| LIABILITY   | FEE      | TITLE OFFICER |
|-------------|----------|---------------|
| \$50,000.00 | \$500.00 | Laura Marquez |

1. NAME OF ASSURED: City of Fresno
2. DATE OF GUARANTEE: June 10, 2014 at 08:00AM
3. THIS LITIGATION GUARANTEE IS FURNISHED SOLELY FOR THE PURPOSE OF FACILITATING THE FILING OF AN ACTION TO:
 

Eminent Domain
4. THE ESTATE OR INTEREST IN THE LAND WHICH IS COVERED BY THIS GUARANTEE IS:
 

A Fee, as to Parcel 1  
An Easement, as to Parcel 2
5. TITLE TO THE ESTATE OR INTEREST IN THE LAND IS VESTED IN:
 

LILLI HEROLD and LINDA E. CHENEY, as Trustees of the "LILLI HEROLD LIVING TRUST," under Agreement dated December 18, 1997, for the benefit of Lilli Herold during her lifetime and for others after her death.
6. THE LAND REFERRED TO IN THIS GUARANTEE IS DESCRIBED AS FOLLOWS:
 

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

**END OF SCHEDULE A**



**EXHIBIT "A"**  
Legal Description

**For APN/Parcel ID(s): 581-020-05s**

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

Parcel 1:

Lot 52 of Tract No. 2137, Appaloosa Acres, in the County of Fresno, State of California, according to the Map thereof recorded July 27, 1967 in Book 23, Pages 66 and 67 of Plats, Fresno County Records.

Excepting from said Lot, an undivided ½ interest in all oil, gas and/or minerals in and under said lands, as reserved in the Deed from California Land, Inc., a Corporation, recorded February 20, 1937, in Book 1550, Page 171 of Official Records, by Quitclaim Deed dated May 26, 1967 and recorded June 21, 1967 in Book 5451, Page 664 of Official Records, the surface and up to 500 feet immediately below such surface of said land was relinquished by Bank of America National Trust and Savings Association successor in interest to California Lands, Inc., to the owners of Record.

Parcel 2:

Easements for road purposes and public utilities over those portions of Tract No. 2137, Appaloosa Acres, in the County of Fresno, State of California, as per Map thereof recorded July 27, 1967, in Book 23, Pages 66 and 67 of Plats, in the Office of County Recorder of said County, designated on said Map as "Private Access Easements offered for Dedication for Street Purposes and Public Utility Easements".

## SCHEDULE B

## PART I

Defects, liens, encumbrances or other matters affecting title:

1. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2014-2015.
2. Property taxes, including any personal property taxes and any assessments collected with taxes are as follows:

Code Area: 076-071  
Tax Identification No.: 581-020-05  
Fiscal Year: 2013-2014  
1st Installment: \$242.52 Paid  
2nd Installment: \$242.52 Paid  
Exemption: \$0.00  
Land: \$38,440.00  
Improvements: \$2,789.00  
Personal Property \$0.00

Prior to close of escrow, please contact the Tax Collector's Office to confirm all amounts owing, including current fiscal year taxes, supplemental taxes, escaped assessments and any delinquencies.

3. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A or as a result of changes in ownership or new construction occurring prior to Date of Policy.
4. The herein described property lies within the boundaries of the Fresno Metropolitan Flood Control District and may be subject to assessment for drainage fees and/or requirements to construct planned local drainage facilities

Disclosed by: FMFCD Resolution No. 1816  
Recording Date: July 31, 1995  
Recording No.: 95092128, of Official Records

No assessments have been levied at this time.

