

**AGREEMENT FOR PURCHASE AND SALE OF A STREET EASEMENT
AND ESCROW INSTRUCTIONS
Belmont Avenue Widening Between Clovis & Fowler Avenues
APN 310-111-31 & 35
City Project No.: PW 00754**

E. & J. Gallo Winery a California Corporation, hereinafter called the "Seller(s)," without regard to number or gender, hereby offers to sell to the CITY OF FRESNO, a municipal corporation, hereinafter called the "City," the hereinafter described street easement on the following terms and conditions:

1. The real property which is the subject of this Agreement is situated in the County of Fresno, State of California and may hereinafter for convenience is referred to as the "subject property," being a street easement approximately 27,740 square feet in size and contained within Assessor's Parcel Number 310-111-31 & 35 and which is more particularly described as:

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

2. The total purchase price for the subject property, including any cost to cure damages as detailed in the Appraisal Summary Statement dated August 8, 2016 shall be the sum of EIGHTY FOUR THOUSAND ZERO HUNDRED AND 00/100 DOLLARS (\$84,000) as just compensation for this property.

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

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

5. It is agreed and confirmed by the City and Seller(s) that, notwithstanding other provisions of this Agreement, the right of possession and use of the subject properties by the City, including the right to remove and dispose of improvements within the permanent street easements, shall commence on close of escrows controlling these transaction, and the amount shown in Paragraph 2 above includes, but is not limited to, full payment for such possession and use, including damages, if any, from said date.

 ORIGINAL

6. Seller represents and warrants that it has the authority to make the offer herein made, and that it holds fee title to said easement.

7. The sale shall be completed through an escrow to be opened at Fidelity National Title Company, 7485 North Palm Avenue, Suite 106, Fresno, California 93711 under Escrow Number 2011504320 and 2011504321-BW. 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. The City shall deposit the sum specified in Paragraphs 2 of this Agreement and the closing costs in escrow upon receipt of a demand and statement from said title company therefor.
- b. Payment of said sum, may be made to Seller only when escrow holder possesses and is in a position to deliver to the City a fully executed and acknowledged and recorded easement deed to the subject property and when said escrow holder stands ready to issue to the City a standard title insurance policy guaranteeing a title to said property in the City free and clear of all liens, encumbrances and restrictions of record, except for: Items **(APN 310-111-31)** 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16; 17, 18, 19 & 20; **(APN 310-111-35s)** 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16; 17, 18, 19, 20 & 21 contained in the Preliminary Title Reports No. 2011504320 and 2011504321-BW BW dated October 2, 2015 from Fidelity National Title Company.
- c. The escrow fee, cost of policy of title insurance, recording fees (if any), and all other closing costs shall be paid by the City. City will also pay any cost to convey the title to the subject property in the condition described in 7b above.
- d. Disbursements of the purchase price to be in the amounts, at the times, and in all respects in accordance with the terms and conditions and subject to the limitations of this Agreement.

8. **Miscellaneous Provisions:**

- a. Waiver The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provision of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
- b. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement any rights and duties hereunder shall be in Fresno, California.
- c. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

- d. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability or any one provision in this Agreement shall not affect the other provisions.
- e. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.
- f. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.
- g. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment.
- h. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- i. Exhibits and Attachments. Each Exhibit and Attachment referenced herein is by such reference incorporated into and made a part of this Agreement for all purposes.
- j. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both the City and the Sellers.

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

10. AS IS; As a material inducement to Seller's execution and delivery of the Agreement, the City acknowledges that the Property shall be conveyed in its AS IS condition, with all faults, including any hazardous substances or hazardous wastes that may be located on, under, or around the Property, whether known or unknown. THE CITY HAS AGREED TO ACCEPT POSSESSION OF THE PROPERTY ON THE CLOSING DATE ON AN "AS IS" BASIS. SELLER AND THE CITY AGREE THAT THE PROPERTY SHALL BE SOLD "AS IS, WHERE IS, WITH ALL FAULTS" WITH NO RIGHT OF SET-OFF OR REDUCTION IN THE PURCHASE PRICE, AND SUCH SALE SHALL BE WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, WARRANTY OF TITLE, USES, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), AND SELLER DISCLAIMS AND RENOUNCES ANY AND ALL REPRESENTATION OR WARRANTY. Buyer confirms that it is relying solely upon its

investigation of the present condition of the Property and all governmental laws and ordinances that might affect its use and development.

