



**CITY COUNCIL AGENDA**  
**CITY HALL, 291 N. MAIN STREET, PORTERVILLE, CA 93257**  
**AND 1960 BRYOR COURT, MERCED, CA 95340**  
**MAY 7, 2019, 5:30 PM**

Call to Order

Roll Call

**ORAL COMMUNICATIONS**

This is the opportunity to address the City Council on any matter scheduled for Closed Session. Unless additional time is authorized by the Council, all commentary shall be limited to three minutes.

**CITY COUNCIL CLOSED SESSION:**

A. Closed Session Pursuant to:

- 1** - Government Code Section 54956.8 – Conference with Real Property Negotiators/Property: APN: 240-070-018. Agency Negotiator: John Lollis. Negotiating Parties: City of Porterville and Alan P. Changala and Elizabeth J. Changala. Under Negotiation: Terms and Price.
- 2** - Government Code Section 54956.8 – Conference with Real Property Negotiators/Property: APNs: 253-131-001, 253-131-002, 302-110-076, 302-110-057, and 302-110-079. Agency Negotiator: John Lollis. Negotiating Parties: City of Porterville and U.S. Forest Service. Under Negotiation: Terms and Price.
- 3** - Government Code Section 54957.6 – Conference with Labor Negotiator. Agency Negotiator: John Lollis, Patrice Hildreth, and Che Johnson. Employee Organizations: Porterville City Employees Association; Public Safety Support Unit; Porterville City Firefighters Association; and Fire Officer Series.
- 4** - Government Code Section 54956.95 – Liability Claim: Claimant: Caprina Lange. Agency claimed against: City of Porterville.
- 5** - Government Code Section 54956.95 – Liability Claim: Claimant: Mid-Century Insurance ASP Rayani. Agency claimed against: City of Porterville.
- 6** - Government Code Section 54956.9(d)(1) – Conference with Legal Counsel – Existing Litigation: John Duran v. John Lollis et al., U.S. District Court, Eastern District, Case No. 1:18-cv-01580-SAB.
- 7** - Government Code Section 54956.9(d)(3) – Conference with Legal Counsel – Anticipated Litigation – Significant Exposure to Litigation: Two (2) cases in which facts are not yet known to potential plaintiff.
- 8** - Government Code Section 54956.9(d)(4) – Conference with Legal Counsel – Anticipated Litigation – Initiation of Litigation: Two (2) cases.

**6:30 P.M. RECONVENE OPEN SESSION AND REPORT ON  
REPORTABLE ACTION TAKEN IN CLOSED SESSION**

Pledge of Allegiance Led by Council Member Peñaloza

Invocation

**PRESENTATIONS**

Outstanding Business

Employee of the Month - Briana Spry

Environmental Sciences Pathway Students

**AB 1234 REPORTS**

This is the time for all AB 1234 reports required pursuant to Government Code § 53232.3.

1. Tulare County Taskforce on Homelessness - April 17, 2019
2. San Joaquin Valley Air Pollution Control District (SJVAPCD) Governing Board - April 18, 2019
3. Tulare County Economic Development Corp. (TCEDC) - April 24, 2019
4. Joint City/School Committee - April 29, 2019
5. Eastern Tule Groundwater Sustainability Agency - May 2, 2019

**REPORTS**

This is the time for all staff informational items.

- I. Staff Informational Reports
  1. OHV Park 3rd Quarter Report - Fiscal Year 2018/19
  2. Golf Course 3rd Quarter Report - Fiscal Year 2018/19
  3. Street Performance Measure 3rd Quarter Report - Fiscal Year 2018/19
  4. Building Permit Activity 3rd Quarter Report - Fiscal Year 2018/19
  5. City Commissions and Committee Attendance 3rd Quarter Report - FY 2018/19
  6. Code Enforcement 3rd Quarter Report - Fiscal Year 2018/19
  7. Charitable Car Washes Report - Year to Date

**ORAL COMMUNICATIONS**

This is the opportunity to address the Council on any matter of interest, whether on the agenda or not. Please address all items not scheduled for public hearing at this time. Unless additional time is authorized by the Council, all commentary shall be limited to three minutes.

## **CONSENT CALENDAR**

All Consent Calendar Items are considered routine and will be enacted in one motion. There will be no separate discussion of these matters unless a request is made, in which event the item will be removed from the Consent Calendar. All items removed from the Consent Calendar for further discussion will be heard at the end of Scheduled Matters.

1.     **Purchase of Police Radios for DUI Trailer/Command Post**  
Re: Considering approval of the purchase of one (1) APX 4500 VHF radio system, and two (2) APX 4500 UHF R2 radio systems and accompanying installation equipment from J's Communications for \$7,563.76.
2.     **Purchase of Sixteen (16) Portable Motorola APX6000 Handheld Radios**  
Re: Considering approval to purchase sixteen (16) Motorola APX6000 handheld radios from J's Communications for \$49,207.95.
3.     **Purchase of Real Property Assessor Parcel Numbers 253-050-093 and 253-050-089**  
Re: Consideration of a Resolution approving the purchase of APN 253-050-093 and 253-050-089 from Mr. James Gregory Shelton for the accepted amount of \$380,325.
4.     **Authorization to Award Freedom Fest Fireworks Contract**  
Re: Considering approval of the expenditure of \$19,750 to Fireworks & Stage FX America, Inc. for the fireworks show portion of the 2019 Freedom Fest.
5.     **Henry House Property Improvements Budget Appropriation**  
RE: Considering approval of the appropriation of funds in the amount of \$24,900 from insurance proceeds to fund work performed by QK, Inc., for design services pertaining to the Henry House Property Improvements Project.
6.     **Authorization to Distribute Request for Proposals for Consulting Services for the Five-Year Consolidated Plan**  
Re: Considering approval to distribute a Request for Proposals for Consulting Services to update the City of Porterville's CDBG Consolidated Plan.
7.     **Authorization of Street Closure for "Great Day" Broadcast**  
Re: Considering approval of the street closure of Cleveland Avenue between Main Street and Second Street on May 8, 2019, from 3:00 AM to 11:00 AM.
8.     **Authorization to Partner with the Tule River Tribe to Provide Tribal Transit Services on the Tule River Reservation**  
Re: Consideration of a partnership with the Tule River Tribe for the development and implementation of a Tribal Transit Program on the Tule River Reservation.

9. **Authorization to File Applications with the Federal Transit Administration (FTA) for Federal Financial Assistance**  
Re: Considering approval of a Resolution authorizing the filing of applications with the Federal Transit Administration (FTA).
10. **Assignment of Airport Lease - Lot 32C**  
Re: Considering approval of the Assignment of the Airport Lease for Lot 32C between the City of Porterville and Ms. Pamela D. Hughes, Trustee of the William E. Parham Irrevocable Trust u/t/d July 29, 2013, to Mr. Mike Quatacker.
11. **Quarterly Portfolio Summary**  
Re: Considering acceptance of the quarterly Portfolio Summary report reflecting the investment portfolio of the City as of March 31, 2019.
12. **Financial Status Reports**  
Re: Acceptance of the financial status reports for the quarter ending March 31, 2019, are submitted.
13. **Request for Proclamation - Letter Carriers' Food Drive Day - May 11, 2019**  
Re: Consideration of a request to proclaim May 11, 2019, as "Letter Carriers' Food Drive Day."
14. **Approval for Community Civic Event - Porterville Chamber of Commerce - 2019 KJUG Concert Series - May 16, 2019, July 9, 2019, August TBD, 2019**  
Re: Considering approval of events to take place at Centennial Park on Thursday, May 16, 2019, Tuesday, July 9, 2019 and another date to be determined in August, 2019, and use of the park and street closures for said events.
15. **Approval for Community Civic Event - Tulare County Junior Livestock Show and Community Fair - Porterville Fair - May 15 - 19, 2019**  
Re: Considering approval of an event to take place at the ten acre site next to the fair grounds during the annual fair, from Wednesday, May 15, 2019, to Sunday, May 19, 2019.
16. **Status and Review of Declaration of Local Emergency**  
Re: Considering approval of the continuance of the Declaration of Local Emergency.
17. **Request for Proclamation - Harvey Milk Day - May 22, 2019**  
Re: Consideration of a request to proclaim May 22, 2019, as "Harvey Milk Day."

## **SECOND READINGS**



**18. Second Reading - Ordinance 1853 - Cannabis Business Regulations**

Re: Second Reading of Ordinance No. 1853, which permits and regulates legal cannabis businesses in the City of Porterville, was given first reading on April 16, 2019, and has been printed.

**19. Second Reading - Ordinance 1854 - Cannabis Land Uses and Commercial Cannabis Activities**

Re: Second Reading of Ordinance No. 1854, which amends cannabis regulations to permit the limited development and establishment of commercial cannabis dispensaries, was given first reading on April 16, 2019, and has been printed.

**20. Second Reading - Ordinance 1855 - Personal Cannabis Activities**

Re: Second Reading of Ordinance No. 1855, which restricts personal cannabis activities including drying, harvesting, processing, smoking, and use, consistent with permitted local regulation under State law, was given first reading on April 16, 2019, and has been printed.

**SCHEDULED MATTERS**

**21. Consideration of Subordination and Amendment to Loan Agreement with Cornerstone Main Partners, L.P.**

Re: Consideration of an Amendment to Loan Agreement Between the City of Porterville and Cornerstone Main Partners, L.P., Amendment to the Promissory Note Secured By Deed of Trust, and the Amended and Restated Deed of Trust, Security Agreement, and Fixture Filing with Assignment of Rents; and consideration of a Subordination and Intercreditor Agreement with Cornerstone Main Partners, L.P., and the primary lender Wells Fargo Trust Company, N.A.

**22. Consideration to Apply for Funding from the Federal Transit Administration's (FTA's) Low or No Emission Grant Program, Appropriation of Local Financial Commitment, and Transit Fleet Management Plan**

Re: Consideration of resolutions authorizing staff to apply for funding and appropriating a local financial commitment, not to exceed \$600,000, for the FY 2019 Low or No Emission Grant Program; and consideration of approval of the Transit Fleet Management Plan.

**23. Consider a Resolution of Support for the State's Safe and Affordable Drinking Water Fund Proposal**

Re: Considering a Resolution of Support for the State's Safe and Affordable Drinking Water Fund Proposal.

**24. Consider a Resolution of Support for H.R. 6: American Dream and Promise Act of 2019**

Re: Considering a Resolution of Support for H.R. 6, "American Dream and Promise Act of 2019."

**25. Consider a Resolution of Support for Assembly Bill 274 (Mathis); Water Treatment Facility: State Water Resources Control Board: Grant**

Re: Considering a Resolution of Support for Assembly Bill 274 (Mathis); Water Treatment Facility: State Water Resources Control Board: Grant.

**26. Consider a Resolution of Support for Senate Bill 559 (Hurtado); Department of Water Resources: Grant: Friant-Kern Canal**

Re: Considering a Resolution of Support for SB 559 (Hurtado); Department of Water Resources: Grant: Friant-Kern Canal.

**27. Consider a Resolution of Support for the 2020 Census**

Re: Considering a Resolution of Support for the 2020 Census.

**28. Receipt of Letter of Resignation from Vice Mayor Ward and Consideration of Options to Fill Vacancy**

Re: Resignation from the City Council submitted by Vice Mayor Ward effective July 17, 2019, and consideration of the process to fill the vacant City Council seat.

**ORAL COMMUNICATIONS**

**OTHER MATTERS**

**CLOSED SESSION**

Any Closed Session Items not completed prior to 6:30 p.m. will be considered at this time.

**ADJOURNMENT** - to the meeting of May 21, 2019

In compliance with the Americans with Disabilities Act and the California Ralph M. Brown Act, if you need special assistance to participate in this meeting, or to be able to access this agenda and documents in the agenda packet, please contact the Office of City Clerk at (559) 782-7464. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting and/or provision of an appropriate alternative format of the agenda and documents in the agenda packet.

Materials related to an item on this Agenda submitted to the City Council after distribution of the Agenda packet are available for public inspection during normal business hours at the Office of City Clerk, 291 North Main Street, Porterville, CA 93257, and on the City's website at [www.ci.porterville.ca.us](http://www.ci.porterville.ca.us).



## CITY COUNCIL AGENDA – MAY 7, 2019

SUBJECT: 1. OHV Park 3rd Quarter Report - Fiscal Year 2018/19

SOURCE: Parks and Leisure Services

COMMENT: At the request of the City Council, staff is providing a report on participation numbers at the Porterville OHV Park for informational purposes. The report reflects the third quarter FY 2018/19.

RECOMMENDATION: Information only

ATTACHMENTS: 1. OHV Park Ridership 3rd Quarter Report

Appropriated/Funded:

Review By:

Department Director:

Donnie Moore, Parks and Leisure Services Director

Final Approver: John Lollis, City Manager

### Porterville OHV Ridership

|                  | Jan.18     | Jan.19    | Feb. 18    | Feb. 19   | Mar. 18    | Mar. 19    |
|------------------|------------|-----------|------------|-----------|------------|------------|
| <b>Riders</b>    | 164        | 47        | 208        | 25        | 99         | 78         |
| <b>Revenue</b>   | \$2,744.00 | \$ 958.00 | \$3,993.00 | \$ 518.00 | \$1,810.00 | \$1,450.00 |
| <b>Days Open</b> | 9          | 6         | 9          | 2         | 12         | 4          |



## CITY COUNCIL AGENDA – MAY 7, 2019

SUBJECT: 2. Golf Course 3rd Quarter Report - Fiscal Year 2018/19

SOURCE: Parks and Leisure Services

COMMENT: At the request of the City Council, staff is providing a report of participation numbers at the Porterville Golf Course for informational purposes. The report reflects the third quarter Fiscal Year 2018/19.

RECOMMENDATION: Information only

ATTACHMENTS: 1. Golf Course 3rd Quarter Report FY 2018-19

Appropriated/Funded:

Review By:

Department Director:

Donnie Moore, Parks and Leisure Services Director

Final Approver: John Lollis, City Manager

## PORTERVILLE GOLF COURSE STATISTICS

|                   | Jan-18             | Jan-19             | Feb-18             | Feb-19            | Mar-18             | Mar-19             |
|-------------------|--------------------|--------------------|--------------------|-------------------|--------------------|--------------------|
| Golfers           | 1352               | 1339               | 1435               | 822               | 1484               | 1402               |
| Repeat 9/Twilight | 475                | 686                | 466                | 412               | 545                | 730                |
| Tickets Used      | 596                | 508                | 620                | 323               | 619                | 492                |
| Passes Sold       | 42                 | 32                 | 57                 | 30                | 28                 | 33                 |
| Carts             | 622                | 728                | 686                | 376               | 772                | 703                |
| <b>Total</b>      | <b>\$12,354.00</b> | <b>\$11,210.00</b> | <b>\$14,936.00</b> | <b>\$7,258.00</b> | <b>\$12,853.00</b> | <b>\$11,591.00</b> |

## FOOTGOLF

|               | Jan-18      | Jan-19      | Feb-18          | Feb-19      | Mar-18          | Mar-19           |
|---------------|-------------|-------------|-----------------|-------------|-----------------|------------------|
| 18-hole adult | 0           | 0           | 0               | 0           | 0               | 6                |
| 18-hole youth | 0           | 0           | 10              | 0           | 15              | 3                |
| Cart rental   | 0           | 0           | 0               | 0           | 0               | 0                |
| Ball rental   | 0           | 0           | 0               | 0           | 0               | 5                |
| Party         | 0           | 0           | 0               | 0           | 0               | 0                |
| <b>Total</b>  | <b>\$ -</b> | <b>\$ -</b> | <b>\$ 50.00</b> | <b>\$ -</b> | <b>\$ 75.00</b> | <b>\$ 100.00</b> |

|                    |                    |                    |                    |                   |                    |                    |
|--------------------|--------------------|--------------------|--------------------|-------------------|--------------------|--------------------|
| <b>GRAND TOTAL</b> | <b>\$12,354.00</b> | <b>\$11,210.00</b> | <b>\$14,986.00</b> | <b>\$7,258.00</b> | <b>\$12,928.00</b> | <b>\$11,691.00</b> |
|--------------------|--------------------|--------------------|--------------------|-------------------|--------------------|--------------------|

- \* **Repeat 9:** Additional 9 rounds after first 9
- \* **Twilight:** Afternoon discount rate
- \* **Tickets:** Surcharge with monthly play pass \$1.00 9-hole, \$2.00 18-hole
- \* **Passes:** Monthly Passes sold

### Significant events

- The course was closed the majority of February 2019 due to flooding from the rains.
- "Kids Play Free for Spring Break" March 18-31, 2019. There were 25 youth that participated in this promotion.



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** 3. Street Performance Measure 3rd Quarter Report - Fiscal Year 2018/19

**SOURCE:** Public Works

**COMMENT:** The purpose of this staff report is to provide Council with an update on progress made on street reconstruction/rehabilitation, overlay, micro-surfacing, and pothole repair efforts for the 3rd quarter (January, February, March) of FY 2018/2019. For Council's information, the light blue bar represents staff's estimated quantity of "work" for each category for the fiscal year. The black overlaid bar represents the quantity of work accomplished to date.

City street crews have focused on significant pothole repairs as the temperatures during the reporting period are not conducive to the local road overlay program, which will be ramping up during the next reporting period. The major reconstruction of Henderson Avenue from Indiana Street to Jaye Street is still in bidding phase due to amendments to the design. The first phase of the Plano Street Micro-Surfacing Project between Vandalia Avenue and Henderson Avenue was completed prior to the close of this reporting period. Removal and replacement of water mains, structural repairs, curb returns and other related improvements were included in this project. Micro-Surfacing of Plano Street, second phase, is currently in the bidding phase. The Barn Theater parking lot was repaired with the first phase and will be resurfaced as part of the second phase of this project as well. Orange Avenue from Main Street to Plano Street and Henderson Avenue from Newcomb Street to Patsy Street are this year's SB1 projects and completed during the prior reporting period.

Other projects slated for this fiscal year are: 1) Henderson Avenue from Second Street to Plano Street; 2) Henderson Avenue from Balmaine Drive to Patsy Street; and 3) Newcomb Street from Olive Avenue to Morton Avenue, all of which are currently under design.

**RECOMMENDATION:** Information Only

**ATTACHMENTS:**

1. 3rd Quarter Report - Street Performance Measure
2. 2nd Quarter Report - Street Performance Measure

**Appropriated/Funded:**

**Review By:**

Department Director:

Final Approver: John Lollis, City Manager



3rd QUARTER REPORT - January 1, 2019 - March 31, 2019



2nd QUARTER REPORT - October 1, 2018 - December 31, 2018





## CITY COUNCIL AGENDA – MAY 7, 2019

SUBJECT: 4. Building Permit Activity 3rd Quarter Report - Fiscal Year 2018/19

SOURCE: Public Works

COMMENT: Building Permit Activity – 3rd Quarter Report (January, February, March)

The Building Permit Activity Report (BPAR) presented herein to the City Council covers the months of January, February and March, 2019. The two main categories include new residential permits issued and new commercial permits issued.