5. Easement(s) for the purpose(s) shown below and rights incidental thereto as delineated or as offered for dedication, on the map of said tract/plat;

Purpose: Drainage Easement  
Affects: A strip 20 feet wide  
Recorded.: July 27, 1967, in Book 23, Pages 66 and 67, of Plats

Purpose: Street purposes and public utilities  
Affects: The East 30 feet

**SCHEDULE B**

(continued)

6. Covenants, conditions and restrictions but omitting any covenants or restrictions, if any, including but not limited to those based upon race, color, religion, sex, sexual orientation, familial status, marital status, disability, handicap, national origin, ancestry, source of income, gender, gender identity, gender expression, medical condition or genetic information, as set forth in applicable state or federal laws, except to the extent that said covenant or restriction is permitted by applicable law, as set forth in the document

Recording Date: July 28, 1967

Recording No.: 50635, in Book 5464, Page 202, of Official Records

Said covenants, conditions and restrictions provide that a violation thereof shall not defeat the lien of any mortgage or deed of trust made in good faith and for value.

7. Easement(s) for the purpose(s) shown below and rights incidental thereto as reserved in a document;

Reserved by: Transamerica Title Insurance Company, a corporation

Purpose: Street purposes and public utilities

Recording Date: October 16, 1968

Recording No.: 74094, in Book 5626, Page 529, of Official Records

Affects: The East 30 feet and as shown on said Tract Map

8. Easement(s) for the purpose(s) shown below and rights incidental thereto as reserved in a document;

Reserved by: Transamerica Title Insurance Company, a corporation

Purpose: Bridle path

Recording Date: October 16, 1968

Recording No.: 74094, in Book 5626, Page 529, of Official Records

Affects: The West 20 feet

9. Please be advised that our search did not disclose any open Deeds of Trust of record. If you should have knowledge of any outstanding obligation, please contact the Title Department immediately for further review prior to closing.

10. Any invalidity or defect in the title of the vestees in the event that the trust referred to herein is invalid or fails to grant sufficient powers to the trustee(s) or in the event there is a lack of compliance with the terms and provisions of the trust instrument.

If title is to be insured in the trustee(s) of a trust, (or if their act is to be insured), this Company will require a Trust Certification pursuant to California Probate Code Section 18100.5.

The Company reserves the right to add additional items or make further requirements after review of the requested documentation.

**END OF SCHEDULE B - PART I**

**SCHEDULE B**

**PART II**

NONE

**END OF SCHEDULE B - PART II**

**SCHEDULE C**

**ADDRESSES**

Vested Owner:

Lilli Herold, Trustee  
Linda E. Cheney, Trustee  
Lilli Herold Living Trust  
1215 W. Terrace Ave.  
Fresno, CA 93705

Lilli Herold, Trustee  
Linda E. Cheney, Trustee  
Lilli Herold Living Trust  
912 E. Green Acres Dr  
Fresno CA 93705

Lilli Herold, Trustee  
Linda E. Cheney, Trustee  
Lilli Herold Living Trust  
C/O Bruce D. Bickel, Esq.  
470 E. Herndon Ave., Suite 203  
Fresno CA 93720-2929

**END OF SCHEDULE C**

**SCHEDULE OF EXCLUSIONS FROM COVERAGE OF THIS GUARANTEE**

1. Except to the extent that specific assurances are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
  - (a) Defects, liens, encumbrances, adverse claims or other matters against the title, whether or not shown by the public records.
  - (b) (1) Taxes or assessments of any taxing authority that levies taxes or assessments on real property; or (2) Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not the matters excluded under (1) or (2) are shown by the records of the taxing authority or by the public records.
  - (c) (1) Unpatented mining claims; (2) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (3) water rights, claims or title to water, whether or not the matters excluded under (1), (2) or (3) are shown by the public records.
2. Notwithstanding any specific assurances which are provided in Schedule A of this Guarantee, the Company assumes no liability for loss or damage by reason of the following:
  - (a) Defects, liens, encumbrances, adverse claims or other matters affecting the title to any property beyond the lines of the land expressly described in the description set forth in Schedule (A), (C) or in Part 2 of this Guarantee, or title to streets, roads, avenues, lanes, ways or waterways to which such land abuts, or the right to maintain therein vaults, tunnels, ramps or any structure or improvements; or any rights or easements therein, unless such property, rights or easements are expressly and specifically set forth in said description.
  - (b) Defects, liens, encumbrances, adverse claims or other matters, whether or not shown by the public records; (1) which are created, suffered, assumed or agreed to by one or more of the Assureds; (2) which result in no loss to the Assured; or (3) which do not result in the invalidity or potential invalidity of any judicial or non-judicial proceeding which is within the scope and purpose of the assurances provided.
  - (c) The identity of any party shown or referred to in Schedule A.
  - (d) The validity, legal effect or priority of any matter shown or referred to in this Guarantee.