11. Exchange Transaction. City recognizes that Seller desires to effect a tax deferred exchange pursuant to Internal Revenue Code Section 1033 or a similar provision (an "**Exchange**"), and City at no cost to City shall cooperate with Seller in effecting the Exchange. However, the City shall not be responsible for any cost or expense, nor shall it incur any potential liability, associated with the Exchange.

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

SIGNATURE PAGE TO FOLLOW

EXHIBIT "A"

Page 1 of 2

PARCEL 1

APN 310-111-35S (portion)
Street easement

A portion of Lot 5 of Block 3 of Nevada Colony, in Section 33, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, according to the map thereof recorded in Volume 2 of Plats at Page 7, Fresno County Records, more particularly described as follows:

COMMENCING at the southwest corner of said Section 33; thence S 89°19'03" E, along the south line of the southwest quarter of said Section 33, a distance of 90.34 feet; thence N 0°40'57" E, a distance of 50.00 feet, to the southeast corner of Segment No. 9 of Relinquishment No. 85312 relinquished from the State of California to the County of Fresno for county highway purposes by California Transportation Commission Resolution No. R3627 recorded December 28, 2005, as Document No. 2005-0302233, Official Records of Fresno County and shown on that map recorded in State Highway Map Book 5 at Pages 44-53, Fresno County Records, said southeast corner being on the north right-of-way line of that portion of East Belmont Avenue designated as Parcel 2 and described in that Quitclaim Deed to the County of Fresno recorded June 30, 1965, as Document No. 53523, in Book 5187 at Page 607, Official Records of Fresno County, said southeast corner also being the TRUE POINT OF BEGINNING of this description; thence S 89°19'03" E, along said right-of-way line, parallel with and 50.00 feet north of the south line of said southwest quarter, a distance of 206.57 feet to the point of cusp of a tangent curve concave northerly and having a radius of 110.00 feet; thence westerly, along the arc of said curve, through a central angle of 13°52'20", an arc distance of 26.63 feet to the beginning of a reverse curve concave southerly and having a radius of 130.00 feet; thence westerly, along the arc of said curve, through a central angle of 13°52'20", an arc distance of 31.47 feet; thence N 89°19'03" W, parallel with and 57.00 feet north of the south line of said southwest quarter, a distance of 149.03 feet to the east line of said Segment No. 9; thence S 0°40'57" W, along said east line, a distance of 7.00 feet to the TRUE POINT OF BEGINNING.

Contains an area of 1,250 square feet, more or less.

EXHIBIT "A"

Page 2 of 2

PARCEL 2

APN 310-111-31 (portion)
Street easement

The south 20 feet of Lot 6 of Block 3 of Nevada Colony, in Section 33, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, according to the map thereof recorded in Volume 2 of Plats at Page 7, Fresno County Records.

Contains an area of 13,245 square feet, more or less.

For the purposes of this description the south line of said Lot 6 is taken to be parallel with and 30.00 feet north of the south line of the southwest quarter of said Section 33, said south line of Lot 6 being the north line of the "Centerville and Fresno County Road 60 ft. wide" as shown on said map of Nevada Colony.

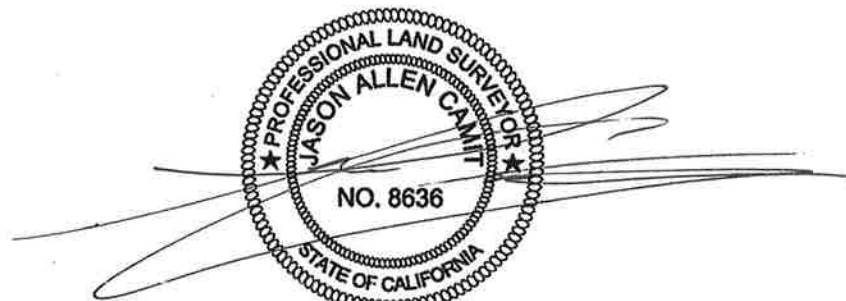
PARCEL 3

APN 310-111-31 (portion)
Street easement

The south 20 feet of Lot 7 of Block 3 of Nevada Colony, in Section 33, Township 13 South, Range 21 East, Mount Diablo Base and Meridian, according to the map thereof recorded in Volume 2 of Plats at Page 7, Fresno County Records.

Contains an area of 13,245 square feet, more or less.