3rd Quarter of FY 2018/2019 compared to 3rd Quarter of FY 2017/2018  
New residential permits issued during the 3rd quarter of 2018/19 (16) showed no change from the 3rd quarter of 2017/18 (16). New commercial permits issued during the 3rd quarter of 2018/19 (0) also showed no change from the 3rd quarter of 2017/18 (0).

Year-to-Date (July 2018 to March 2019)  
New residential permits issued this fiscal year (45) are up 2% compared to the same period last fiscal year (44). New commercial permits issued this fiscal year (2) showed no change from the same period last fiscal year (2).

RECOMMENDATION: Informational item.

ATTACHMENTS:

1. Building Activity - January 2019
2. Building Activity - February 2019
3. Building Activity - March 2019

Appropriated/Funded:

Review By:

Department Director:

Mike Reed, Acting Public Works Director

Final Approver: John Lollis, City Manager

**CITY OF PORTERVILLE - BUILDING DIVISION  
REPORT FOR THE PERIODS OF  
7/1/2017 - 1/31/2018 AND  
7/1/2018 - 1/31/2019**

| PERMIT          | NUMBER OF PERMITS ISSUED |                 |                      |                      | ACTUAL VALUATION OF PERMITS ISSUED |                 |                      |                      | BUILDING FEES TOTALS FOR PERMITS ISSUED |                 |                      |                      |
|-----------------|--------------------------|-----------------|----------------------|----------------------|------------------------------------|-----------------|----------------------|----------------------|-----------------------------------------|-----------------|----------------------|----------------------|
|                 | JANUARY<br>2019          | JANUARY<br>2018 | THIS YEAR<br>TO DATE | LAST YEAR<br>TO DATE | JANUARY<br>2019                    | JANUARY<br>2018 | THIS YEAR<br>TO DATE | LAST YEAR<br>TO DATE | JANUARY<br>2019                         | JANUARY<br>2018 | THIS YEAR<br>TO DATE | LAST YEAR<br>TO DATE |
| NEW<br>RESID    | 1                        | 3               | 30                   | 31                   | 210,230                            | 638,125         | 7,226,437            | 7,352,565            | 1,914                                   | 6,460           | 70,433               | 77,847               |
| NEW<br>COMM     | 0                        | 0               | 2                    | 2                    | 0                                  | 0               | 2,300,000            | 2,625,000            | 0                                       | 0               | 13,262               | 15,596               |
| RESID<br>IMPROV | 11                       | 15              | 117                  | 85                   | 92,321                             | 348,979         | 1,299,390            | 1,412,565            | 3,999                                   | 6,415           | 44,281               | 30,538               |
| COMM<br>IMPROV  | 5                        | 2               | 40                   | 34                   | 293,250                            | 23,500          | 4,829,299            | 1,638,191            | 7,176                                   | 296             | 69,872               | 32,988               |
| OTHER           | 26                       | 20              | 157                  | 179                  | 280,629                            | 358,795         | 2,013,071            | 2,034,395            | 4,633                                   | 4,912           | 30,734               | 35,850               |
| ELECT           | 27                       | 17              | 170                  | 136                  | 477,175                            | 2,331,785       | 2,597,243            | 4,195,311            | 5,528                                   | 3,491           | 32,846               | 25,718               |
| PLUMB           | 61                       | 31              | 374                  | 253                  | 500                                | 0               | 17,400               | 25,600               | 8,990                                   | 4,592           | 52,193               | 37,223               |
| TOTALS          | 131                      | 88              | 890                  | 720                  | 1,354,105                          | 3,701,184       | 20,282,840           | 19,283,627           | 32,241                                  | 26,166          | 313,620              | 255,760              |

|                  | NEW DWELLING UNITS TOTALS |                 |                      |                      |
|------------------|---------------------------|-----------------|----------------------|----------------------|
|                  | JANUARY<br>2019           | JANUARY<br>2018 | THIS YEAR<br>TO DATE | LAST YEAR<br>TO DATE |
| SINGLE<br>FAMILY | 1                         | 3               | 28                   | 31                   |
| MULTI<br>FAMILY  | 0                         | 0               | 4                    | 0                    |
| TOTAL            | 1                         | 3               | 32                   | 31                   |

  
 CHIEF BUILDING OFFICIAL

**CITY OF PORTERVILLE - BUILDING DIVISION**  
**REPORT FOR THE PERIODS OF**  
**7/1/2017 - 2/28/2018 AND**  
**7/1/2018 - 2/28/2019**

| PERMIT          | NUMBER OF PERMITS ISSUED |                  |                      |                      | ACTUAL VALUATION OF PERMITS ISSUED |                  |                      |                      | BUILDING FEES TOTALS FOR PERMITS ISSUED |                  |                      |                      |
|-----------------|--------------------------|------------------|----------------------|----------------------|------------------------------------|------------------|----------------------|----------------------|-----------------------------------------|------------------|----------------------|----------------------|
|                 | FEBRUARY<br>2019         | FEBRUARY<br>2018 | THIS YEAR<br>TO DATE | LAST YEAR<br>TO DATE | FEBRUARY<br>2019                   | FEBRUARY<br>2018 | THIS YEAR<br>TO DATE | LAST YEAR<br>TO DATE | FEBRUARY<br>2019                        | FEBRUARY<br>2018 | THIS YEAR<br>TO DATE | LAST YEAR<br>TO DATE |
| NEW<br>RESID    | 10                       | 7                | 40                   | 38                   | 3,176,905                          | 2,230,123        | 10,403,342           | 9,582,688            | 30,277                                  | 17,602           | 100,710              | 95,449               |
| NEW<br>COMM     | 0                        | 0                | 2                    | 2                    | 0                                  | 0                | 2,300,000            | 2,625,000            | 0                                       | 0                | 13,262               | 15,596               |
| RESID<br>IMPROV | 14                       | 8                | 131                  | 93                   | 135,499                            | 177,300          | 1,434,889            | 1,589,865            | 4,463                                   | 4,907            | 48,744               | 35,445               |
| COMM<br>IMPROV  | 2                        | 3                | 42                   | 37                   | 25,000                             | 615,000          | 4,854,299            | 2,253,191            | 1,657                                   | 3,033            | 71,530               | 36,021               |
| OTHER           | 17                       | 25               | 174                  | 204                  | 325,360                            | 177,988          | 2,338,431            | 2,212,383            | 4,290                                   | 4,440            | 35,024               | 40,290               |
| ELECT           | 24                       | 14               | 194                  | 150                  | 427,314                            | 163,502          | 3,024,557            | 4,358,813            | 4,442                                   | 2,441            | 37,288               | 28,159               |
| PLUMB           | 28                       | 28               | 402                  | 281                  | 0                                  | 0                | 17,400               | 25,600               | 4,176                                   | 5,033            | 56,369               | 42,256               |
| TOTALS          | 95                       | 85               | 985                  | 805                  | 4,090,078                          | 3,363,913        | 24,372,918           | 22,647,540           | 49,305                                  | 37,456           | 362,926              | 293,216              |

|                  | NEW DWELLING UNITS TOTALS |                  |                      |                      |
|------------------|---------------------------|------------------|----------------------|----------------------|
|                  | FEBRUARY<br>2019          | FEBRUARY<br>2018 | THIS YEAR<br>TO DATE | LAST YEAR<br>TO DATE |
| SINGLE<br>FAMILY | 8                         | 7                | 36                   | 38                   |
| MULTI<br>FAMILY  | 8                         | 0                | 12                   | 0                    |
| TOTAL            | 16                        | 7                | 48                   | 38                   |

  
 CHIEF BUILDING OFFICIAL

**CITY OF PORTERVILLE - BUILDING DIVISION**  
**REPORT FOR THE PERIODS OF**  
**7/1/2017 - 3/31/2018 AND**  
**7/1/2018 - 3/31/2019**

| PERMIT       | NUMBER OF PERMITS ISSUED |               |                      |                      | ACTUAL VALUATION OF PERMITS ISSUED |               |                      |                      | BUILDING FEES TOTALS FOR PERMITS ISSUED |               |                      |                      |
|--------------|--------------------------|---------------|----------------------|----------------------|------------------------------------|---------------|----------------------|----------------------|-----------------------------------------|---------------|----------------------|----------------------|
|              | MARCH<br>2019            | MARCH<br>2018 | THIS YEAR<br>TO DATE | LAST YEAR<br>TO DATE | MARCH<br>2019                      | MARCH<br>2018 | THIS YEAR<br>TO DATE | LAST YEAR<br>TO DATE | MARCH<br>2019                           | MARCH<br>2018 | THIS YEAR<br>TO DATE | LAST YEAR<br>TO DATE |
| NEW RESID    | 5                        | 6             | 45                   | 44                   | 1,261,170                          | 1,688,594     | 11,664,512           | 11,271,282           | 10,775                                  | 14,622        | 111,485              | 110,071              |
| NEW COMM     | 0                        | 0             | 2                    | 2                    | 0                                  | 0             | 2,300,000            | 2,625,000            | 0                                       | 0             | 13,262               | 15,596               |
| RESID IMPROV | 11                       | 10            | 142                  | 103                  | 238,502                            | 208,910       | 1,673,391            | 1,798,775            | 6,511                                   | 4,909         | 55,255               | 40,354               |
| COMM IMPROV  | 8                        | 1             | 50                   | 38                   | 511,200                            | 800           | 5,365,499            | 2,253,991            | 6,134                                   | 279           | 77,664               | 36,300               |
| OTHER        | 24                       | 21            | 198                  | 225                  | 238,775                            | 386,480       | 2,577,206            | 2,598,863            | 4,554                                   | 4,851         | 39,578               | 45,141               |
| ELECT        | 34                       | 14            | 228                  | 164                  | 373,839                            | 185,738       | 3,398,396            | 4,544,551            | 6,737                                   | 2,578         | 44,025               | 30,737               |
| PLUMB        | 63                       | 23            | 465                  | 304                  | 0                                  | 0             | 17,400               | 25,600               | 10,206                                  | 3,012         | 66,575               | 45,268               |
| TOTALS       | 145                      | 75            | 1,130                | 880                  | 2,623,486                          | 2,470,522     | 26,996,404           | 25,118,062           | 44,918                                  | 30,251        | 407,843              | 323,467              |

|               | NEW DWELLING UNITS TOTALS |               |                      |                      |
|---------------|---------------------------|---------------|----------------------|----------------------|
|               | MARCH<br>2019             | MARCH<br>2018 | THIS YEAR<br>TO DATE | LAST YEAR<br>TO DATE |
| SINGLE FAMILY | 5                         | 6             | 41                   | 44                   |
| MULTI FAMILY  | 0                         | 0             | 12                   | 0                    |
| TOTAL         | 5                         | 6             | 53                   | 44                   |

  
 CHIEF BUILDING OFFICIAL

Note: Of the 45 residential permits issued this year to date, 41 are single family and 4 are multi family permits equating to a total of 53 residential units.



## CITY COUNCIL AGENDA – MAY 7, 2019

SUBJECT: 5. City Commissions and Committee Attendance 3rd Quarter Report - FY 2018/19

SOURCE: Administrative Services

COMMENT: Staff herein provides for Council's information attendance reports as of the third quarter FY 2018/19 for the following City Commissions and Committees:

- Parks & Leisure Services Commission
- Library & Literacy Commission
- Arts Commission
- Animal Control Commission
- Transactions & Use Tax Oversight Committee
- CDBG Advisory & Housing Opportunity Committee

RECOMMENDATION: For information only.

ATTACHMENTS:

1. P&L Attendance
2. Library & Literacy Commission
3. Arts Commission
4. Animal Control Commission
5. TUTOC Attendance
6. CDBG Citizens' Advisory

Appropriated/Funded:

Review By:

Department Director:

Patrice Hildreth, Administrative Services Dir

Final Approver: John Lollis, City Manager

**Parks & Leisure Services Commissioner's Record of Attendance**

|                 | 2018 | 2018 | 2018 | 2018 | 2018 | 2018 | 2019 | 2019 | 2019 | 2019 | 2019 | 2019 |
|-----------------|------|------|------|------|------|------|------|------|------|------|------|------|
|                 | July | Aug  | Sept | Oct  | Nov  | Dec  | Jan  | Feb  | Mar  | Apr  | May  | June |
|                 | 5    | 2    | 6    | 4    | 1    | 6    | 3    | 7    | 7    |      |      |      |
| Rocco Calantone | **   | **   | E    | P    | P    | P    | P    | E    | P    |      |      |      |
| Richard Rankin  | **   | **   | P    | P    | P    | E    | P    | P    | P    |      |      |      |
| Rachel Lucero   | **   | **   | A    | A    | P    | A    | P    | A    | P    |      |      |      |
| Carrol Land     | **   | **   | P    | P    | A    | P    | P    | P    | P    |      |      |      |
| Phillip Duncan  | **   | **   | P    | P    | P    | P    | P    | P    | P    |      |      |      |
| Diane Graybehl  | **   | **   | P    | P    | P    | P    | P    | E    | P    |      |      |      |
| Kieran Daly     | **   | **   | E    | P    | E    | E    | P    | P    | A    |      |      |      |
| Janet Uresti    | **   | **   | P    | P    | E    | E    | P    | P    | P    |      |      |      |

\*\*No meeting held. \* Due to lack of quorum, an informal discussion only took place.  
P = Present; E = Excused Absence; A = Absent; T = Tardy

**Parks & Leisure Services Commissioner's Record of Attendance**

|                      | 2017            | 2017 | 2017 | 2017 | 2017               | 2017 | 2018 | 2018 | 2018 | 2018 | 2018 | 2018 |
|----------------------|-----------------|------|------|------|--------------------|------|------|------|------|------|------|------|
|                      | July            | Aug  | Sept | Oct  | Nov                | Dec  | Jan  | Feb  | Mar  | Apr  | May  | June |
|                      |                 | 3    | 7    | 4    | 1                  | 6    |      |      |      |      |      |      |
| Rocco Calantone      | **              | P    | P    | P    | P                  | P    | P    | P    | A    | P    | P    | P    |
| Monte Moore          | **              | P    | P    | P    | Term Expired 10/17 |      |      |      |      |      |      |      |
| Leticia Lupio-Devine | **              | P    | A    | P    | Term Expired 10/17 |      |      |      |      |      |      |      |
| Rick Vafeades        | **              | P    | P    | P    | Term Expired 10/17 |      |      |      |      |      |      |      |
| Richard Rankin       | **              | P    | P    | P    | P                  | P    | P    | P    | P    | A    | P    | A    |
| Rachel Lucero        | **              | A    | A    | P    | P                  | A    | A    | A    | P    | P    | P    | A    |
| Carrol Land          | **              | P    | P    | P    | P                  | P    | P    | P    | P    | P    | P    | P    |
| Phillip Duncan       | Appointed 10/17 |      |      |      | P                  | P    | P    | P    | P    | P    | P    | P    |
| Diane Graybehl       | Appointed 10/17 |      |      |      | A                  | P    | P    | P    | P    | P    | A    | P    |
| Kieran Daly          | Appointed 10/17 |      |      |      | P                  | P    | P    | P    | P    | A    | A    | P    |
| Janet Uresti         | Appointed 10/17 |      |      |      | P                  | P    | P    | P    | P    | P    | P    | P    |

\*\*No meeting held. \* Due to lack of quorum, an informal discussion only took place.  
P = Present; E = Excused Absence; A = Absent; T = Tardy

**Parks & Leisure Services Commissioner's Record of Attendance**

|                      | 2016 | 2016 | 2016     | 2016 | 2016 | 2016 | 2017 | 2017 | 2017 | 2017 | 2017 | 2017            |
|----------------------|------|------|----------|------|------|------|------|------|------|------|------|-----------------|
|                      | Jul  | Aug  | Sep      | Oct  | Nov  | Dec  | Jan  | Feb  | Mar  | Apr  | May  | Jun             |
|                      | 7    | 11   | 1        | 6    | 3    | 8    | 5    | 2    | 2    | 6    | 4    | 1               |
| Rocco Calantone      | **   | P    | E        | P    | P    | P    | P    | E    | E    | P    | P    | ** FT Exp 10/19 |
| Monte Moore          | **   | E    | P        | P    | P    | P    | P    | P    | P    | P    | E    | ** FT Exp 10/17 |
| Leticia Lupio-Devine | **   | P    | E        | P    | P    | P    | E    | P    | P    | P    | P    | ** FT Exp 10/17 |
| Rick Vafeades        | **   | P    | P        | P    | P    | E    | E    | P    | P    | P    | P    | ** FT Exp 10/17 |
| Richard Rankin       | **   | P    | P        | P    | P    | P    | P    | P    | P    | E    | P    | ** PUSD Rep.    |
| Carroll Land         | **   | E    | E        | P    | P    | P    | P    | P    | P    | P    | P    | ** FT Exp 10/19 |
| Rachel Lucero        | **   | P    | P        | E    | P    | P    | A    | P    | P    | P    | P    | ** FT Exp 10/19 |
| Shannon Bennett      | **   | A    | Resigned |      |      |      |      |      |      |      |      |                 |

\*\*No meeting held. \* Due to lack of quorum, an informal discussion only took place.  
P = Present; E = Excused Absence; A = Absent; T = Tardy