**GUARANTEE CONDITIONS AND STIPULATIONS (09/12/08)****1. DEFINITION OF TERMS**

The following terms when used in the Guarantee mean:

- (a) the "Assured": the party or parties named as the Assured in this Guarantee, or on a supplemental writing executed by the Company.
- (b) "land": the land described or referred to in Schedule (A), (C) or in Part 2, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule (A), (C) or in Part 2, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways.
- (c) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.
- (d) "public records": records established under state statutes at Date of Guarantee for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge.
- (e) "date": the effective date.

**2. NOTICE OF CLAIM TO BE GIVEN BY ASSURED CLAIMANT**

An Assured shall notify the Company promptly in writing in case knowledge shall come to an Assured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as stated herein, and which might cause loss or damage for which the Company may be liable by virtue of this Guarantee. If prompt notice shall not be given to the Company, then all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any Assured under this Guarantee unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

**3. NO DUTY TO DEFEND OR PROSECUTE**

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

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

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

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

(continued)

**5. PROOF OF LOSS OR DAMAGE**

In addition to and after the notices required under Section 2 of these Conditions and Stipulations have been provided to the Company, a proof of loss or damage signed and sworn to by the Assured shall be furnished to the Company within ninety (90) days after the Assured shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the matters covered by this Guarantee which constitute the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the Assured to provide the required proof of loss or damage, the Company's obligation to such assured under the Guarantee shall terminate. In addition, the Assured may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Guarantee, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Assured shall grant its permission, in writing, for any authorized representative of the Company, to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the Assured provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Assured to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in the above paragraph, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this Guarantee to the Assured for that claim.

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

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

- (a) To Pay or Tender Payment of the Amount of Liability or to Purchase the Indebtedness.

The Company shall have the option to pay or settle or compromise for or in the name of the Assured any claim which could result in loss to the Assured within the coverage of this Guarantee, or to pay the full amount of this Guarantee or, if this Guarantee is issued for the benefit of a holder of a mortgage or a lienholder, the Company shall have the option to purchase the indebtedness secured by said mortgage or said lien for the amount owing thereon, together with any costs, reasonable attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of purchase.

Such purchase, payment or tender of payment of the full amount of the Guarantee shall terminate all liability of the Company hereunder. In the event after notice of claim has been given to the Company by the Assured the Company offers to purchase said indebtedness, the owner of such indebtedness shall transfer and assign said indebtedness, together with any collateral security, to the Company upon payment of the purchase price.

Upon the exercise by the Company of the option provided for in Paragraph (a) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4, and the Guarantee shall be surrendered to the Company for cancellation.

- (b) To Pay or Otherwise Settle With Parties Other Than the Assured or With the Assured Claimant.

To pay or otherwise settle with other parties for or in the name of an Assured claimant any claim assured against under this Guarantee, together with any costs, attorneys' fees and expenses incurred by the Assured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of the option provided for in Paragraph (b) the Company's obligation to the Assured under this Guarantee for the claimed loss or damage, other than to make the payment required in that paragraph, shall terminate, including any obligation to continue the defense or prosecution of any litigation for which the Company has exercised its options under Paragraph 4.

**7. DETERMINATION AND EXTENT OF LIABILITY**

This Guarantee is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Assured claimant who has suffered loss or damage by reason of reliance upon the assurances set forth in this Guarantee and only to the extent herein described, and subject to the Exclusions From Coverage of This Guarantee.