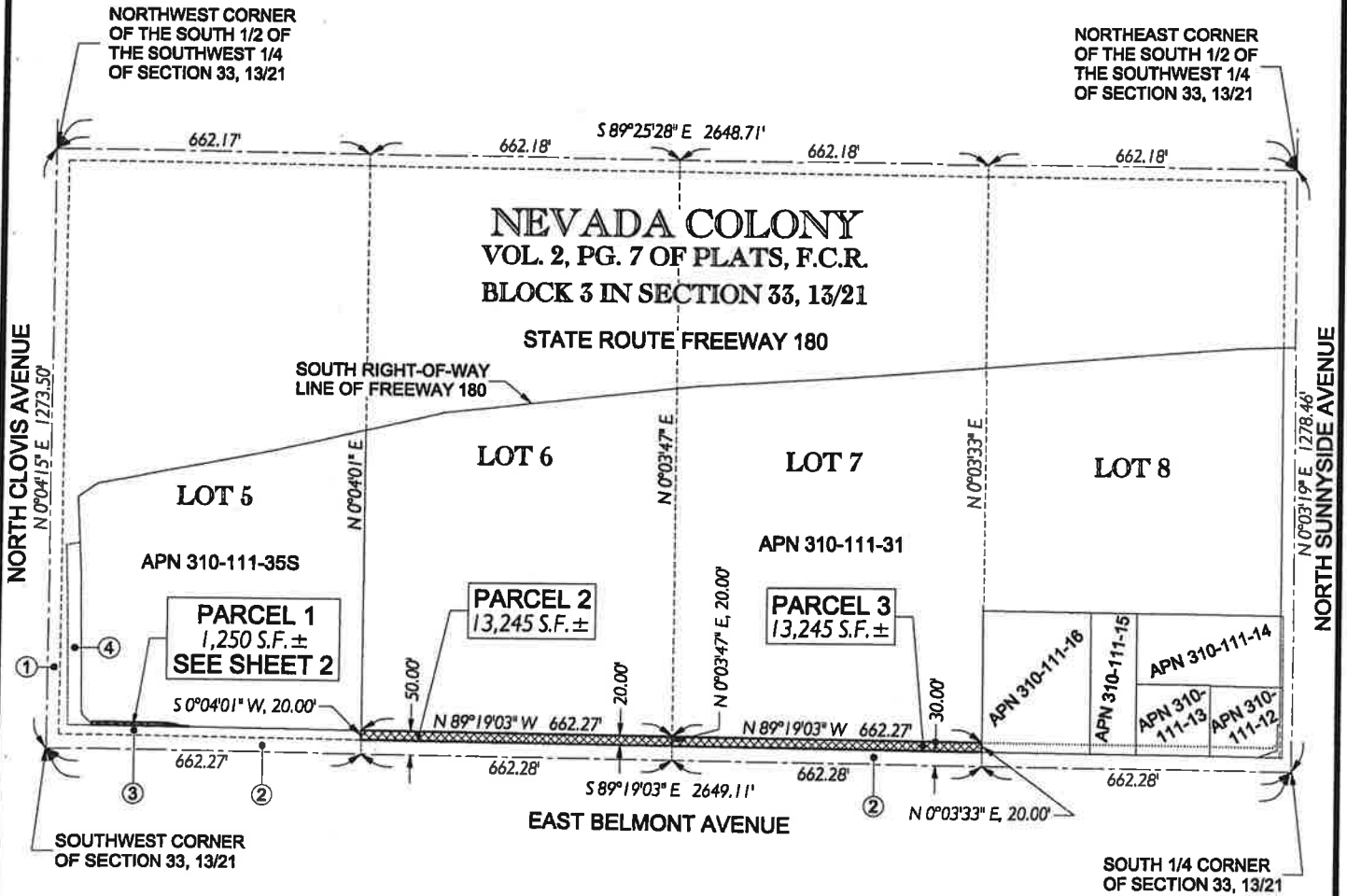
For the purposes of this description the south line of said Lot 7 is taken to be parallel with and 30.00 feet north of the south line of the southwest quarter of said Section 33, said south line of Lot 7 being the north line of the "Centerville and Fresno County Road 60 ft. wide" as shown on said map of Nevada Colony.