**LIBRARY & LITERACY COMMISSION - Attendance Record**

As of: March 31, 2019

P = Present; A = Absent; E = Excused absence; T = Tardy

 = Summer Hiatus

|                        | 2019<br>Mar<br>12 | 2019<br>Apr<br>26 | 2019<br>May<br>2 | 2019<br>June | 2019<br>July | 2019<br>Aug<br>13 | 2019<br>Sept<br>10 | 2019<br>Oct<br>8 | 2019<br>Nov | 2019<br>Dec |  |
|------------------------|-------------------|-------------------|------------------|--------------|--------------|-------------------|--------------------|------------------|-------------|-------------|--|
| Catherine May          | E                 |                   |                  |              |              |                   |                    |                  |             |             |  |
| Allan Bailey           | P                 |                   |                  |              |              |                   |                    |                  |             |             |  |
| Esther Figueroa        | P                 |                   |                  |              |              |                   |                    |                  |             |             |  |
| Tamara Bishop-Mitchell | P                 |                   |                  |              |              |                   |                    |                  |             |             |  |
| Edith La Vonne         | P                 |                   |                  |              |              |                   |                    |                  |             |             |  |
| Jennifer Biagio        | E                 |                   |                  |              |              |                   |                    |                  |             |             |  |
| Patience Christenson   | E                 |                   |                  |              |              |                   |                    |                  |             |             |  |

|                        | 2018<br>May<br>8 | 2018<br>June | 2018<br>July | 2018<br>Aug<br>14 | 2018<br>Sept<br>11 | 2018<br>Oct<br>9 | 2018<br>Nov<br>13 | 2018<br>Dec<br>11 | 2019<br>Jan<br>17 | 2019<br>Feb<br>12 |  |
|------------------------|------------------|--------------|--------------|-------------------|--------------------|------------------|-------------------|-------------------|-------------------|-------------------|--|
| Catherine May          | P                |              |              | P                 | P                  | P                | P                 | P                 | P                 | P                 |  |
| Allan Bailey           | P                |              |              | P                 | P                  | P                | P                 | P                 | E                 | P                 |  |
| Esther Figueroa        | P                |              |              | P                 | E                  | E                | P                 | P                 | P                 | P                 |  |
| Tamara Bishop-Mitchell | P                |              |              | P                 | P                  | P                | P                 | P                 | P                 | P                 |  |
| Edith La Vonne         | P                |              |              | P                 | P                  | P                | E                 | P                 | P                 | P                 |  |
| Jennifer Biagio        | E                |              |              | E                 | E                  | E                | E                 | P                 | P                 | E                 |  |
| Patience Christenson   | P                |              |              | E                 | E                  | E                | P                 | E                 | P                 | P                 |  |

|                        | 2017<br>July | 2017<br>Aug<br>8 | 2017<br>Sept<br>12 | 2017<br>Oct<br>10 | 2017<br>Nov<br>14 | 2017<br>Dec<br>12 | 2018<br>Jan<br>9 | 2018<br>Feb<br>13 | 2018<br>Mar<br>13 | 2018<br>Apr<br>10 |  |
|------------------------|--------------|------------------|--------------------|-------------------|-------------------|-------------------|------------------|-------------------|-------------------|-------------------|--|
| Catherine May          |              | A                | P                  | P                 | P                 | P                 | P                | P                 | P                 |                   |  |
| Allan Bailey           |              | P                | P                  | P                 | P                 | P                 | P                | P                 | P                 |                   |  |
| Esther Figueroa        |              | P                | P                  | P                 | P                 | P                 | P                | P                 | P                 |                   |  |
| Tamara Bishop-Mitchell |              | P                | P                  | P                 | P                 | P                 | P                | P                 | P                 |                   |  |
| Edith La Vonne         |              | P                | P                  | P                 | E                 | E                 | P                | P                 | P                 |                   |  |
| Jennifer Biagio        |              | P                | E                  | E                 | E                 | A                 | P                | E                 | E                 |                   |  |
| Patience Christenson   |              | A                | P                  | P                 | P                 | E                 | P                | P                 | P                 |                   |  |

|                        | 2016<br>Sept<br>13 | 2016<br>Oct<br>11 | 2016<br>Nov<br>8 | 2016<br>Dec<br>13 | 2017<br>Jan<br>10 | 2017<br>Feb<br>14 | 2017<br>Mar<br>14 | 2017<br>April<br>11 | 2017<br>May<br>9 | 2017<br>June |                |
|------------------------|--------------------|-------------------|------------------|-------------------|-------------------|-------------------|-------------------|---------------------|------------------|--------------|----------------|
| Catherine May          | P                  | P                 | P                | P                 | P                 | P                 | P                 | P                   | P                |              | Re-appt. 10/16 |
| Allan Bailey           | P                  | P                 | P                | P                 | P                 | P                 | P                 | P                   | P                |              | Re-appt. 10/15 |
| Esther Figueroa        | P                  | P                 | P                | P                 | P                 | P                 | P                 | E                   | P                |              | Re-appt. 10/15 |
| Tamara Bishop-Mitchell | E                  | E                 | P                | P                 | P                 | E                 | P                 | P                   | P                |              | Re-appt. 10/16 |
| Edith La Vonne         | T                  | P                 | P                | E                 | E                 | P                 | P                 | P                   | P                |              | Re-appt. 10/15 |
| Jennifer Biagio        | P                  | P                 | P                | P                 | P                 | E                 | E                 | E                   | E                |              | Re-appt. 10/16 |
| Patience Christenson   | E                  | P                 | P                | P                 | P                 | P                 | P                 | P                   | E                |              | Re-appt. 10/15 |

**Arts Commission  
Attendance Records**

31-Mar-19

|                   | 2018<br>Dec | 2019<br>17-Jan | 2019<br>13-Feb | 2019<br>27-Mar | 2019<br>24-Apr | 2019 | 2019 | 2019 |
|-------------------|-------------|----------------|----------------|----------------|----------------|------|------|------|
| Donna Serna       | *           | P              | P              |                |                |      |      |      |
| Kyree Perkins     | *           | A              | P              |                |                |      |      |      |
| Emily Luna        | *           | P              | P              |                |                |      |      |      |
| Diego Monterrubio | *           | A              | P              |                |                |      |      |      |
| West Maas         | *           | P              | P              |                |                |      |      |      |
| Kacie Bellisch    |             |                |                |                |                |      |      |      |

\* No meeting due to lack of quorum.

|                   | 2018<br>23-May | 2018<br>27-Jun | 2018<br>11-Jul | 2018<br>25-Jul | 2018<br>22-Aug | 2018<br>26-Sep | 2018<br>24-Oct | 2018<br>28-Nov |
|-------------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
| Donna Serna       | *              | A              | P              | A              | *              | *              | A              | P              |
| Mariza Serrano    | *              | P              | P              | P              | *              | *              | P              |                |
| Dalia Gonzalez    | *              | A              | A              | A              | *              | *              |                |                |
| Nilsa Cubiascanas | *              | P              | P              | A              | *              | *              |                |                |
| Kyree Perkins     | *              | P              | A              | P              | *              | *              | P              | A              |
| Emily Luna        | *              | P              | A              | P              | *              | *              | P              | P              |
| Diego Monterrubio |                |                |                |                |                |                |                | A              |
| West Maas         |                |                |                |                |                |                |                | P              |

\* No meeting due to lack of quorum.

|                   | 2017<br>27-Sep | 2017<br>25-Oct | 2017<br>15-Nov | 2017<br>13-Dec | 2018<br>17-Jan | 2018<br>28-Feb | 2018<br>28-Mar* | 2018<br>25-Apr            |
|-------------------|----------------|----------------|----------------|----------------|----------------|----------------|-----------------|---------------------------|
| Donna Serna       | P              | P              | *              | P              | P              | *              | A               |                           |
| Mariza Serrano    | P              | P              | *              | P              | P              | *              | P               |                           |
| Dalia Gonzalez    | P              | P              | *              | A              | P              | *              | P               |                           |
| Nilsa Cubiascanas | P              | P              | *              | P              | P              | *              | P               | Apptd 9/2017 thru 7/2019  |
| Kyree Perkins     | P              | P              | *              | A              | P              | *              | A               | Apptd 9/2017 thru 7/2019  |
| Emily Luna        |                | P              | *              | A              | P              | *              | A               | Apptd 10/2017 thru 7/2019 |
|                   |                |                |                |                |                |                |                 |                           |
|                   |                |                |                |                |                |                |                 |                           |

\* No meeting due to lack of quorum.

At the Dec. 13 meeting, discussion only took place as their was not a quorum.

|                   | 2017<br>26-Apr | 2017<br>24-May | 2017<br>28-Jun | 2017          | 2017 | 2017 | 2017 | 2017 |
|-------------------|----------------|----------------|----------------|---------------|------|------|------|------|
| Deana Worthington | *              | *              | *              | Term expired. |      |      |      |      |
| Joan Givan        | *              | *              | *              | Term expired. |      |      |      |      |
| Judith Halloway   | *              | *              | *              | Term expired. |      |      |      |      |
| Mel Gosage        | *              | *              | *              | Term expired. |      |      |      |      |
| Donna Serna       | *              | *              | *              | *             | *    | *    | *    | *    |
| Hector Marquez    | *              | *              | *              | Term expired. |      |      |      |      |
| Mariza Serrano    | Appted 7/18/17 |                |                | *             | *    | *    | *    | *    |
| Dalia Gonzalez    | Appted 7/18/17 |                |                | *             | *    | *    | *    | *    |

\* No meeting due to lack of quorum.

**Animal Control Commission  
Attendance Records**

31-Mar-19

|                  | 2018<br>12-Nov | 2018<br>10-Dec | 2019<br>14-Jan | 2019<br>25-Feb | 2019<br>11-Mar | 2019 | 2019 | Notes: |
|------------------|----------------|----------------|----------------|----------------|----------------|------|------|--------|
| Daniel Penaloza  | **             |                |                |                |                |      |      |        |
| Florenza Pizanis | **             | **             | P              | P              | *              |      |      |        |
| Valerie Simonich | **             | **             | P              | P              | *              |      |      |        |
| Jerry Hall       | **             | **             | P              | P              | *              |      |      |        |
|                  |                |                |                |                |                |      |      |        |
|                  |                |                |                |                |                |      |      |        |
|                  |                |                |                |                |                |      |      |        |

\*Meeting cancelled due to lack of quorum.

\*\*Meeting cancelled due to holiday and/or scheduling.

|                  | 2018<br>9-Apr | 2018<br>14-May | 2018<br>11-Jun | 2018<br>9-Jul | 2018<br>20-Aug | 2018<br>10-Sep | 2018<br>8-Oct | Notes: |
|------------------|---------------|----------------|----------------|---------------|----------------|----------------|---------------|--------|
| Daniel Penaloza  | *             | *              | *              | *             | P              | *              | P             |        |
| Florenza Pizanis | *             | *              | *              | *             | P              | *              | P             |        |
| Valerie Simonich | *             | *              | *              | *             | P              | *              | P             |        |
| Jerry Hall       | *             | *              | *              | *             | P              | *              | P             |        |
|                  |               |                |                |               |                |                |               |        |
|                  |               |                |                |               |                |                |               |        |
|                  |               |                |                |               |                |                |               |        |

\*Meeting cancelled due to lack of quorum.

|                    | 2017<br>11-Sep | 2017<br>9-Oct | 2017<br>13-Nov | 2017<br>11-Dec | 2018<br>8-Jan | 2018<br>12-Feb | 2018<br>12-Mar | Notes: |
|--------------------|----------------|---------------|----------------|----------------|---------------|----------------|----------------|--------|
| Daniel Penaloza    | P              | P             | *              | *              | P             | *              | *              |        |
| Florenza Pizanis   | P              | P             | *              | *              | P             | *              | *              |        |
| Maritza Altamirano | P              |               |                |                |               |                |                |        |
| Gabriel Castaneda  | P              | P             | *              | *              | P             |                |                |        |
|                    |                |               |                |                |               |                |                |        |
|                    |                |               |                |                |               |                |                |        |
|                    |                |               |                |                |               |                |                |        |

\*Meeting cancelled due to lack of quorum.

|                    | 2017<br>13-Feb | 2017<br>13-Mar | 2017<br>10-Apr | 2017<br>8-May | 2017<br>12-Jun | 2017<br>10-Jul | 2017<br>14-Aug | Notes:                     |
|--------------------|----------------|----------------|----------------|---------------|----------------|----------------|----------------|----------------------------|
| Margaret Land      | P              | P              | P              | P             |                |                |                | Resigned.                  |
| Daniel Penaloza    | A              | P              | A              | P             | *              | P              | A              |                            |
| Florenza Pizanis   | P              | P              | P              | P             | *              | P              | P              |                            |
| Maritza Altamirano | P              | P              | P              | P             | *              | P              | P              |                            |
| Richard Stadtherr  | P              |                |                |               |                |                |                | Appointment rescinded 2/21 |
| Gabriel Castaneda  |                |                |                |               |                | P              | P              | Apptd July 2017.           |
|                    |                |                |                |               |                |                |                |                            |
|                    |                |                |                |               |                |                |                |                            |

\*Meeting cancelled due to lack of quorum.

|                    | 2016<br>11-Jul | 2016<br>8-Aug | 2016<br>9-Sep | 2016<br>10-Oct | 2016<br>14-Nov | 2016<br>12-Dec | 2017<br>9-Jan | Notes: |
|--------------------|----------------|---------------|---------------|----------------|----------------|----------------|---------------|--------|
| Margaret Land      | A              | P             | P             | P              | P              | P              | P             |        |
| Daniel Penaloza    | P              | P             | P             | P              | A              | P              | P             |        |
| Florenza Pizanis   | P              | P             | P             | P              | P              | P              | P             |        |
| Maritza Altamirano | P              | P             | P             | P              | P              | P              | P             |        |
| Richard Stadtherr  | P              | P             | P             | P              | P              | P              | P             |        |
|                    |                |               |               |                |                |                |               |        |
|                    |                |               |               |                |                |                |               |        |

|                  | 2016<br>7-Mar | 2016<br>4-Apr | 2016<br>18-Apr | 2016<br>12-May | 2016<br>16-May | 2016<br>6-Jun | 2016<br>20-Jun | Notes:          |
|------------------|---------------|---------------|----------------|----------------|----------------|---------------|----------------|-----------------|
| Maureen Hamilton | A             | A             | *              | A              | *              | *             | *              | Resigned 05/16. |
| Margaret Land    | P             | P             | *              | P              | *              | *             | *              |                 |
| Debbie Arthur    | P             | P             | *              | P              | *              | *             | *              | Resigned 05/16. |
| Melanie Huerta   | P             | P             | *              | P              | *              | *             | *              | Resigned 05/16. |
| Daniel Penaloza  |               | P             | *              | P              | *              | *             | *              |                 |
|                  |               |               |                |                |                |               |                |                 |
|                  |               |               |                |                |                |               |                |                 |

\*Meeting cancelled due to lack of quorum.

**Transactions and Use Tax Oversight Committee  
Attendance Records**

As of: March 31, 2019

|                         | 2018<br>13-Nov | 2019<br>9-Jan | 2019<br>12-Feb | 2019 | 2019 | 2019 | 2019 |
|-------------------------|----------------|---------------|----------------|------|------|------|------|
| John Simonich           | A              | P             | A              |      |      |      |      |
| Margaret Stinson        | P              | P             | P              |      |      |      |      |
| Russell "Buck" Fletcher | P              | P             | P              |      |      |      |      |
| John Angell             | A              | A             | A              |      |      |      |      |
| Mike Boudreaux Sr.      | A              | P             | P              |      |      |      |      |
| Virginia Gurrola        | P              | P             | P              |      |      |      |      |
| John Billiou            | P              | P             | A              |      |      |      |      |
| Jerry Hall              | P              | P             | P              |      |      |      |      |
| Janice Kovars           | P              | P             | P              |      |      |      |      |
| Shawn Byars             | P              | P             | P              |      |      |      |      |

|                         | 2017<br>28-Feb | 2017<br>23-May | 2017<br>29-Aug | 2017<br>14-Nov | 2018<br>Feb 13* | 2018<br>10-May | 2018<br>28-Aug |                                   |
|-------------------------|----------------|----------------|----------------|----------------|-----------------|----------------|----------------|-----------------------------------|
| John Simonich           | P              | A              | A              | P              | P               | A              | P              |                                   |
| Margaret Stinson        | P              | P              | P              | P              | A               | P              | P              |                                   |
| Kathleen "Kat" Harris   | P              | P              | P              | P              | A               | P              | P              |                                   |
| Russell "Buck" Fletcher | P              | A              | P              | A              | A               | P              | P              |                                   |
| Titus Moore             |                |                |                |                |                 |                |                | <i>Resigned</i>                   |
| Richard Stadtherr       |                |                |                |                |                 |                |                | <i>Appointment rescinded 2/21</i> |
| John Angell             | P              | P              | A              | P              | A               | P              | P              | <i>Appointed 2/7</i>              |
| Mike Boudreaux Sr.      | P              | P              | P              | P              | P               | P              | A              | <i>Appointed 2/7</i>              |
| Jerry Claborn           | P              | P              | P              | P              | P               | P              |                | <i>Term ended</i>                 |
| Virginia Gurrola        | P              | P              | P              | P              | P               | P              | P              | <i>Appointed 2/21</i>             |
| John Billiou            |                |                | A              | A              | A               | A              | P              | <i>Appointed 7/17</i>             |
| Jerry Hall              |                |                |                |                |                 |                | P              | <i>Appointed 7/18</i>             |
| Janice Kovars           |                |                |                |                |                 |                | P              | <i>Appointed 7/18</i>             |

\* No meeting was held due to lack of quorum.

|                         | 2015<br>8-Oct | 2015<br>18-Nov | 2016<br>11-Feb | 2016<br>12-May | 2016<br>30-Jun    | 2016<br>25-Aug | 2016<br>22-Nov |
|-------------------------|---------------|----------------|----------------|----------------|-------------------|----------------|----------------|
| Khris Saleh             | A             | A              | A              | **             | <i>Term ended</i> |                |                |
| John Simonich           | P             | A              | P              | **             | P                 | P              |                |
| Raheel Mann             | A             | A              | A              | **             | <i>Resigned</i>   |                |                |
| Gail Lemmen             | P             | P              | P              | **             | <i>Term ended</i> |                |                |
| Margaret Stinson        | P             | P              | P              | **             | P                 | P              |                |
| Janet Meister           | P             | P              | A              | **             | <i>Term ended</i> |                |                |
| Kathleen "Kat" Harris   | P             | P              | P              | **             | P                 | P              |                |
| Russell "Buck" Fletcher | P             | P              | P              | **             | P                 | P              |                |
| Salvador Estrada, Jr.   | P             | A              | P              | **             | <i>Term ended</i> |                |                |
| Titus Moore             |               |                |                |                | P                 | P              |                |
| Richard Stadtherr       |               |                |                |                | P                 | A              |                |

**CDBG Citizens' Advisory and Housing Opportunity Committee  
Attendance Records**

As of: March 31, 2019

| Committee Member | Reg. Mtg<br>2/26/2019 | Reg. Mtg | Reg. Mtg | Reg. Mtg | Reg. Mtg |
|------------------|-----------------------|----------|----------|----------|----------|
| Pat Contreras    | P                     |          |          |          |          |
| Linda Mendez     | A                     |          |          |          |          |
| Grace Munoz-Rios | P                     |          |          |          |          |
| Doug Heusdens    | A                     |          |          |          |          |
| Rebecca Vigil    | P                     |          |          |          |          |
| Kelle Jo Lowe    | P                     |          |          |          |          |
| Maria Gonzalez   | P                     |          |          |          |          |

| Committee Member | Reg. Mtg<br>4/27/2015 | Reg. Mtg<br>3/28/2016 | Reg. Mtg<br>3/1/2017 | Reg. Mtg<br>2/28/2018 | Reg. Mtg |
|------------------|-----------------------|-----------------------|----------------------|-----------------------|----------|
| Pat Contreras    | P                     | A                     | P                    | P                     |          |
| Linda Mendez     | P                     | A                     | P                    | P                     |          |
| Grace Munoz-Rios | P                     | P                     | P                    | P                     |          |
| Doug Heusdens    | P                     | P                     | P                    | P                     |          |
| Rebecca Vigil    | P                     | P                     | A                    | P                     |          |
| Kelle Jo Lowe    | P                     | P                     | P                    | P                     |          |
| Maria Gonzalez   | P                     | A                     | P                    | P                     |          |

| Committee Member | Year Originally<br>Appointed | Reg. Mtg<br>3/14/2011 | Reg. Mtg<br>3/12/2012 | Reg. Mtg<br>3/11/2013 | Reg. Mtg<br>3/10/2014 |
|------------------|------------------------------|-----------------------|-----------------------|-----------------------|-----------------------|
| Pat Contreras    | 1988                         | P                     | P                     | P                     | P                     |
| Linda Olmedo     | 1997                         | P                     | P                     | P                     | P                     |
| Grace Munoz-Rios | 1992                         | P                     | P                     | P                     | A                     |
| Doug Heusdens    | 2012                         | N/A                   | P                     | P                     | P                     |
| John Dennis      | 1998                         | P                     | P                     | A                     | P                     |
| Rebecca Vigil    | 2008                         | P                     | P                     | A                     | P                     |
| Kelle Jo Lowe    | 2009                         | P                     | P                     | P                     | P                     |

*This Committee typically meets on an annual basis in March.*





## CITY COUNCIL AGENDA – MAY 7, 2019

SUBJECT: 6. Code Enforcement 3rd Quarter Report - Fiscal Year 2018/19

SOURCE: Fire

COMMENT: This informational report utilizes data from the “myPorterville” application for tracking code enforcement activity between January 1 and March 31, 2019. During this 3rd quarter of fiscal year 2018/2019, each Department of the City contributed toward recording 540 code enforcement issues. Of these, 363 were corrected and 177 were continued into the 4th quarter of 2018/2019 for additional corrective action. The Code Enforcement Division issued 25 Administrative Citations.