The liability of the Company under this Guarantee to the Assured shall not exceed the least of:

- (a) the amount of liability stated in Schedule A or in Part 2;
- (b) the amount of the unpaid principal indebtedness secured by the mortgage of an Assured mortgagee, as limited or provided under Section 6 of these Conditions and Stipulations or as reduced under Section 9 of these Conditions and Stipulations, at the time the loss or damage assured against by this Guarantee occurs, together with interest thereon; or
- (c) the difference between the value of the estate or interest covered hereby as stated herein and the value of the estate or interest subject to any defect, lien or encumbrance assured against by this Guarantee.

**8. LIMITATION OF LIABILITY**

- (a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures any other matter assured against by this Guarantee in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.
- (b) In the event of any litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title, as stated herein.
- (c) The Company shall not be liable for loss or damage to any Assured for liability voluntarily assumed by the Assured in settling any claim or suit without the prior written consent of the Company.

(continued)

**9. REDUCTION OF LIABILITY OR TERMINATION OF LIABILITY**

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

**10. PAYMENT OF LOSS**

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

**11. SUBROGATION UPON PAYMENT OR SETTLEMENT**

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

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

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

**12. ARBITRATION**

Unless prohibited by applicable law, either the Company or the Assured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association.

Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Assured arising out of or relating to this Guarantee, any service of the Company in connection with its issuance or the breach of a Guarantee provision or other obligation. All arbitrable matters when the Amount of Liability is Two Million And No/100 Dollars (\$2,000,000) or less shall be arbitrated at the option of either the Company or the Assured. All arbitrable matters when the amount of liability is in excess of Two Million And No/100 Dollars (\$2,000,000) shall be arbitrated only when agreed to by both the Company and the Assured. The Rules in effect at Date of Guarantee shall be binding upon the parties. The award may include attorneys' fees only if the laws of the state in which the land is located permits a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

**13. LIABILITY LIMITED TO THIS GUARANTEE; GUARANTEE ENTIRE CONTRACT**

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

**14. NOTICES, WHERE SENT**

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

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

**END OF CONDITIONS AND STIPULATIONS**



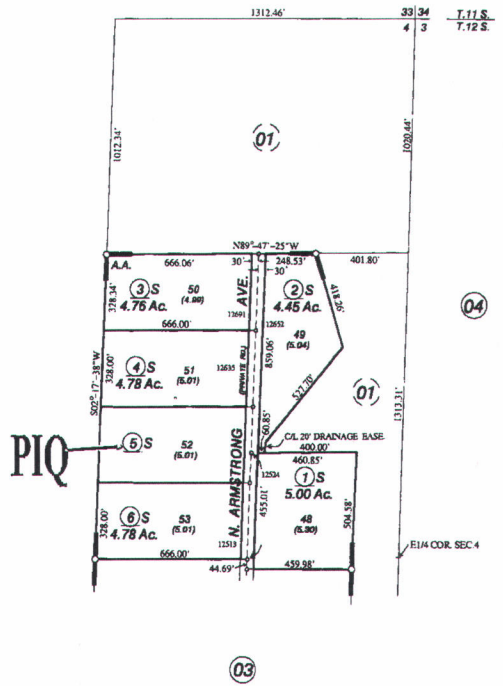
--- NOTE ---  
 This map is for Assessment purposes only.  
 It is not to be construed as portraying  
 legal ownership or divisions of land for  
 purposes of zoning or subdivision law.

SUBDIVIDED LAND IN POR. SEC. 4, T.12 S., R.21 E., M.D.B.&M.

Tax Rate Area  
 76-071

581-02

Bk.  
 300



This Map is being furnished as a convenience to locate the herein described land in relation to adjoining streets and other lands. The Company does not guarantee dimensions, distances, bearings, or acreage stated thereon, nor is it intended to illustrate legal building sites or supersede City or County ordinances, i.e. zoning and building codes, etc. Official information concerning the use of any parcel should be obtained from local government agencies.

Agricultural Preserve  
 Appaloosa Acres, Tract No. 2137 - Plat Bk. 23, Pg. 66 & 67

Assessor's Map Bk. 581 - Pg. 02  
 County of Fresno, Calif.

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

09-18-2001