12-15-2015

EXHIBIT "B"

SHEET 1 OF 2



- ① = PREVIOUSLY DEDICATED FOR PUBLIC HIGHWAY PURPOSES BY INDENTURE RECORDED 2/6/1879 IN BOOK "Q" OF DEEDS AT PAGE 414, O.R.F.C.
- ② = SHOWN ON THE MAP OF NEVADA COLONY, VOL. 2 OF PLATS AT PAGE 7, F.C.R., AS "CENTERVILLE AND FRESNO COUNTY ROAD 60 FT. WIDE", ASSUMED AS BEING CENTERED ON 1/4 SECTION LINE. ACCEPTED AND DECLARED AS PUBLIC HIGHWAY BY FRESNO COUNTY MINUTE ORDER RECORDED 2/7/1913 IN VOL. 29 OF MISCELLANEOUS AT PAGE 9, F.C.R.
- ③ = PREVIOUSLY GRANTED TO THE COUNTY OF FRESNO BY DEED RECORDED 6/30/1965 AS DOCUMENT NO. 53523, IN BOOK 5187 AT PAGE 607, O.R.F.C.
- ④ = SEGMENT NO. 9 RELINQUISHED FROM THE STATE OF CALIFORNIA TO THE COUNTY OF FRESNO FOR COUNTY HIGHWAY PURPOSES BY RELINQUISHMENT NO. 85312, CTC RESOLUTION RECORDED 12/28/2005 AS DOCUMENT NO. 2005-0302233, O.R.F.C. AND SHOWN ON MAP RECORDED IN STATE HIGHWAY MAP BOOK 5 AT PAGES 44-53, F.C.R.



INDICATES AREAS TO BE DEDICATED
TOTAL = 27,740 S.F. ±

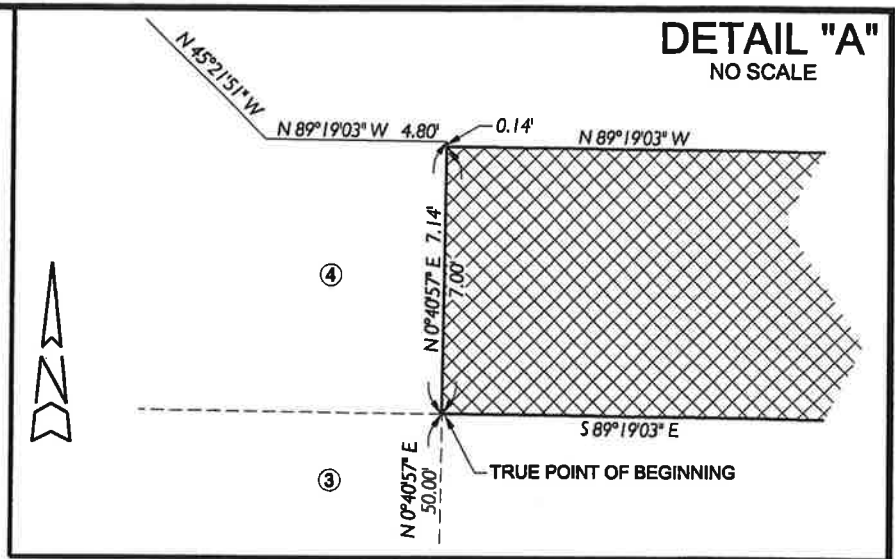
<p>REF. & REV.</p> <p>2015-109</p> <p>PWF 11980</p> <p>PLAT 2466</p>	<p>CITY OF FRESNO</p> <p>DEPARTMENT OF PUBLIC WORKS</p> <p>PARCELS TO BE DEDICATED TO THE CITY OF FRESNO AS AN EASEMENT AND RIGHT-OF-WAY FOR PUBLIC STREET PURPOSES</p>	<p>PROJ. ID. <u>PW00754</u> ACTIVITY ID <u>MSP</u></p> <p>FUND NO. <u>31641</u></p> <p>ORG. NO. <u>189901</u></p>	<p>DR. BY <u>A.J.</u></p> <p>CH. BY <u>J.A.C.</u></p> <p>DATE <u>DEC. 3, 2015</u></p> <p>SCALE <u>NO SCALE</u></p>
		<p>SHEET NO. <u>1</u></p> <p>OF <u>2</u> SHEETS</p> <p>15-A-9201</p>	

EXHIBIT "B"

SHEET 2 OF 2

DETAIL "A"