RECOMMENDATION: Information only

ATTACHMENTS: 1. Code Enforcement Stats for Q3 FY 18-19

Appropriated/Funded:

Review By:

Department Director:

Dave LaPere, Fire Chief

Final Approver: John Lollis, City Manager

Code Enforcement Report, Quarter 3, FY 18-19

| Q3 Code Enforcement Activity                          | # Requests | # Completed | % Closed |
|-------------------------------------------------------|------------|-------------|----------|
| Abandoned Vehicle (Street)                            | 8          | 8           | 100.00%  |
| Animal Control Services                               | 4          | 4           | 100.00%  |
| Animals- agricultural animals                         | 5          | 5           | 100.00%  |
| Animals- barking dogs                                 | 6          | 6           | 100.00%  |
| Animals- keeping too many or unauthorized species     | 8          | 8           | 100.00%  |
| Animals- roosters                                     | 2          | 2           | 100.00%  |
| Anonymous Crime Tip                                   | 3          | 3           | 100.00%  |
| Building Department/ Permits                          | 28         | 13          | 46.43%   |
| Business License Inquiries                            | 8          | 2           | 25.00%   |
| Can Replacement / Repair                              | 8          | 7           | 87.50%   |
| CEO, Building permit check                            | 2          | 2           | 100.00%  |
| CEO, Business License                                 | 4          | 4           | 100.00%  |
| CEO, Shopping Carts                                   | 74         | 72          | 97.30%   |
| CEO, Sign Removal                                     | 37         | 37          | 100.00%  |
| Code Enforcement, General                             | 16         | 11          | 68.75%   |
| Community Development, General or MULTIPLE violations | 12         | 1           | 8.33%    |
| Engineering                                           | 10         | 1           | 10.00%   |
| Fire Hazard                                           | 3          | 3           | 100.00%  |
| Garbage Collection/ Illegal Dumping                   | 12         | 8           | 66.67%   |
| Graffiti                                              | 6          | 4           | 66.67%   |
| Health Hazard                                         | 3          | 0           | 0.00%    |
| Housing Issue (Structure Related)                     | 1          | 0           | 0.00%    |
| Itinerant Vendor, Solicitor, Peddler                  | 5          | 5           | 100.00%  |
| Landscaping/trees- private property                   | 7          | 0           | 0.00%    |
| Meter Request                                         | 83         | 28          | 33.73%   |
| Neglected property/trash & debris                     | 17         | 4           | 23.53%   |
| Outdoor Storage                                       | 4          | 1           | 25.00%   |
| Parking Issue                                         | 1          | 1           | 100.00%  |
| Parks                                                 | 4          | 3           | 75.00%   |
| Police/ Traffic Enforcement                           | 25         | 25          | 100.00%  |
| Potholes                                              | 33         | 30          | 90.91%   |
| Report Leak                                           | 8          | 5           | 62.50%   |
| Sidewalk Condition                                    | 3          | 1           | 33.33%   |
| Signs- In Public Right of Way                         | 1          | 1           | 100.00%  |
| Signs- Review                                         | 1          | 0           | 0.00%    |
| Signs- Temporary                                      | 3          | 1           | 33.33%   |
| Stop Light Issue                                      | 4          | 4           | 100.00%  |
| Storm Water                                           | 2          | 0           | 0.00%    |
| Street Light Issue                                    | 7          | 7           | 100.00%  |

| Administrative Citations | Q1 | Q2 | Q3 | Q4 | Total    |
|--------------------------|----|----|----|----|----------|
| \$100                    | 28 | 51 | 17 |    | \$9,600  |
| \$200                    | 10 | 13 | 5  |    | \$5,600  |
| \$500                    | 16 | 16 | 3  |    | \$17,500 |
| \$1,000                  | 10 | 0  | 0  |    | \$10,000 |
| \$1,500                  | 26 | 0  | 0  |    | \$39,000 |
| FY 18-19 Total Assesment |    |    |    |    | \$81,700 |

| Shopping Carts  | Q1   | Q2  | Q3  | Q4 | Total |
|-----------------|------|-----|-----|----|-------|
| Collected       | 180  | 302 | 174 |    | 656   |
| Disposed (Lbs.) | 1900 | 0   | 0   |    | 1900  |

| Private Property Vehicle Abatements | Q1 | Q2 | Q3 | Q4 | Total |
|-------------------------------------|----|----|----|----|-------|
| Voluntary Abatement                 | 43 | 48 | 34 |    | 125   |
| Certified Voluntary Abatement       | 2  | 1  | 0  |    | 3     |
| Towed                               | 3  | 3  | 1  |    | 7     |
| Total Vehicles Abated               | 48 | 52 | 35 |    | 135   |

| Weed Abatement                      | Q1  | Q2 | Q3   | Q4 | Total |
|-------------------------------------|-----|----|------|----|-------|
| Properties Noticed                  | 14  | 6  | 1708 |    | 1728  |
| Completed by Owner                  | 824 | 6  | 6    |    | 836   |
| Assigned to Contractor (private)    | 3   | 1  | 0    |    | 4     |
| Assigned to Contractor (city owned) | 0   | 0  | 0    |    | 0     |
| Completed by Contractor             | 3   | 1  | 0    |    | 4     |
| Admin Citations                     | 12  | 1  | 4    |    | 17    |

Code Enforcement Report, Quarter 3, FY 18-19

|                               |     |     |         |
|-------------------------------|-----|-----|---------|
| Transit Department            | 6   | 0   | 0.00%   |
| Vehicles- inoperable vehicles | 23  | 15  | 65.22%  |
| Vehicles- Parked on lawn      | 3   | 3   | 100.00% |
| Vehicles- RVs/boats/etc       | 12  | 10  | 83.33%  |
| Water Waste                   | 10  | 2   | 20.00%  |
| Water Waste NOV               | 9   | 9   | 100.00% |
| Weed Abatement                | 8   | 6   | 75.00%  |
| Yard Sales, Frequent          | 1   | 1   | 100.00% |
| Q3 Total                      | 540 | 363 | 67.22%  |



## CITY COUNCIL AGENDA – MAY 7, 2019

SUBJECT: 7. Charitable Car Washes Report - Year to Date

SOURCE: Finance

COMMENT: In accordance with City Council direction, staff is providing a report on charitable car wash permits issued during the year. Article VI, Section 15-130 of the City Code allows up to four car washes by a charitable organization in a calendar year. For the period of January 1 to March 31, 2019, the following car washes occurred within the City.

| <u>Date</u> | <u>Name of Organization</u>      | <u>Location of Car Wash</u>          |
|-------------|----------------------------------|--------------------------------------|
| 3/31/19     | Porterville Breakfast Lions Club | ACE Cash Express - 308 W. Olive Ave. |

RECOMMENDATION: Information only.

ATTACHMENTS:

Appropriated/Funded:

Review By:

Department Director:

Maria Bemis, Finance Director

Final Approver: John Lollis, City Manager



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Purchase of Police Radios for DUI Trailer/Command Post

**SOURCE:** Police

**COMMENT:** At its meeting on September 5, 2017, the City Council authorized the Police Department to apply for the Bureau of Justice Assistance, FY 2017, Edward Byrne Memorial Justice Grant (Council Resolution 54-2017), which the Department has recently been notified of award. In addition, Council authorized the Department to use those grant funds to purchase three (3) Motorola base radios for the DUI trailer. Two (2) of the Motorola radios are for Porterville Police Department and local agency emergency channels, while the third Motorola radio will contain the Porterville Fire Department channels. The purchase and installation of these radios will allow the DUI trailer to be used as a command post/mobile communication center for critical incident and DUI check points.

The Porterville Police Department is requesting to utilize its current radio vendor, J's Communications as the sole source for this purchase. J's Communications currently provides all radio service for the Porterville Police Department's vehicles and Communications Center. In addition to purchasing these radios on an existing County of Los Angeles contract, J's Communications is the sole vendor for Motorola radios for the local geographical area, therefore additional quotes were not obtained.

The estimate received from J's Communications is for one (1) APX 4500 VHF radio system, and two (2) APX 4500 UHF R2 radio systems and accompanying installation equipment. The cost is \$7,563.76, which is based on the current Los Angeles County contract.

The Department requests Council approval to purchase the above listed equipment and enter into direct negotiations with the vendor of these items in accordance with the City's Purchasing Policy and Procedure Manual, as amended by Resolution No. 122-87, adopted by Council on October 20, 1987. Funds for the radio purchase are available in the Department's equipment replacement account and will be refunded upon reimbursement in accordance with the grant.

**RECOMMENDATION:** That the City Council:  
1. Authorize Police Department Staff to purchase (3) Motorola APX 4500 radios with associated installation components per

listed specifications; and

2. Authorize payment upon satisfactory delivery of the radios and associated equipment.

ATTACHMENTS:

1. Quote

Appropriated/Funded: MB

Review By:

Department Director:

Eric Kroutil, Police Chief

Final Approver: John Lollis, City Manager





**Quote Number:** QU0000474038

**Effective:** 10 APR 2019

**Effective To:** 09 JUN 2019

**Bill-To:**

PORTERVILLE, CITY OF  
350 NORTH D ST  
PORTERVILLE, CA 93257  
United States

**Ultimate Destination:**

PORTERVILLE, CITY OF  
350 NORTH D ST  
PORTERVILLE, CA 93257  
United States

**Attention:**

**Name:** Sergeant Ron Moore  
**Email:** rmoore@ci.porterville.ca.us  
**Phone:** 559.782.7576

**Sales Contact:**

**Name:** Eugene Orta  
**Email:** geneo@j-scommunications.com  
**Phone:** 559.435.6619

**Contract Number:** LA COUNTY (CA)

**Freight terms:** FOB Destination

**Payment terms:** Net 30 Due

| Item | Quantity | Nomenclature | Description                           | Your price | Extended Price |
|------|----------|--------------|---------------------------------------|------------|----------------|
| 1    | 1        | M22KSS9PW1AN | APX4500 VHF                           | \$1,141.72 | \$1,141.72     |
| 1a   | 1        | G89AC        | ADD: NO RF ANTENNA NEEDED             | -          | -              |
| 1b   | 1        | W382AM       | ADD: CONTROL STATION DESK GCAI<br>MIC | \$123.37   | \$123.37       |
| 1c   | 1        | G66AW        | ADD: DASH MOUNT O2 WWM                | \$91.25    | \$91.25        |
| 1d   | 1        | B18CR        | ADD: AUXILARY SPKR 7.5 WATT           | \$43.80    | \$43.80        |
| 1e   | 1        | GA05100AA    | ADD: STD WARRANTY - NO<br>ESSENTIAL   | -          | -              |
| 1f   | 1        | Q811BU       | ADD: SOFTWARE P25<br>CONVENTIONAL     | \$474.50   | \$474.50       |
| 1g   | 1        | W665BJ       | ADD: CONTROL STATION<br>OPERATION     | \$51.10    | \$51.10        |
| 1h   | 1        | GA00804AA    | ADD: APX O2 CONTROL HEAD              | \$359.16   | \$359.16       |
| 1i   | 1        | G444AH       | ADD: APX CONTROL HEAD<br>SOFTWARE     | -          | -              |
| 1j   | 1        | GA00235AA    | ADD: NO GPS ANTENNA NEEDED            | -          | -              |
| 2    | 2        | M22SSS9PW1AN | APX4500 UHF R2                        | \$1,141.72 | \$2,283.44     |
| 2a   | 2        | G89AC        | ADD: NO RF ANTENNA NEEDED             | -          | -              |
| 2b   | 2        | W382AM       | ADD: CONTROL STATION DESK GCAI<br>MIC | \$123.37   | \$246.74       |
| 2c   | 2        | G66AW        | ADD: DASH MOUNT O2 WWM                | \$91.25    | \$182.50       |
| 2d   | 2        | B18CR        | ADD: AUXILARY SPKR 7.5 WATT           | \$43.80    | \$87.60        |
| 2e   | 2        | GA05100AA    | ADD: STD WARRANTY - NO<br>ESSENTIAL   | -          | -              |
| 2f   | 2        | Q811BU       | ADD: SOFTWARE P25<br>CONVENTIONAL     | \$474.50   | \$949.00       |
| 2g   | 2        | W665BJ       | ADD: CONTROL STATION<br>OPERATION     | \$51.10    | \$102.20       |
| 2h   | 2        | GA00804AA    | ADD: APX O2 CONTROL HEAD              | \$359.16   | \$718.32       |
| 2i   | 2        | G444AH       | ADD: APX CONTROL HEAD<br>SOFTWARE     | -          | -              |
| 2j   | 2        | GA00235AA    | ADD: NO GPS ANTENNA NEEDED            | -          | -              |

**Estimated Tax Amount**

\$634.06

**Estimated Freight Amount**

\$75.00

**Total Quote in USD**

**\$7,563.76**

THIS QUOTE IS BASED ON THE FOLLOWING:

1 This quotation is provided to you for information purposes only and is not intended to be an offer or a binding proposal.

If you wish to purchase the quoted products, Motorola Solutions, Inc. ("Motorola") will be pleased to provide you with our standard terms and conditions of sale (which will include the capitalized provisions below), or alternatively, receive your purchase order which will be acknowledged.

Thank you for your consideration of Motorola products.

2 Quotes are exclusive of all installation and programming charges (unless expressly stated) and all applicable taxes.

3 Purchaser will be responsible for shipping costs, which will be added to the invoice.

4 Prices quoted are valid for thirty(30) days from the date of this quote.

5 Unless otherwise stated, payment will be due within thirty days after invoice. Invoicing will occur concurrently with shipping.

MOTOROLA DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE ORDERED PRODUCTS, EXPRESS OR IMPLIED INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

MOTOROLA'S TOTAL LIABILITY ARISING FROM THE ORDERED PRODUCTS WILL BE LIMITED TO THE PURCHASE PRICE OF THE PRODUCTS WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. IN NO EVENT WILL MOTOROLA BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Purchase of Sixteen (16) Portable Motorola APX6000 Handheld Radios

**SOURCE:** Police

**COMMENT:** The Porterville Police Department currently owns sixty-eight (68) handheld Motorola APX6000 UHF radios, which are utilized by sworn personnel while working in the field. The current radios were purchased after authorization was received from the City Council to replace the previously used Kenwood radios which were over ten years old and beginning to fail.

Currently, Community Service Officers and Animal Control Officers still have to rely on the older Kenwood radios due to insufficient numbers of Motorola radios being available for all field personnel. Additionally, with the anticipation of hiring more Officers in the near future, additional radios are needed to outfit each Officer.

Staff contacted the supplier of the Motorola radios, J's Communications, and was asked to provide a quote for sixteen (16) additional Motorola APX6000 UHF portable radios. In addition to J's Communications having a previously negotiated Los Angeles County contract for these radios, they are the sole vendor for Motorola radios in the local geographical area. Per Motorola regulations, the City is required to purchase Motorola radio equipment from the geographical supplier.

J's Communications provided a quote of \$49,207.95 for sixteen (16) radios as specified under the County of Los Angeles contract.

Funding is available for the purchase of sixteen (16) radios in the Department's Equipment Replacement Fund and Measure I monies.

**RECOMMENDATION:** That the City Council;

1. Authorize Department staff to negotiate the purchase of sixteen (16) Motorola APX6000 handheld radios from J's Communications; and
2. Authorize payment upon receipt of radios.

**ATTACHMENTS:** 1. Quote

Appropriated/Funded: MB

Review By:

Department Director:

Final Approver: John Lollis, City Manager



**Quote Number:** QU0000474671

**Effective:** 16 APR 2019

**Effective To:** 16 JUL 2019

**Bill-To:**

PORTERVILLE, CITY OF  
350 NORTH D ST  
PORTERVILLE, CA 93257  
United States

**Ultimate Destination:**

PORTERVILLE, CITY OF  
350 NORTH D ST  
PORTERVILLE, CA 93257  
United States

**Attention:**

**Name:** Sergeant Ron Moore  
**Email:** rmoore@ci.porterville.ca.us  
**Phone:** 559.782.7576

**Sales Contact:**

**Name:** Eugene Orta  
**Email:** geneo@j-scommunications.com  
**Phone:** 559.435.6619

**Contract Number:** LA COUNTY (CA)  
**Freight terms:** Prepay and Add to Invoice  
**Payment terms:** Net 30 Due

| Item                  | Quantity | Nomenclature | Description                                          | Your price | Extended Price |
|-----------------------|----------|--------------|------------------------------------------------------|------------|----------------|
| 1                     | 16       | H98QDD9PW5BN | APX6000 UHF R1 MODEL 1.5<br>PORTABLE                 | \$1,774.65 | \$28,394.40    |
| 1a                    | 16       | QA05100AA    | ENH:STD WARRANTY APPLIES-NO<br>SFS                   | -          | -              |
| 1b                    | 16       | H207EZ       | DEL: DELETE STANDARD BATTERY                         | \$-21.90   | \$-350.40      |
| 1c                    | 16       | QA05570AA    | ALT: LI-ION IMPRES 2 IP68 3400 MAH                   | \$73.00    | \$1,168.00     |
| 1d                    | 16       | QA01833AH    | ADD: EXTREME 1-SIDED NOISE<br>REDUCTION              | \$18.25    | \$292.00       |
| 1e                    | 16       | Q806BM       | ADD: ASTRO DIGITAL CAI<br>OPERATION                  | \$375.95   | \$6,015.20     |
| 1f                    | 16       | H35BU        | ADD: CONVENTIONAL OPERATION                          | \$365.00   | \$5,840.00     |
| 2                     | 16       | NNTN8860A    | CHARGER, SINGLE-UNIT, IMPRES 2,<br>3A, 115VAC, US/NA | \$123.75   | \$1,980.00     |
| (Notes)PORTERVILLE PD |          |              |                                                      |            |                |
| 3                     | 16       | PMMN4069A    | MICROPHONE,IMPRES RSM, 3.5MM<br>JACK, IP55           | \$106.40   | \$1,702.40     |
| (Notes)PORTERVILLE PD |          |              |                                                      |            |                |

**Estimated Tax Amount** \$4,166.35

**Total Quote in USD** \$49,207.95

\* This quote contains items with approved price exceptions applied against it

**THIS QUOTE IS BASED ON THE FOLLOWING:**

1 This quotation is provided to you for information purposes only and is not intended to be an offer or a binding proposal.

If you wish to purchase the quoted products, Motorola Solutions, Inc. ("Motorola") will be pleased to provide you with our standard terms and conditions of sale (which will include the capitalized provisions below), or alternatively, receive your purchase order which will be acknowledged.

Thank you for your consideration of Motorola products.

2 Quotes are exclusive of all installation and programming charges (unless expressly stated) and all applicable taxes.

3 Purchaser will be responsible for shipping costs, which will be added to the invoice.

4 Prices quoted are valid for thirty(30) days from the date of this quote.

5 Unless otherwise stated, payment will be due within thirty days after invoice. Invoicing will occur concurrently with shipping.

MOTOROLA DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE ORDERED PRODUCTS, EXPRESS OR IMPLIED INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

MOTOROLA'S TOTAL LIABILITY ARISING FROM THE ORDERED PRODUCTS WILL BE LIMITED TO THE PURCHASE PRICE OF THE PRODUCTS WITH RESPECT TO WHICH LOSSES OR DAMAGES ARE CLAIMED. IN NO EVENT WILL MOTOROLA BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.





## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Purchase of Real Property Assessor Parcel Numbers 253-050-093 and 253-050-089

**SOURCE:** Community Development

**COMMENT:** Pursuant to City Council authorization on February 5, 2019, staff has negotiated the purchase of real property from Mr. James Gregory Shelton in the accepted amount of \$380,325. The property consists of two parcels, APNs 253-050-093 and 253-050-089, which is approximately 4.61 acres of land generally located on the south side of Henderson Avenue, east of North 4th Street. Mr. Shelton, noting the property's adjacency to the Rails to Trails pedestrian trail, approached the City with an offer to sell the land for some public use.

The Council has long maintained that public recreation facilities are an important element of the community. For the last few years, the Council has discussed the possibility of developing a larger multi-purpose community and recreation facility, and while no site has yet been selected, acquisition of the subject site offers an additional location for facility planning. The proposed use of the property described herein has not yet been established, but would be reserved for a recreational facility of some sort, available to the public.

The terms of the purchase are outlined in the Purchase and Sale Agreement which is provided herein, as is the draft Resolution for Council's consideration. The funding source is the General Fund Capital Construction/Improvement Designated fund.

**RECOMMENDATION:** That the City Council adopt the Draft Resolution approving the purchase of APN 253-050-093 and 253-050-089; and authorize the Mayor and City Manager to sign all documents necessary to complete the purchase.

**ATTACHMENTS:**

1. Locator Map
2. Draft Purchase and Sale Agreement
3. Draft Resolution

Appropriated/Funded:

Review By:

Department Director:

Jenni Byers, Community Development Director

Final Approver: John Lollis, City Manager

Location  
APN 253-050-093 and 253-050-089



1' = 250 feet



**PURCHASE AND SALE AGREEMENT  
AND ESCROW INSTRUCTIONS**

**Between**

**JAMES GREGORY SHELTON**

**SELLER**

**And**

**CITY OF PORTERVILLE,  
a California municipal corporation**

**BUYER**

**DATED: \_\_\_\_\_, 2019**

\_\_\_\_\_  
("Escrow Holder")

\_\_\_\_\_, California \_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Escrow No. \_\_\_\_\_

Date of Opening of  
Escrow: \_\_\_\_\_

## **PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS**

THIS PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (the "Agreement") is made as of \_\_\_\_\_, 2019 ("Execution Date"), by and between **JAMES GREGORY SHELTON** ("Seller"), and **CITY OF PORTERVILLE**, a California municipal corporation ("Buyer").

### **ARTICLE 1 PROPERTY**

1.1 The Property. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the real property in Porterville, Tulare County, California, as described in **Exhibit A** (the "Property"), subject to the terms and conditions of this Agreement, any and all applicable federal, state and local laws, orders, rules, regulations, any and all outstanding rights of record or open and obvious on the ground, and all matters in the form of the Quitclaim Deed also attached in **Exhibit A** (the "Deed").

### **ARTICLE 2 PURCHASE PRICE**

2.1 Purchase Price The purchase price ("Purchase Price") for the Property is \$380,325.

2.2 Payment of Purchase Price. Buyer shall pay the Purchase Price as follows:

2.2.1 Deposit. Concurrently with Buyer's execution and delivery of this Agreement to Seller, Buyer shall deliver to Escrow Holder, for deposit into the above-referenced numbered escrow account (the "Escrow"), the sum of \$10,000 as a deposit toward the Purchase Price (the "Deposit"). Buyer shall pay the Deposit by cashier's or certified check drawn upon a California financial institution, or by cash deposit or a wire transfer of U.S. funds for immediate credit ("Good Funds"). The Deposit will be applied towards the Purchase Price at Closing (as defined in Section 7.2.1), except in the event of a material default by Seller or the failure of a condition precedent to Buyer's obligations hereunder, or termination of this Agreement.

2.2.2 Balance. At least one (1) business day prior to the Closing Date (as defined in Section 7.2.1), Buyer shall deliver to Escrow Holder a sum equal to the Purchase Price, together with Buyer's share of prorations and costs of Escrow as provided in Sections 7.6 through 7.8, less the amount of the Deposit. Buyer shall pay such sum in Good Funds.

### **ARTICLE 3 AS IS SALE**

3.1 As Is Sale. Buyer and its representatives, prior to the Closing Date, will have been afforded the opportunity to make such inspections of the Property and matters related thereto as Buyer and its representatives desire, including, without limitation, governmental laws and regulations to which the Property is subject. Buyer shall accept the Property upon the basis of its review and determination of the applicability and effect of such laws and regulations. Buyer acknowledges and agrees that the Property is to be sold and quitclaimed to and accepted by Buyer in an "as is" condition with all faults, and that the Property has been used for, among other things, railroad operating right-of-way. Seller does not make any representations or warranties of any kind whatsoever, either express or implied, with respect to the Property or any of such related matters; in particular, but without limitation, Seller makes no representations or warranties with respect to the use, condition, title, occupation or management of the Property, compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to leasing, zoning, subdivision, planning, building, fire, safety, health or environmental matters, compliance with covenants, conditions and restrictions (whether or not of record), other local, municipal, regional, state or federal requirements, or other statutes, laws, codes, ordinances, regulations or requirements (collectively, "Condition of the Property"). Buyer acknowledges that it is entering into this Agreement on the basis of Buyer's own investigation of the physical and environmental conditions of the Property, including the subsurface conditions and Buyer assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation.

3.2 Survival. The provisions of Section 3.1 will survive the Closing and the delivery of the Deed.

### **ARTICLE 4 TITLE TO PROPERTY**

4.1 Title. At the Closing (as defined in Section 7.2.1), Seller shall execute and deliver to Buyer the Deed(s) to the Property in the form of **Exhibit A** attached hereto. Title will be evidenced by the issuance by First American Title Company ("Title Company") of a CLTA Standard Coverage Owner's Policy of Title Insurance in the full amount of the Purchase Price (the "Title Policy"), insuring fee simple title to the Property in Buyer, subject only to:

4.1.1 A lien to secure payment of real property taxes and assessments, not delinquent;

4.1.2 Matters affecting the condition of title created or permitted to be created by or with the written consent of Buyer;

4.1.3 Standard exceptions in the Title Policy, and exceptions that are disclosed by the Title Report described in Section 5.1 or any supplementary report and that are approved or deemed approved by Buyer in accordance with Section 5.1; and

4.1.4 Any other exceptions or reservations set forth in the Deed.

4.2 Extended Coverage. Buyer, at its option and at its sole cost and expense, may obtain ALTA extended coverage and/or an ALTA survey, provided, however, that the failure to obtain such extended coverage will not be a condition to nor delay the Close of Escrow beyond the Closing Date, and that Seller will not be required to assume any obligations or liabilities in addition to Seller's obligations and liabilities under this Agreement.

## **ARTICLE 5 BUYER'S CONDITIONS TO CLOSING**

The following are conditions precedent to Buyer's obligation to purchase the Property:

### **5.1 Approval of Title.**

(a) Buyer, at its sole cost and expense, will obtain a preliminary title report on the Property ("Title Report") together with copies of all the documents referred to in the Title Report that are provided by the Title Company with the Title Report. Within the earlier to occur of (i) ten (10) days after receipt by Buyer of the Title Report, or (ii) Sixty (60) days after Opening of Escrow ("Title Contingency Date"), per Section Article 6 below, Buyer shall deliver written notice to Seller ("Buyer's Title Notice") of all matters of title to the Property disapproved by Buyer ("Disapproved Items"). If Buyer timely notifies Seller of Disapproved Items and all or some of the Disapproved Items (except for those Disapproved Items, if any, which will be removed upon the Close of Escrow in accordance with the terms of this Agreement) are not cured or deleted as exceptions to title within ten (10) days after Seller's receipt of Buyer's Title Notice ("Seller's Cure Period"), Buyer will have the option of either waiving its disapproval of such Disapproved Items and proceeding to the Close of Escrow or terminating this Agreement, in which event the provisions of Section 5.1(b) will govern. The procurement by Seller of a commitment for the issuance of the Title Policy, or an endorsement thereto, insuring Buyer against any Disapproved Item set forth in Buyer's Title Notice, will be deemed a cure by Seller of such Disapproved Item. In the event Buyer elects to terminate this Agreement pursuant to this Section 5.1, Buyer shall notify Seller of its election by written notice no later than five (5) days after expiration of Seller's Cure Period. Buyer's failure to timely deliver written notice to Seller of its election will be deemed to be Buyer's election to proceed to the Close of Escrow and to waive its disapproval of such Disapproved Items. In no event will Seller's failure to cure or delete as exceptions to the Title Policy any Disapproved Items be deemed to be a breach of this Agreement by Seller or entitle Buyer to any offset against the Purchase Price.



(b) If this Agreement is terminated pursuant to this Section 5.1., the Deposit will be returned to Buyer and neither party will have any further rights or obligations under this Agreement (other than the Surviving Obligations).

5.2 Compliance by Seller. Seller will have complied with each and every condition and material covenant of this Agreement to be kept or complied with by Seller.

## **ARTICLE 6 SELLER'S CONDITIONS TO CLOSING**

The following are conditions precedent to Seller's obligation to sell the Property:

6.1 Compliance by Buyer. Buyer will have complied with each and every condition and material covenant of this Agreement to be kept or complied with by Buyer.

## **ARTICLE 7 OPENING AND CLOSING OF ESCROW**

7.1 Opening of Escrow and Escrow Instructions. Upon execution of this Agreement, the parties shall deposit three (3) executed counterparts of this Agreement (and Buyer shall deposit the Deposit) with Escrow Holder and this instrument will serve as the instructions to Escrow Holder for consummation of the purchase and sale contemplated hereby, including Escrow Holder's general provisions which are contained in **Exhibit B** attached hereto to the extent said general provisions do not conflict with the provisions contained in these Escrow Instructions. Escrow Holder shall insert the date of the Opening of Escrow on the upper right hand corner of the first page of this Agreement on each of the three counterparts. The Opening of Escrow is the date upon which Escrow Holder has received executed counterparts of this Agreement from both Buyer and Seller and has received the Deposit from Buyer. Escrow Holder shall deliver to both Buyer and Seller a set of counterparts of the Agreement executed by Buyer, Seller and Escrow Holder and shall retain a set in Escrow. Escrow Holder is responsible only for undertaking such matters in conjunction with the Closing as are specifically provided for in this Agreement or in any additional or supplementary escrow instructions delivered by the parties.

7.2 Closing.

7.2.1 Closing Date. The consummation of the transaction contemplated by this Agreement and recording of the Deed (the "Closing" or "Close of Escrow") will occur and delivery of all items to be made at the Closing under the terms of this Agreement will be made within sixty (60) days after the date of Opening of Escrow, unless the Closing date is extended upon mutual agreement between the parties.

7.2.2 Preclosing Conditions. Provided that Escrow Holder can comply with these instructions, that Escrow Holder has received the deliveries described in Sections 8.3 and 8.4 below, that Escrow Holder has not received prior written notice from a party that any condition to such party's obligations has not been fulfilled, or that Buyer has elected to terminate its rights and obligations under this Agreement pursuant to Article 5 or Seller has elected to terminate its rights and obligations under this Agreement pursuant to Article 6 and the Title Company has issued or is unconditionally prepared to issue to Buyer, as of the Closing Date, the Title Policy, then Escrow Holder is authorized and instructed to (a) record the Deed, (b) deliver the Purchase Price to Seller, less prorations and costs of Escrow in accordance with Section 8.6, (c) deliver a conformed copy of the recorded Deed(s), and (d) deliver the closing statements to Buyer and Seller in accordance with Section 8.2.4.

7.2.3 Failure to Close. If the Closing does not occur on or before the Closing Date (or as extended by mutual agreement), then either party not then in default may elect to terminate this Agreement and cancel Escrow by giving written notice of such termination and cancellation to the other party and to Escrow Holder. In the event of such termination and cancellation, neither party will have any further obligations hereunder (other than the Surviving Obligations) and, unless the Escrow fails to close due to (a) a material default by Seller, (b) the failure of a condition precedent to Buyer's obligations hereunder, or (c) termination of this Agreement, the Deposit and any interest accrued thereon will be paid to or retained by Seller, and all documents and other instruments must be returned to the party depositing the same into Escrow. If neither party is in default, then Buyer and Seller will share equally the cost of cancellation of Escrow. If only one of the parties hereto is in default or if this Agreement expressly so provides, then such defaulting party shall pay for the entire cost of cancellation of Escrow. The termination of this Agreement and cancellation of Escrow will be without prejudice to whatever legal rights, as such rights may be limited by the terms of this Agreement, that Buyer or Seller may have against each other arising out of this Agreement and the Escrow. If neither party so elects to terminate this Agreement and cancel Escrow, Escrow Holder shall close the Escrow as soon as possible.

7.2.4 Notification; Closing Statements. If Escrow Holder cannot comply with the instructions in this Agreement and to be provided, Escrow Holder is not authorized to cause the recording of the Deed or close this Escrow. If Escrow Holder is unable to cause the recording of the Deed, Escrow Holder shall notify Jennifer Byers at (559) 782-7460 and James Gregory Shelton, without delay. If Escrow Holder is able to comply with the instructions herein and to be provided, at the Closing Escrow Holder shall deliver to Seller at the addresses provided in Section 12.9 a true, correct and complete copy of the Seller's closing statement, in the form customarily prepared by Escrow Holder and shall deliver to Buyer at the address provided in Section 10.9 a true, correct and complete copy of Buyer's closing statement, in the form customarily prepared by Escrow Holder.

7.3 Deliveries by Seller. Not later than one business day prior to the Closing Date, Seller shall deposit with Escrow Holder the following items:

7.3.1 Deed. The Deed in the form of **Exhibit A** duly executed and acknowledged by Seller.

7.3.2 California Form 593-C. California Form 593-C (Real Estate Withholding Certificate) duly executed by Seller, if applicable.

7.3.4 Other Documents. Any other documents, instruments, data, records, correspondence or agreements called for under this Agreement and/or necessary to effectuate the sale that have not previously been delivered.

7.4 Deliveries by Buyer. Not later than one (1) business day prior to the Closing Date (or such other time specified below), Buyer shall deposit with Escrow Holder the following items:

7.4.1 Purchase Price. A sum, including the Deposit, in an amount equal to the Purchase Price, plus Buyer's share of the prorations and costs of Escrow that are required pursuant to this Article 8 to close Escrow.

7.4.2 Other Documents. Any other documents, instruments, data, records, correspondence or agreements called for under this Agreement and/or necessary to effectuate the sale that have not been previously delivered.

7.5 Other Instruments. Seller and Buyer shall each deposit such other instruments and take such other actions as are reasonably required by Escrow Holder or otherwise required to close the Escrow and consummate the purchase of the Property in accordance with the terms of this Agreement.

7.6 Prorations. All revenues and expenses of the Property, including, without limitation, real property taxes, special taxes, assessments and utility fees and/or deposits, and rentals under the Licenses, if any, will be prorated and apportioned between Buyer and Seller as of 12:01 a.m. on the Closing Date, so that Seller bears all expenses with respect to the Property and has the benefit of all income with respect to the Property through and including the date immediately preceding the Closing Date. Seller and Buyer agree that any of the aforesaid prorations that cannot be calculated accurately as of the Closing Date will be prorated on the basis of the parties' reasonable estimates, and will be recomputed between Seller and Buyer when actual tax statements for the year of Closing are received, and either party owing the other party a sum of money based on such subsequent proration adjustment will promptly pay said sum to the other party, and, if payment is not made within ten (10) days after delivery of a bill therefor, will pay interest thereon at the lesser of the rate of ten percent (10%) per annum or the highest rate permitted by law, from the Closing Date to the date of payment.

7.7 Special Taxes, Bonds or Assessments. If, at the time of Closing, any portion of the Property is affected by an assessment or other charge, whether for taxes or bonds, or interest thereon, which is or may become payable in installments, and an installment payment of such assessment is then a lien, then such installment will be prorated as of midnight at the end of the day preceding the Close of Escrow. All installments not then yet due whether or not the same have been prepaid will not be prorated and Buyer shall assume such bonds or assessments. Any prepaid assessments made in advance of its due date will be credited to Seller. In addition, Buyer shall assume any and all future bonds, assessments, special taxes, fees or charges applicable to the Property for liabilities now or hereafter imposed by any governmental authority (collectively

referred to as "Governmental Requirements") including, without limitation, any such Governmental Requirements imposed by the City of Porterville, and those for (a) common area improvements, whether or not specifically set forth in this Agreement, (b) local assessment or improvement districts, (c) any special tax assessments, (d) traffic mitigation improvements, (e) park and recreation fees, and/or (f) any other public facility infrastructure or traffic mitigation required or imposed by the City of Porterville. Buyer shall assume all such bonds or future assessments without offset or adjustment.

7.8 Costs and Expenses. The costs and expenses of Escrow upon Close of Escrow will be shared equally (50% each) by Buyer and Seller, including, without limitation, all recording charges, the premium for the Title Policy, the cost of any documentary or other transfer taxes applicable to the sale, and all other standard costs and charges of the Escrow.

7.9 Disbursement of Funds. On the Close of Escrow, Escrow Holder shall disburse the Purchase Price less Seller's share of prorations as determined pursuant to this Agreement in immediately available funds, and, unless otherwise instructed by Seller, Escrow Holder shall cause such funds to be sent as follows: A certified check of other appropriate instrument of payment to be made available for personal pickup by the Seller at the First American Title Company office in Porterville, CA.

7.10 Delivery of Documents. Upon the Close of Escrow, Escrow Holder shall promptly deliver all instruments and documents to the parties as specified in Section 10.9. Escrow Holder shall promptly deliver to the party entitled thereto the recorded originals of such instruments or documents upon Escrow Holder's receipt of the same.