NO SCALE

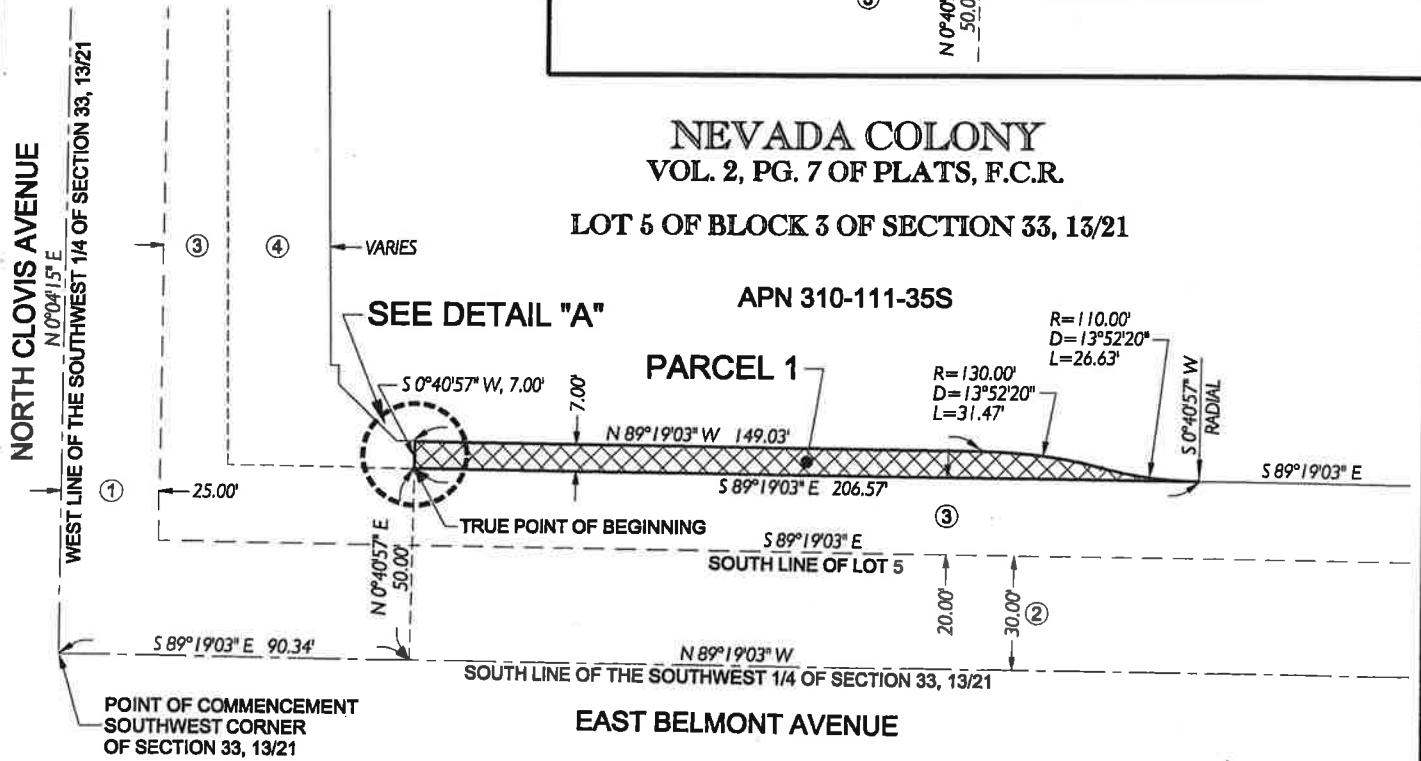


NEVADA COLONY


VOL. 2, PG. 7 OF PLATS, F.C.R.

LOT 5 OF BLOCK 3 OF SECTION 33, 13/21

APN 310-111-35S



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 INDICATES AREAS TO BE DEDICATED
1,250 S.F. ±

REF. & REV. 2015-109 PWF 11980 PLAT 2466	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS	PROJ. ID. <u>PW00754</u> ACTIVITY ID. <u>MSP</u> FUND NO. <u>31641</u> ORG. NO. <u>189901</u>
	PARCEL TO BE DEDICATED TO THE CITY OF FRESNO AS AN EASEMENT AND RIGHT-OF-WAY FOR PUBLIC STREET PURPOSES	DR. BY <u>A.J.</u> SHEET NO. <u>2</u> CH. BY <u>J.A.C.</u> OF <u>2</u> SHEETS DATE <u>DEC. 3, 2015</u> SCALE <u>NO SCALE</u>

15-A-9201