7.11 Supplemental Taxes. Seller and Buyer acknowledge that the Property may be subject to supplemental taxes due as a result of change of ownership taking place through this Escrow. Any necessary adjustment due either party on receipt of a supplemental tax bill will be made by the parties outside of this Escrow and Escrow Holder is released of any liability in connection with same.

## **ARTICLE 8 REPRESENTATIONS, WARRANTIES AND COVENANTS;**

8.1 Representations, Warranties and Covenants of Seller. Seller hereby represents, warrants and covenants to Buyer as of the date of this Agreement, as follows:

8.1.1 Organization. Seller is an individual.

8.1.2 Enforceability. This Agreement and all documents executed by Seller which are to be delivered to Buyer at the Closing are intended, provided Buyer has duly executed those documents requiring Buyer's signature, to be legal, valid, and binding obligations of Seller, and do not and at the time of Closing will not violate any provisions of any agreement or judicial order to which Seller is a party or to which Seller or the Property is subject.

8.1.3 Bankruptcy. No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under federal or state bankruptcy or insolvency laws is pending against or contemplated by Seller.

8.2 Representations, Warranties and Covenants of Buyer. Buyer hereby represents, warrants and covenants to Seller as of the date of this Agreement, as follows:

8.2.1 Organization. Buyer is a municipal corporation, duly organized, validly existing and in good standing under the laws of the State of California and qualified to do business in California, with full power and authority to enter into and comply with the terms of this Agreement.

8.2.2 Enforceability. This Agreement and all documents executed by Buyer which are to be delivered to Seller at the Closing are intended, provided Seller has duly executed those documents requiring Seller's signature, to be legal, valid, and binding obligations of Buyer, and do not and at the time of Closing will not violate any provisions of any agreement or judicial order to which Buyer is a party or to which it is subject.

8.2.3 Bankruptcy. No petition in bankruptcy (voluntary or otherwise), assignment for the benefit of creditors, or petition seeking reorganization or arrangement or other action under federal or state bankruptcy or insolvency laws is pending against or contemplated by Buyer.

8.3 Mutual Representations and Covenants, Brokers and Finders. No broker's fee, finder's fee, commission or similar compensation will be paid to principals of Buyer or Seller in connection with this Agreement. In the event of a claim for broker's fee, finder's fee, commission or other similar compensation in connection herewith, Buyer, if such claim is based upon any agreement alleged to have been made by Buyer, agrees to indemnify and hold Seller harmless against any and all liability, loss, cost, damage or expense (including reasonable attorneys' fees and costs) which Seller may sustain or incur by reason of such claim; and Seller, if such claim is based upon any agreement alleged to have been made by Seller, agrees to indemnify and hold Buyer harmless against any and all liability, loss, cost, damage or expense (including reasonable attorneys' fees and costs) which Buyer may sustain or incur by reason of such claim. The provisions of this Section will survive the Close of Escrow or termination of this Agreement.

## **ARTICLE 9 POSSESSION**

Possession of the Property will be delivered to Buyer on the Close of Escrow.

## **ARTICLE 10 MISCELLANEOUS**

10.1 Agreement Expenses. The parties agree to bear their respective expenses, incurred or to be incurred in negotiating and preparing this Agreement and in Closing and carrying out the transactions contemplated by this Agreement.

10.2 Satisfaction or Waiver of Contingencies. The consummation of the Closing will be conclusive evidence that the contingencies and conditions to Closing have been fully satisfied or waived.

10.3 Successors and Assigns. This Agreement will be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

10.4 Parties in Interest. Except as expressly provided in this Agreement, nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor will any provision give any third persons any right to subrogation or action over or against any party to this Agreement.

10.5 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior or contemporaneous oral or written agreements, representations, statements, documents, or understandings of the parties.

10.6 Amendment. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing by the party to be bound.

10.7 Waiver. No waiver of any of the provisions of this Agreement will be deemed, or will constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

10.8 Timeliness. Seller and Buyer acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision of this Agreement and that failure to timely perform any of the material terms, conditions, obligations or provisions of this Agreement by either party is a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

10.9 Notices. Any notice or other communication required or permitted to be given under this Agreement ("Notices") must be in writing and must be (a) personally delivered; (b) delivered by a reputable overnight courier; or (c) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Notices will be deemed received at the earlier of (a) actual receipt or (b) one business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (c) three business days following deposit in the U.S. Mail, as

evidenced by a return receipt. Notices must be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other in the manner described above:

If to Seller: James Gregory Shelton  
888 N. Williford Dr.  
Porterville, CA 93257

If to Buyer: CITY OF PORTERVILLE  
ATTN: Jennifer Byers, Community Development Director  
291 Main Street  
Porterville, California 93257  
Telephone: (559) 782-7460

10.10 Governing Law and Venue. This Agreement is to be construed in accordance with, and governed by, the laws of the State of California, and any action or proceeding, including arbitration, brought by any party in which this Agreement is subject, will be brought in the county in which the Property is located. This Agreement is entered into and to be performed in Tulare County, California.

10.11 Effect of Headings. The headings of the paragraphs of this Agreement are included for purposes of convenience only, and will not affect the construction or interpretation of any of its provisions.

10.12 Invalidity. Any provision of this Agreement which is invalid, void, or illegal, will not affect, impair, or invalidate any other provision of this Agreement, and such other provisions of this Agreement will remain in full force and effect.

10.13 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

10.14 Number and Gender. When required by the context of this Agreement, each number (singular and plural) will include all numbers, and each gender will include all genders.

10.15 Joint and Several Liability. In the event either party hereto now or hereafter consists of more than one person, firm, or corporation, then and in such event, all such persons, firms, or corporations will be jointly and severally liable as parties under this Agreement.

10.16 Recording. Neither party may record this Agreement or any memorandum thereof.

10.17 Advice of Professionals. Each party has had the opportunity to be advised by legal counsel and other professionals in connection with this Agreement, and each party has obtained such advice as each party deems appropriate.



10.18 Negotiated Terms. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement will not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement.

10.19 Recitals and Exhibits. The recitals and contents of all Exhibits to this Agreement are incorporated by reference and constitute a material part of this Agreement.

10.20 Professional Fees and Costs. If any legal or equitable action, arbitration, bankruptcy, reorganization, or other proceeding, whether on the merits, application, or motion, are brought or undertaken, or an attorney retained, to enforce this Agreement or any closing document, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement or any closing document, then the successful or prevailing party or parties in such undertaking (or the party that would prevail if an action were brought) will be entitled to recover reasonable attorney's and other professional fees, expert witness fees, court costs and other expenses incurred in such action, proceeding, or discussions, in addition to any other relief to which such party may be entitled. The parties intend this provision to be given the most liberal construction possible and to apply to any circumstances in which such party reasonably incurs expenses. The provisions of this Section will survive the Close of Escrow or the termination of this Agreement.

10.21 Not an Offer. The submission of this Agreement to Buyer for review or signature does not constitute an offer to sell the Property to Buyer or the granting of an option or other rights with respect to the Property to Buyer. No agreement with respect to the purchase and sale of the Property will exist, and this writing will have no binding force or effect, until executed and delivered by both Seller and Buyer.

10.22 Severability. Any provision of this Agreement that is determined by a court of competent jurisdiction to be invalid or unenforceable will be invalid or unenforceable only to the extent of such determination, which will not invalidate or otherwise render ineffective any other provision of this Agreement.

10.23 Merger. Except as otherwise expressly provided in this Agreement, the covenants, representations and warranties of Buyer and Seller in this Agreement will merge into the Deed to be delivered by Seller to Buyer at Closing and will not survive the Closing of Escrow.

//  
//  
//  
//  
//  
//  
//  
//  
//  
//

**SELLER:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BUYER:**

**CITY OF PORTERVILLE,  
a California municipal corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

THE UNDERSIGNED ESCROW HOLDER ACKNOWLEDGES ITS RECEIPT  
OF THE DEPOSIT AND THREE (3) EXECUTED COPIES OF THIS AGREEMENT AND  
AGREES TO ACT IN ACCORDANCE THEREWITH.

**ESCROW HOLDER:**

\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Escrow Officer

**EXHIBIT A**

**[Deed with Legal Descriptions]**

**EXHIBIT B**

**ESCROW HOLDER GENERAL PROVISION**



RESOLUTION NO. \_\_\_\_-2019

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
PORTERVILLE ACCEPTING A QUITCLAIM DEED FOR REAL PROPERTY FROM  
JAMES GREGORY SHELTON AND AUTHORIZING THE APPROPRIATION OF FUNDS  
FROM THE CAPITAL CONSTRUCTION / IMPROVEMENT DESIGNATED FUND

WHEREAS: The City Council has authorized the acquisition of approximately 4.61 acres of real property generally located on the south side of Henderson Avenue, east of North 4<sup>th</sup> Street, from James Gregory Shelton in the amount of \$380,325; and

WHEREAS: The City of Porterville Municipal Code Section 2-31.4, established the Capital Construction/Improvement Designated Fund for the exclusive purpose of providing funds to support new capital construction and/or improvement projects identified in the Capital improvement Plan; and

WHEREAS: The Fourth Street Fieldhouse was identified as a possible project in the 2018-2019 10-year Capital Improvements Plan; and

WHEREAS: The City Council is evaluating the sale of the Heritage Center; and

WHEREAS: The intent of the acquisition described herein is to construct a larger multi-purpose community and recreation facility, which meets the National Objective of Low/Mod Area Benefit. Because of the intent and meeting a National Objective, upon the sale of the Heritage Center property, repayment of the Community Development Block Grant Section 108 loan, and subsequent approval for the disbursement of funds by HUD, any remaining proceeds from the sale of the Heritage Center shall be used towards the reimbursement of the Construction/Improvements Designated Fund.

NOW, THEREFORE, BE IT RESOLVED:

1. That the City Council of the City of Porterville accept a Quitclaim Deed from James Gregory Shelton, a single man, for real property, in the City of Porterville, County of Tulare, State of California, to-wit:

See Exhibit "A" and shown on Exhibit "B" attached hereto and made a part hereof by reference.

2. That the purchase price of \$380,325.00 is hereby approved with the City of Porterville to open escrow account, pay the normal and customary escrow fees, authorize Mayor to sign all necessary documents, and said quitclaim deed to be recorded in the office of the Tulare County Recorder.
3. That the City Council of the City of Porterville does hereby approve and authorize the appropriation of \$380,325 plus the normal and customary escrow fees, from the Capital Construction/Improvement Designated Fund for the acquisition of said real property.

PASSED, APPROVED AND ADOPTED this 7<sup>th</sup> day of May, 2019.

---

Martha A. Flores, Mayor

ATTEST:  
John D. Lollis, City Clerk

---

By: Patrice Hildreth, Chief Deputy City Clerk

**Exhibit "A"**

**Legal Description**

A.P.N.: 253-050-089-000 and 253-050-093

Real property in the City of Porterville, County of Tulare, State of California, described as follows:

PARCEL A: (PORTION OF APN: 253-050-089)

ALL THAT LAND CONVEYED TO THE MINKLER SOUTHERN RAILWAY COMPANY THE DEED RECORDED MAY 23, 1921 IN VOLUME 296, PAGE 478 OF DEEDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, WHICH IS A PORTION OF PARCEL 8 (EIGHT) OF SAID DEED, FURTHER DESCRIBED AS:

LOT 23 OF PIONEER LAND COMPANY'S FIRST SUBDIVISION, AS PER THE MAP RECORDED IN VOLUME 1, PAGES 110 AND 111 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE PORTION INCLUDED BETWEEN THE EAST AND SOUTH LINES OF SAID LOT, AND A DIRECT LINE BEGINNING IN SAID EAST LINE 200 FEET SOUTH OF CYPRESS STREET, AND ENDING IN SAID SOUTH LINE 150 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT.

ALSO EXCEPTING THEREFROM THAT PORTION THEREOF CONVEYED TO JAMES GREGORY SHELTON IN THE DEED RECORDED FEBRUARY 23, 2005 AS INSTRUMENT NUMBER 2005-0019793 OF OFFICIAL RECORDS OF SAID COUNTY.

ALSO EXCEPTING THEREFROM THE WEST 200 FEET THEREOF.

ALSO EXCEPTING THEREFROM SAID LAND ALL OWNERSHIP RIGHTS TO THE ENTIRE MINERAL ESTATE BELOW THE PROPERTY, BELOW A DEPTH OF 25 FEET, INCLUDING WITHOUT LIMITATION, ALL OIL, PETROLEUM, GAS AND OTHER MINERALS, WHETHER GASEOUS, LIQUID OR SOLID, IN AND UNDER THE ABOVE-DESCRIBED PREMISES, BELOW A DEPTH OF 25 FEET. SUCH RIGHTS SHALL INCLUDE SURFACE AND SUBSURFACE ACCESS EASEMENTS, RIGHTS TO CONSTRUCT, MAINTAIN AND OPERATE SURFACE AND SUBSURFACE FACILITIES, AND OTHER RIGHTS TO DEVELOP AND EXTRACT OIL, PETROLEUM, GAS OR ANY OTHER MINERAL, EXCEPT THAT GRANTOR (1) SHALL NOT, WITHOUT PRIOR WRITTEN CONSENT FROM GRANTEE, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD OR DELAYED, HAVE ANY RIGHT TO ENTER THE SURFACE OF THE PROPERTY, FOR PURPOSES OF EXPLORATION, DEVELOPMENT OR EXTRACTION OF SUCH MINERALS; (2) SHALL NOT IN EXERCISING THESE RIGHTS MORE THAN MINIMALLY INTERFERE WITH GRANTEE'S USE OF THE PROPERTY; AND (3) PRIOR TO THE EXERCISE OF THESE RIGHTS, SHALL PROVIDE ADEQUATE LIABILITY PROTECTION TO GRANTEE, IN THE FORM OF GENERAL LIABILITY INSURANCE OBTAINED (OR EXTENDED), AT THE SOLE COST OF THE GRANTOR, NAMING GRANTEE AS AN INSURED PARTY, UPON SUCH TERMS AS ARE THEN REASONABLE AND CUSTOMARY, UNLESS GRANTOR, IN THE REASONABLE OPINION OF GRANTEE, POSSESSES THE FINANCIAL CAPABILITY TO FUND SUCH LIABILITY PROTECTION AS A SELF-INSURED ENTITY, UNDER THAT REASONABLE AND CUSTOMARY STANDARD, FOR ANY LOSSES OF DAMAGES REASONABLY LIKELY TO BE SUSTAINED BY GRANTEE AS A RESULT OF GRANTOR'S EXERCISE OF THESE RIGHTS. IN ADDITION, ANY SURFACE OR SUBSURFACE FACILITIES CONSTRUCTED OR EQUIPMENT USED, BY GRANTOR THE COURSE OF GRANTOR'S EXERCISE OF THESE RIGHTS SHALL BE CONSTRUCTED AND USED IN A MANNER THAT RESULTS IN NO MORE THAN MINIMAL INTERFERENCE



WITH GRANTEE'S USE OF THE PROPERTY, AS RESERVED IN THE DEED RECORDED DECEMBER 29, 1992, AS DOCUMENT NO. 92-094547, OFFICIAL RECORDS, AND RECORDED OCTOBER 18, 1994, AS DOCUMENT NO. 94-074651, OFFICIAL RECORDS.

PARCEL B: (PORTION OF APN: 253-050-089)

ALL THAT LAND CONVEYED TO THE MINKLER SOUTHERN RAILWAY COMPANY IN THE DEED RECORDED MAY 23, 1921 IN VOLUME 296, PAGE 478 OF DEEDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, WHICH IS A PORTION OF PARCEL 9 (NINE) OF SAID DEED, FURTHER DESCRIBED AS:

LOT 22 OF PIONEER LAND COMPANY'S FIRST SUBDIVISION, AS PER THE MAP RECORDED IN VOLUME 1, PAGES 110 AND 111 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM THE EAST 150 FEET THEREOF.

ALSO EXCEPTING THEREFROM THE WEST 200 FEET THEREOF.

ALSO EXCEPTING THEREFROM SAID LAND ALL OWNERSHIP RIGHTS TO THE ENTIRE MINERAL ESTATE BELOW THE PROPERTY, BELOW A DEPTH OF 25 FEET, INCLUDING WITHOUT LIMITATION, ALL OIL, PETROLEUM, GAS AND OTHER MINERALS, WHETHER GASEOUS, LIQUID OR SOLID, IN AND UNDER THE ABOVE-DESCRIBED PREMISES, BELOW A DEPTH OF 25 FEET. SUCH RIGHTS SHALL INCLUDE SURFACE AND SUBSURFACE ACCESS EASEMENTS, RIGHTS TO CONSTRUCT, MAINTAIN AND OPERATE SURFACE AND SUBSURFACE FACILITIES, AND OTHER RIGHTS TO DEVELOP AND EXTRACT OIL, PETROLEUM, GAS OR ANY OTHER MINERAL, EXCEPT THAT GRANTOR (1) SHALL NOT, WITHOUT PRIOR WRITTEN CONSENT FROM GRANTEE, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD OR DELAYED, HAVE ANY RIGHT TO ENTER THE SURFACE OF THE PROPERTY, FOR PURPOSES OF EXPLORATION, DEVELOPMENT OR EXTRACTION OF SUCH MINERALS; (2) SHALL NOT IN EXERCISING THESE RIGHTS MORE THAN MINIMALLY INTERFERE WITH GRANTEE'S USE OF THE PROPERTY; AND (3) PRIOR TO THE EXERCISE OF THESE RIGHTS, SHALL PROVIDE ADEQUATE LIABILITY PROTECTION TO GRANTEE, IN THE FORM OF GENERAL LIABILITY INSURANCE OBTAINED (OR EXTENDED), AT THE SOLE COST OF THE GRANTOR, NAMING GRANTEE AS AN INSURED PARTY, UPON SUCH TERMS AS ARE THEN REASONABLE AND CUSTOMARY, UNLESS GRANTOR, IN THE REASONABLE OPINION OF GRANTEE, POSSESSES THE FINANCIAL CAPABILITY TO FUND SUCH LIABILITY PROTECTION AS A SELF-INSURED ENTITY, UNDER THAT REASONABLE AND CUSTOMARY STANDARD, FOR ANY LOSSES OF DAMAGES REASONABLY LIKELY TO BE SUSTAINED BY GRANTEE AS A RESULT OF GRANTOR'S EXERCISE OF THESE RIGHTS. IN ADDITION, ANY SURFACE OR SUBSURFACE FACILITIES CONSTRUCTED, OR EQUIPMENT USED, BY GRANTOR IN THE COURSE OF GRANTOR'S EXERCISE OF THESE RIGHTS, SHALL BE CONSTRUCTED AND USED IN A MANNER THAT RESULTS IN NO MORE THAN MINIMAL INTERFERENCE WITH GRANTEE'S USE OF THE PROPERTY, AS RESERVED IN THE DEED RECORDED DECEMBER 29, 1992, AS DOCUMENT NO. 92-094547, OFFICIAL RECORDS, AND RECORDED OCTOBER 18, 1994, AS DOCUMENT NO. 94-074651, OFFICIAL RECORDS.

PARCEL C: (PORTION OF APN: 253-050-093)

ALL THAT LAND CONVEYED TO THE MINKLER SOUTHERN RAILWAY COMPANY IN THE DEED RECORDED MAY 23, 1921 IN VOLUME 296, PAGE 478 OF DEEDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, WHICH IS A PORTION OF PARCEL 8 (EIGHT) OF SAID DEED, FURTHER DESCRIBED AS:

THE EAST 90 FEET OF THE WEST 200 FEET OF LOT 23 OF PIONEER LAND COMPANY'S FIRST SUBDIVISION, AS PER THE MAP RECORDED IN VOLUME 1, PAGES 110 AND 111 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM SAID LAND ALL OWNERSHIP RIGHTS TO THE ENTIRE MINERAL ESTATE BELOW THE PROPERTY, BELOW A DEPTH OF 25 FEET, INCLUDING WITHOUT LIMITATION, ALL OIL, PETROLEUM, GAS AND OTHER MINERALS, WHETHER GASEOUS, LIQUID OR SOLID, IN AND UNDER THE ABOVE-DESCRIBED PREMISES, BELOW A DEPTH OF 25 FEET. SUCH RIGHTS SHALL INCLUDE SURFACE

AND SUBSURFACE ACCESS EASEMENTS, RIGHTS TO CONSTRUCT, MAINTAIN AND OPERATE SURFACE AND SUBSURFACE FACILITIES, AND OTHER RIGHTS TO DEVELOP AND EXTRACT OIL, PETROLEUM, GAS OR ANY OTHER MINERAL, EXCEPT THAT GRANTOR (1) SHALL NOT, WITHOUT PRIOR WRITTEN CONSENT FROM GRANTEE, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD OR DELAYED, HAVE ANY RIGHT TO ENTER THE SURFACE OF THE PROPERTY, FOR PURPOSES OF EXPLORATION, DEVELOPMENT OR EXTRACTION OF SUCH MINERALS; (2) SHALL NOT IN EXERCISING THESE RIGHTS MORE THAN MINIMALLY INTERFERE WITH GRANTEE'S USE OF THE PROPERTY; AND (3) PRIOR TO THE EXERCISE OF THESE RIGHTS, SHALL PROVIDE ADEQUATE LIABILITY PROTECTION TO GRANTEE, IN THE FORM OF GENERAL LIABILITY INSURANCE OBTAINED (OR EXTENDED), AT THE SOLE COST OF THE GRANTOR, NAMING GRANTEE AS AN INSURED PARTY, UPON SUCH TERMS AS ARE THEN REASONABLE AND CUSTOMARY, UNLESS GRANTOR, IN THE REASONABLE OPINION OF GRANTEE, POSSESSES THE FINANCIAL CAPABILITY TO FUND SUCH LIABILITY PROTECTION AS A SELF-INSURED ENTITY, UNDER THAT REASONABLE AND CUSTOMARY STANDARD, FOR ANY LOSSES OF DAMAGES REASONABLY LIKELY TO BE SUSTAINED BY GRANTEE AS A RESULT OF GRANTOR'S EXERCISE OF THESE RIGHTS. IN ADDITION, ANY SURFACE OR SUBSURFACE FACILITIES CONSTRUCTED, OR EQUIPMENT USED, BY GRANTOR IN THE COURSE OF GRANTOR'S EXERCISE OF THESE RIGHTS, SHALL BE CONSTRUCTED AND USED IN A MANNER THAT RESULTS IN NO MORE THAN MINIMAL INTERFERENCE WITH GRANTEE'S USE OF THE PROPERTY, AS RESERVED IN THE DEED RECORDED DECEMBER 29, 1992, AS DOCUMENT NO. 92-094547, OFFICIAL RECORDS, AND RECORDED OCTOBER 18, 1994, AS DOCUMENT NO. 94-074651, OFFICIAL RECORDS.

PARCEL D: (PORTION OF APN: 253-050-093)

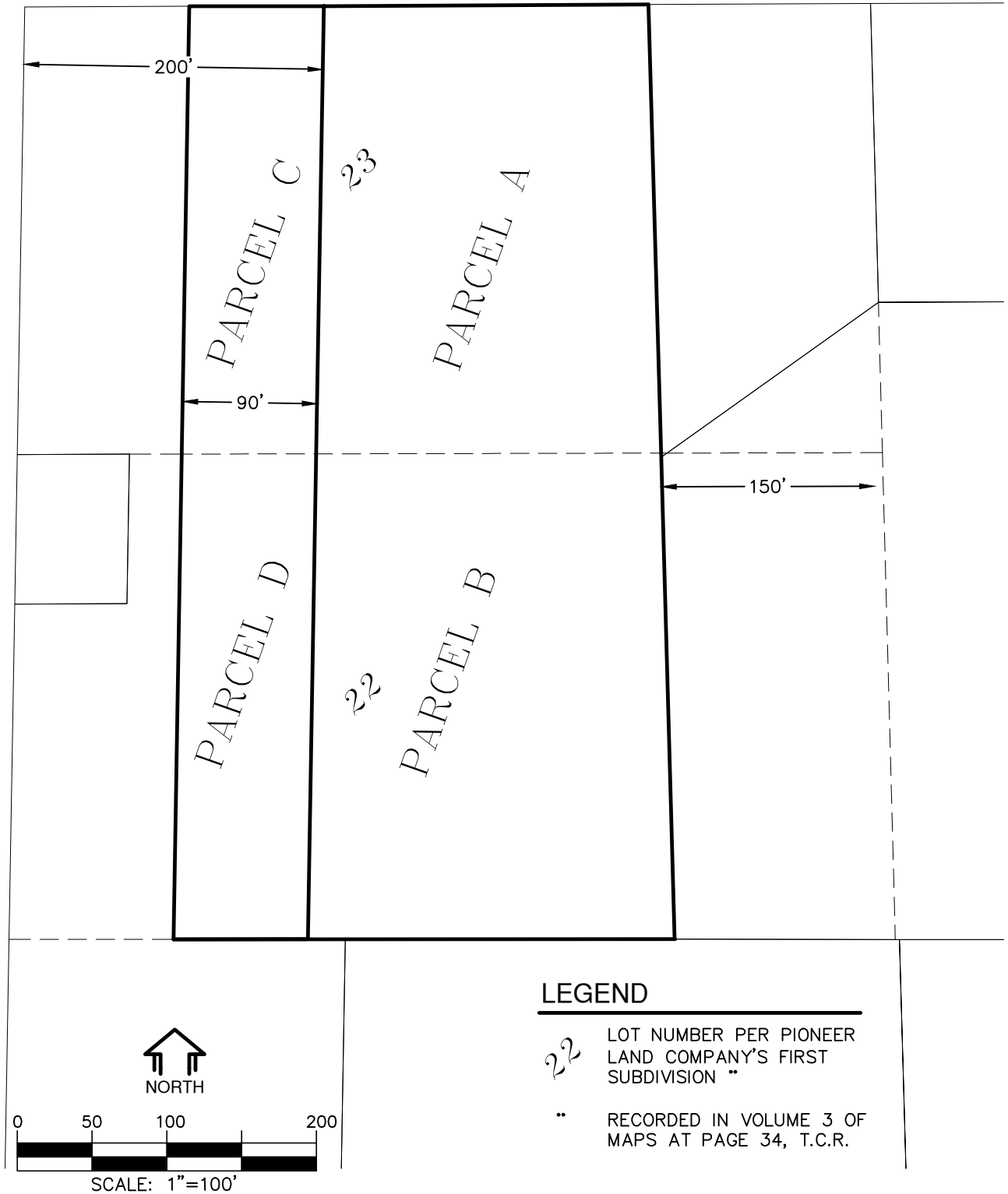
ALL THAT LAND CONVEYED TO THE MINKLER SOUTHERN RAILWAY COMPANY IN THE DEED RECORDED MAY 23, 1921 IN VOLUME 296, PAGE 478 OF DEEDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, WHICH IS A PORTION OF PARCEL 9 (NINE) OF SAID DEED, FURTHER DESCRIBED AS:

THE EAST 90 FEET OF THE WEST 200 FEET OF LOT 22 OF PIONEER LAND COMPANY'S FIRST SUBDIVISION, AS PER THE MAP RECORDED IN VOLUME 1, PAGES 110 AND 111 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM SAID LAND ALL OWNERSHIP RIGHTS TO THE ENTIRE MINERAL ESTATE BELOW THE PROPERTY, BELOW A DEPTH OF 25 FEET, INCLUDING WITHOUT LIMITATION, ALL OIL, PETROLEUM, GAS AND OTHER MINERALS, WHETHER GASEOUS, LIQUID OR SOLID, IN AND UNDER THE ABOVE-DESCRIBED PREMISES, BELOW A DEPTH OF 25 FEET. SUCH RIGHTS SHALL INCLUDE SURFACE AND SUBSURFACE ACCESS EASEMENTS, RIGHTS TO CONSTRUCT, MAINTAIN AND OPERATE SURFACE AND SUBSURFACE FACILITIES, AND OTHER RIGHTS TO DEVELOP AND EXTRACT OIL, PETROLEUM, GAS OR ANY OTHER MINERAL, EXCEPT THAT GRANTOR (1) SHALL NOT, WITHOUT PRIOR WRITTEN CONSENT FROM GRANTEE, WHICH CONSENT SHALL NOT BE UNREASONABLY WITHHELD OR DELAYED, HAVE ANY RIGHT TO ENTER THE SURFACE OF THE PROPERTY, FOR PURPOSES OF EXPLORATION, DEVELOPMENT OR EXTRACTION OF SUCH MINERALS; (2) SHALL NOT IN EXERCISING THESE RIGHTS MORE THAN MINIMALLY INTERFERE WITH GRANTEE'S USE OF THE PROPERTY; AND (3) PRIOR TO THE EXERCISE OF THESE RIGHTS, SHALL PROVIDE ADEQUATE LIABILITY PROTECTION TO GRANTEE, IN THE FORM OF GENERAL LIABILITY INSURANCE OBTAINED (OR EXTENDED), AT THE SOLE COST OF THE GRANTOR, NAMING GRANTEE AS AN INSURED PARTY, UPON SUCH TERMS AS ARE THEN REASONABLE AND CUSTOMARY, UNLESS GRANTOR, IN THE REASONABLE OPINION OF GRANTEE, POSSESSES THE FINANCIAL CAPABILITY TO FUND SUCH LIABILITY PROTECTION AS A SELF-INSURED ENTITY, UNDER THAT REASONABLE AND CUSTOMARY STANDARD, FOR ANY LOSSES OF DAMAGES REASONABLY LIKELY TO BE SUSTAINED BY GRANTEE AS A RESULT OF GRANTOR'S EXERCISE OF THESE RIGHTS. IN ADDITION, ANY SURFACE OR SUBSURFACE FACILITIES CONSTRUCTED, OR EQUIPMENT USED, BY GRANTOR IN THE COURSE OF GRANTOR'S EXERCISE OF THESE RIGHTS, SHALL BE CONSTRUCTED AND USED IN A MANNER THAT RESULTS IN NO MORE THAN MINIMAL INTERFERENCE WITH GRANTEE'S USE OF THE PROPERTY, AS RESERVED IN THE DEED RECORDED DECEMBER 29, 1992, AS DOCUMENT NO. 92-094547, OFFICIAL RECORDS, AND RECORDED OCTOBER 18, 1994, AS DOCUMENT NO. 94-074651, OFFICIAL RECORDS.

## E HENDERSON AVENUE

N FOURTH STREET



## LEGEND

22

LOT NUMBER PER PIONEER  
LAND COMPANY'S FIRST  
SUBDIVISION "

"

RECORDED IN VOLUME 3 OF  
MAPS AT PAGE 34, T.C.R.

CITY OF PORTERVILLE  
ENGINEERING DIVISION

291 NORTH MAIN STREET  
PORTERVILLE, CA 93257  
(559) 782-7462

PROPERTY PLAT  
APN 253-050-089 AND 093

|            |           |
|------------|-----------|
| DRAWN BY   | CAL       |
| CHECKED BY |           |
| SCALE      | 1" = 100' |
| DATE       | 4/26/2019 |

SHEET  
1  
OF  
1



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Authorization to Award Freedom Fest Fireworks Contract

**SOURCE:** Parks and Leisure Services

**COMMENT:** The inaugural Freedom Fest community event took place in 2011 in partnership between the City and the Tule River Tribe, with each party contributing \$15,000 in seed money in support of the event. Freedom Fest has grown to an estimated annual attendance of around 10,000. Event activities include a live band, family entertainment, Porterville Fire Department spray zone, food, craft and information booths, and a fireworks show. In 2013, City Council contributed \$10,000 and the Tribal Council \$7,500 to assist with the continuation of the event and to help in meeting the increased expenditure costs as the event expanded.

Now approaching its ninth year, staff is requesting that Council approve the expenditure of \$19,750 to Fireworks & Stage FX America, Inc. for the fireworks show portion of the 2019 Freedom Fest. Council's approval will allow staff to issue a purchase order to secure their services. A \$9,875 deposit is required prior to the event with the remaining balance due ten (10) days after the event. The expenditure will come from the Freedom Fest account out of the General Fund from which there is currently an account balance of \$20,786.24. In 2018, the Freedom Fest revenue exceeded expenditures by \$2,067. Annual sponsorships have helped tremendously in sustaining the event. Last year's vendor, Pyro Spectaculars, quote for this year's event was \$22,000, and a third vendor didn't supply a comparable product.

**RECOMMENDATION:** That the City Council authorize progress payments up to 100% of the contract amount to Fireworks & Stage FX America, Inc., as well as the contract provisions subject to the City Attorney's approval.

**ATTACHMENTS:** 1. Freedom Fest Fireworks

**Appropriated/Funded:**

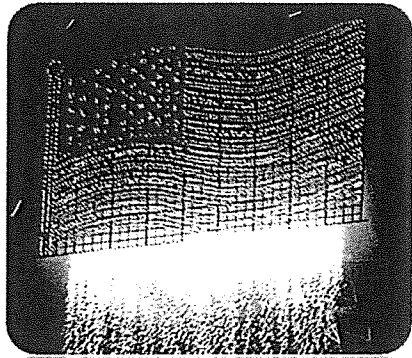
**Review By:**

Department Director:

Donnie Moore, Parks and Leisure Services Director

Final Approver: John Lollis, City Manager

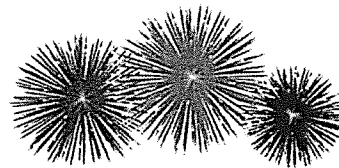
# The City of Porterville



Presents

## A Star Spangled Holiday Fireworks Extravaganza 6/29/2019

Produced by



**Fireworks**  
— & Stage FX —  
**America**

**"The Difference is Quality"**

**The City of Porterville**  
**A Star Spangled Holiday**  
**June 29, 2019**

**Announcement Barrage**

Program A

Aerial Titanium Flash Salutes

3" 30

Color & Multi-Color Finale Shells

2.5" 30

**Multishot Devices**

Program A

|          |    |      |
|----------|----|------|
| 100 Shot | 10 | 1000 |
| 150 Shot | 10 | 1500 |
| 300 Shot | 3  | 900  |
| 600 Shot | 1  | 600  |
| Total    | 24 | 4000 |

**Aerial Show Presentation**

Color & Multi-Color Aerial Shells

3" 50

4" 50

Flitter, Glitter, Electric Color &  
Color Changing Shells

3" 40

4" 40

Distinctive & Unique Aerial Shells

3" 30

4" 30

Premium Aerial Shells

3" 30

4" 30

Streaking Comets & Tiger Tails

3" 5

**Grand Totals**

Aerial Shell Counts

2.5" 210

3" 235

4" 180

Sub Total 625

Multishots: 4000

Total Shot Count:  
4625

**Program Price**

Total Program Price Inclusive of  
Insurance, Operator and  
Transportation

Cost \$19,750

**Aerial Grand Finale**

Color & Multi-Color Finale Shells

2.5" 150

3" 50

4" 30

Aerial Titanium Flash Salutes

2.5" 30



**Fireworks**  
— & Stage FX —  
**America**

# Fireworks America Products

## "The Difference Is Quality"

Fireworks America has sought to affiliate itself with world renown-award winning manufacturers, both foreign and domestic. In every show you will find only the highest quality of products, designs, and variety which will far surpass those of our competitors.

### Product Definitions Are:

**Standard:** Aerial Shells include: One color products and multiple colored products such as Chrysanthemums, Peonies, Hearts, Rings, Red, Green, Blue, Yellow, Purple, Orange, Variegated, etc. Our variety is unmatched and as such we can guarantee over 40 varieties in this category.

*Compare to our competitors "Color", "Fancy", some "Extra Fancy", "Standard" or "Japanese Style Deluxe" Shells.*

**Classic:** Aerial Shells include: Flitter, Glitter, Electric Color, Color Changing Transformation, Penny Glitter, Glitter & Color, Magnesium Red Electric, Red to Blue, Comets, etc. Our variety is unmatched and as such we can guarantee over 50 varieties in this category.

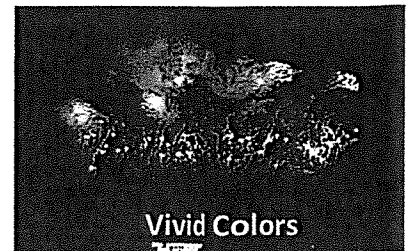
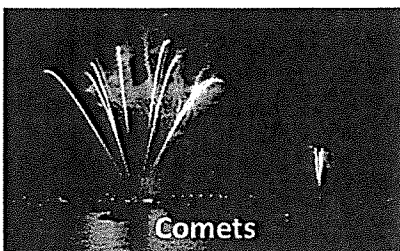
*Compare to our competitors "Extra Fancy", "Floral", "Classic" or "Japanese Style Super Effect" Shells*

**Select:** Aerial Shells include: Distinctive and Unique Aerial Shells such as Spiders, Multiple Reports, Strobes, Multiple Effect Shells, Domestic Glittering Comets, Double Hearts, Crackling Effects, Double Ring Shells, Saturn Shells, Tourbillion Shells, Waterfalls, Special Pattern Shells, Weeping Willow Shells, Shell of Shells, Coconut Palms, and Serpentine Shells, etc..

*Compare to our competitors "Special" or "Japanese Style Special Effect" Shells.*

**Premium:** Aerial Shells include: Crossettes, Serpents, Whistles, Whistles and Reports, Serpents and Strobes, Fish and Whistles, Tourbillions to Reports, Thunder and Rainbow, Serpents and Stars, Nishiki Kamuros, and many other American Made Specialty Shells.

*Our competitors cannot compare with our Domestically-Made Superstars.*





**The City of Porterville**  
**Show Concept, Services List,**  
**and Miscellaneous Details**

**Services List:**

**Fireworks America to Provide:**

- 1) Permit Filings as Required
- 2) Storage and Delivery of fireworks
- 3) All Equipment to produce the display
- 4) Insurance Aggregate amount of  
\$10,000,000 (Combined Single Limits)
- 5) Worker's Compensation Insurance  
(Statute)
- 6) Ipod, CD or Flash Drive
- 7) Choreography

**The City of Porterville to Provide:**

- 1) A Suitable Firing Site
- 2) Adequate Security for Firing Site
- 3) Permit Fees
- 4) Standby Firefighter Fees, if req'd
- 5) Sound System and Playback
- 6) Adequate Permit Time as  
listed below.

**Minimum Time Required**

Fireworks America will provide permitting services on your behalf. There are minimum times required to pull these permits. Contracts and deposits must be signed and back to us prior to starting these services. Here are the **minimum permit times.**

Land Based Shows based require a minimum of **30 days** to permit based on Local and State Ordinance, FAA and other requirements.

Water based shows require a minimum of **60 days** to permit based on all of the above PLUS Coast Guard requirements.

Please plan your show accordingly.

**Operators and Assistants:**

Fireworks America will provide the services of a State Licensed Pyrotechnic Operator and experienced crew to fire your display. The entire crew will be covered under Fireworks America's Worker's Compensation Insurance.

**Payment Terms:**

50% deposit is due on Contract Execution, Balance Net 10 days after display.

Continued

**The City of Porterville  
Show Concept, Services List,  
and Miscellaneous Details**

**Method of Discharge:**

The show will be fired electrically. Each fireworks event will have its own ignitor for precise timing. Fireworks America will provide the firing panel, cable, distribution system and power for the show.

**Choreography:**

The program will be choreographed utilizing the latest innovation in computerized-fireworks choreography. This will allow maximum accuracy in firing and timing of the display. The fireworks will follow the music precisely and provide an exhilarating experience for the viewer.





## ***PYROTECHNIC PUBLIC DISPLAY CONTRACT***

Fireworks & Stage FX America, Inc./LLC  
dba: Fireworks America  
PO Box 488  
Lakeside, CA 92040  
619-938-8277  
619-938-8273 Fax

**BATF License Number:**

9-CA-073-20-6B-01843

9-CA-073-23-6B-01844

**California Licenses:**

GPD-0528

I/E-1129

W-1132

1) This Contract, entered into this 8th day of April, 2019, by and between FIREWORKS & STAGE FX AMERICA, INC., dba FIREWORKS AMERICA, a California Corporation, duly licensed by the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives and the State of California, hereinafter referred to as "FA" and THE CITY OF PORTERVILLE hereinafter referred to as "BUYER".

2) FA agrees to furnish BUYER, in accordance with the terms and conditions set forth herein, One (1) fireworks/special effects display as per Program A, submitted, accepted and made part hereof, and the services of a licensed pyrotechnic operator who will be in charge of the execution of said display unless otherwise agreed in writing. This display is to be performed on June 29, 2019, located at Porterville Sports Complex.

The time of the display is to be at:

9:15 PM or TBD

"3) BUYER agrees to pay FA the sum of: Nineteen Thousand, Seven Hundred Fifty Dollars, (U.S.) (\$19,750.00), per the following terms:

50% of the Sum is to be paid to FA at the signing of the Contract, Balance Net 10 Days After Display  
Contract and Deposit to be received by: 5/1/2019

4) Should the BUYER default on these payment terms, a finance charge at a rate of 1.5% per month, 18% annual percentage rate, or the maximum rate permitted by law, whichever is greater, will be charged and accrued on the unpaid balance of the Contract until the Contract is satisfied.

FA is hereby authorized to receive BUYER's financial information from any person or entity for the purpose of verifying BUYER's ability to pay.

5) BUYER, at its expense, agrees to provide FA a suitable DISPLAY SITE in which to stage, setup and fire the display. This DISPLAY SITE will incorporate an appropriate fallout zone, which has to be approved by FA, and that will fulfill any requirements set forth by any governing legal authority. Should the proposed site require the involvement of specialized equipment, watercraft or clean up, BUYER agrees to provide said equipment and labor at BUYER's expense.

BUYERS Initials \_\_\_\_\_

# Fireworks America Public Display Contract

- 6) BUYER, at its expense, agrees to provide adequate security to prevent any access to the DISPLAY SITE by members of the general public or any persons not expressly approved by FA. Any claim arising from damage to persons or property caused by any unauthorized access to the DISPLAY SITE is the sole responsibility of the BUYER. Should a multiple day setup be required, BUYER shall provide appropriate security during all the times FA is away from the DISPLAY SITE.
- 7) BUYER, at its expense, agrees to pay for any required "standby" Firemen, and/or any applicable permit costs and fees as required by state and local statutes, ordinances or regulations. BUYER agrees to indemnify FA for any and all changes or adjustments made to the DISPLAY at the request of any governing legal authority.
- 8) BUYER, at its expense, shall provide FA sufficient parking, all necessary site and event passes and allow FA sufficient time and available access, as determined by FA, to safely and professionally setup and discharge the display and subsequently remove the display equipment from the DISPLAY SITE.
- 9) Should BUYER fail to comply or prove itself unable to comply with the requirements stated in paragraphs 5, 6, 7 and 8 herein, FA shall have no obligation to continue with the performance of the display and the BUYER agrees to pay the full contract price plus any additional associated expenses incurred by FA.
- 10) BUYER agrees to assume the risk of weather, or any other cause that is beyond FA's control, that may prevent the display from being discharged on the scheduled date and time. In the event that FA, at its sole discretion, determines that the weather unsuitable for the discharge of the display, BUYER shall pay per the cancellation terms contained in paragraph 11 herein.
- 11) BUYER shall have the option to cancel this display at any time. If BUYER decides to cancel, BUYER agrees to pay to FA 35% of the display contract price and all other associated costs incurred by FA, including, but not limited to, permits, insurance, pyrotechnic operator's fee, transportation, choreography, custom design or any other provable expense associated with the execution of the Display.
- 12) BUYER agrees to hold FA harmless from all claims and penalties made against FA in the event that the display fails to start on time or is disrupted after commencement as a direct result of equipment or product malfunction or failure.
- 13) FA agrees to provide insurance coverage of Twenty Million Dollars, Bodily Injury and Property Damage and statutory limits for Worker's Compensation. This insurance covers the operations of FA only and does not extend to any other aspect of the event at which such a display may be held. FA's operations are deemed complete when FA has vacated the premises.
- 14) Should BUYER fail to perform its obligations as set forth herein, BUYER agrees to indemnify, defend and hold FA harmless from all claims and suits made against FA in conjunction with the discontinuance or cancellation of the display.

BUYERS Initials \_\_\_\_\_

# Fireworks America Public Display Contract

15) FA agrees to defend, indemnify and hold harmless BUYER from and against all claims and liability arising out of the services to be performed by FA hereunder, except to the extent arising from BUYER'S negligence or willful misconduct.

16) The laws of the State of California shall govern this contract. It is agreed that any court of competent jurisdiction located in the County of San Diego, CA shall be proper venue for an action. Should such action be brought to enforce or interpret the terms or provisions of this Contract, the prevailing party shall be entitled to reasonable attorney fees and costs in addition to any other relief to which they may be entitled.

17) Nothing in this contract shall be construed as forming a partnership, joint venture, agency or any form of legal relationship, other than contractual, between BUYER and FA. Neither party shall be held responsible for any agreements or obligations not expressly provided for herein and shall be severally responsible for their own separate debts and obligations.

18) BUYER shall not under any circumstances, be entitled to recover any consequential damages from FA. Nothing in this paragraph shall be construed as a modification or limitation on the insurance coverages afforded in Paragraph 13 herein.

19) Other Considerations: NONE

20) This agreement shall be binding on the parties and on their heirs, executors, administrators, successors and assigns.

In Witness the parties hereto, by or through their duly authorized agents, have set their hands and seals this 8th day of April, 2019.

Fireworks & Stage FX America, LLC.

The City of Porterville

*Jim Acker*

Jim Acker

Northern California Sales & Operations Manager

Signature: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Please initial all contract pages



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Henry House Property Improvements Budget Appropriation

**SOURCE:** Public Works

**COMMENT:** In accordance with the "Policy for Selecting Consultants to Provide Architectural, Engineering and Similar Services," CMO #16-040709, informal selection process, City staff has contracted with QK, Inc., for the Henry House property improvements project. Consultant shall provide to the City design services to prepare preliminary grading plan, proposed/future layout of the park area, and landscape and irrigation plans for the picnic area, trail around the pond, and the "island."

Staff is requesting that the City Council direct the Finance Director to appropriate \$24,900 from the Henry House insurance proceeds to fund this work.

**RECOMMENDATION:** That City Council direct the Finance Director to appropriate funds in the amount of \$24,900 from the Henry House insurance proceeds for this project.

**ATTACHMENTS:** 1. Locator Map

Appropriated/Funded: MB

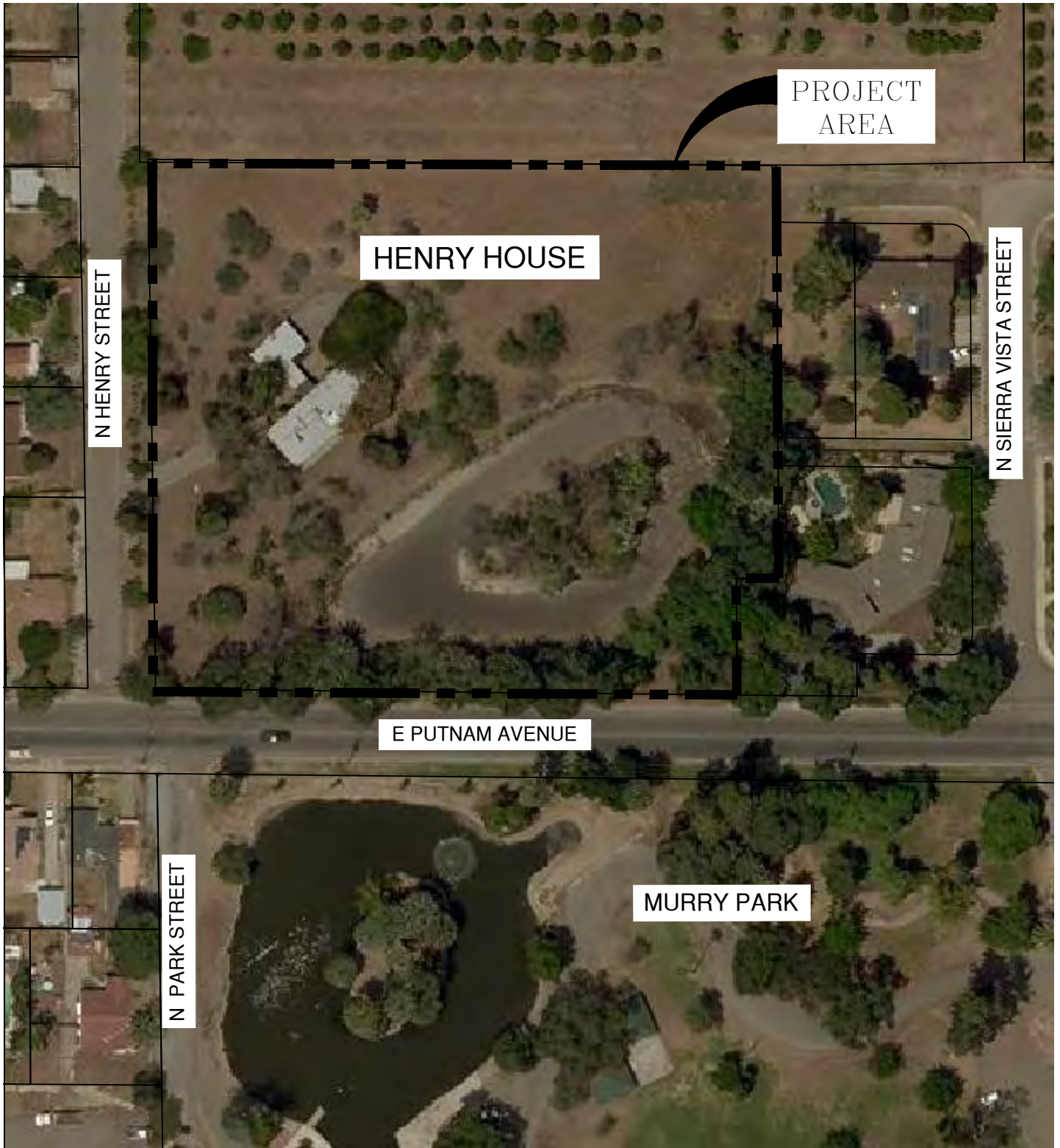
Review By:

Department Director:

Mike Reed, Acting Public Works Director

Final Approver: John Lollis, City Manager





0 50 100 200



SCALE: 1"=100'

CITY OF PORTERVILLE  
ENGINEERING DIVISION

291 NORTH MAIN STREET  
PORTERVILLE, CA 93257  
(559) 782-7462

LOCATOR MAP

HENRY HOUSE PROPERTY IMPROVEMENT  
604 E PUTNAM AVENUE

|            |           |
|------------|-----------|
| DRAWN BY   | KRS       |
| CHECKED BY | MKR       |
| SCALE      | 1"=100'   |
| DATE       | 4/16/2019 |

SHEET  
1  
OF  
1



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Authorization to Distribute Request for Proposals for Consulting Services for the Five-Year Consolidated Plan

**SOURCE:** Community Development

**COMMENT:** In 2015, the California Department of Housing and Community Development (HCD) adopted and certified the City of Porterville's current Community Development Block Grant (CDBG) Five-Year Consolidated Plan. On April 16, 2019, City Council approved the Action Plan for the final year of the current Consolidated Plan. The next Consolidated Plan will cover the planning period of 2020/21 through 2024/25 program years. Due to the complexity of the task, staff is unable to perform the necessary technical studies and functions required for the update. At this time, staff is requesting authorization to distribute a Request for Proposals (RFP) for a specialized consultant with expertise in this field.

The services to be rendered under this contract would consist of, but not be limited to, the preparation of Initial Studies, Impact Studies and other documents as necessary to comply with federal guidelines. The selected consultant must have a substantial working knowledge of Housing and Urban Development (HUD) requirements and the ability to perform specialized studies such as addressing special needs populations; providing an Analysis of Impediments, as well as the Five-Year Consolidated Plan and serving as the main contact with HUD in working through the approval process which can be quite onerous.

The Request for Proposal (RFP) will request fixed costs for the above mentioned tasks and then a comprehensive fee schedule for all personnel, equipment and indirect costs related to additional services that may be required. Funding for this project was approved in the 2018-2019 Capital Improvement Project from the General Fund.

**RECOMMENDATION:** That the City Council authorize staff to distribute a Request for Proposals for Consulting Services to update the City of Porterville's CDBG Consolidated Plan.

**ATTACHMENTS:**

1. Draft Request for Proposals
2. Draft Consultant Agreement

Appropriated/Funded: MB



Review By:

Department Director:

Jenni Byers, Community Development Director

Final Approver: John Lollis, City Manager



CITY OF PORTERVILLE

REQUEST FOR PROPOSALS FOR CONSULTING SERVICES FOR THE  
PREPARATION OF THE U.S. DEPARTMENT OF HOUSING AND URBAN  
DEVELOPMENT (HUD) 2020/21-2024/25 CONSOLIDATED PLAN AND OTHER  
COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) UPDATES

RFP No. \_\_\_\_\_

The City of Porterville is seeking a qualified consultant to prepare the City's required five year CDBG Consolidated Plan for 2021–2025; update the City's Analysis of Impediments to Fair Housing Choices (AI); and review and update the City's internal CDBG Policies and Procedures Manual and associated sample forms.

**Submittal:** Two unbound originals and one PDF version must be received by:  
**4:00 p.m., Friday, June 7, 2019**

**Addressed to:** Community Development Department  
City of Porterville  
291 N. Main Street  
Porterville, CA 93257  
Attention: Jennifer M. Byers

**Mark envelope:** RFP No. \_\_\_\_\_  
Consulting Services for the Preparation of the U.S. Department of Housing  
and Urban Development (HUD) 2020/21-2024/25 Consolidated Plan.

***Proposals received after the time and date stated above shall be returned unopened to the proposer.***

**INQUIRIES:**

Proposal forms may be inspected and electronically downloaded at no cost, at the Public Purchase website, <https://www.publicpurchase.com>. No copies of said documents will be provided by the City. All addenda and correspondence during the bid process will be handled electronically through the Public Purchase website. ***No bid shall be received from an individual or company that is not an official proposal holder and has not registered and accessed the proposal documents from the Public Purchase website.*** Questions regarding this project are due no later than **Friday, May 31, 2019.**

**REQUEST FOR PROPOSALS (RFP)  
FOR FIVE YEAR CONSOLIDATED  
PLAN**

**I. PROPOSED PROJECT**

The City of Porterville (“the City”) is soliciting proposals for consulting services from individuals or firms with expertise and understanding of the U.S. Department of Housing and Urban Development (HUD) as it relates to the Community Development Block Program (CDBG) for the development of a Consolidated Plan (CONPLAN) as required by HUD. The City is an entitlement jurisdiction and receives an annual CDBG allocation directly from HUD. The proposal will highlight the consultant’s capability to develop a five-year CONPLAN that will establish goals and strategies for housing and community development in the City for 2021-2025.

A copy of the City’s 2015-2019 CONPLAN is available on the City’s website: <http://www.ci.porterville.ca.us/depts/CommunityDevelopment/documents/FinalApprovedAmendmentDocument.pdf>. The City’s Analysis of Impediments to Fair Housing Choice (AI) was updated in April 2015 and is available on the City’s website: <http://www.ci.porterville.ca.us/depts/CommunityDevelopment/documents/PortervilleFinalAI.pdf>. The AI will need to be reviewed and minor updates may be necessary. Staff will provide a copy of the City’s internal CDBG Policies and Procedures Manual to the selected firm.

The target start date and term for the proposed services is June 2019 through October 30, 2020, subject to negotiation of a final agreement.

**II. SCOPE OF SERVICES**

Five Year CONPLAN

The required work along with troubleshooting guidelines can be found on the HUD Exchange at: <https://www.hudexchange.info/programs/consolidated-plan/guides/#consolidated-plan-template-in-idis>.

The required work must follow any and all amendments and updates, such as utilizing the HUD’s Office of Community Planning and Development (CPD) eCon Planning Suite, including the Consolidated Plan template in IDIS Online and the CPD Maps website. The eCon Planning Suite is designed to support grantees and the public to assess their needs and make strategic investment decisions by providing better data and tools and by creating a seamless planning and grants management framework. Overview information is available here: <https://www.hudexchange.info/programs/consolidated-plan/>

The Consultant will review and tabulate data and information supplied by the City, HUD, the U.S. Census Bureau, sub-grantees, and input from citizens to complete the required CONPLAN components per the HUD regulations including all required charts, tables, maps and final input into IDIS.

Update AI

The Consultant will also review and update the City’s AI. The consultant will be charged with working

with City staff to update the AI as needed. The City is not required to complete the Assessment of Fair Housing (AFH) until October 31, 2024; however an updated AI is needed.

#### City's Internal CDBG Policies and Procedures Manual

A copy of the City's Internal CDBG Policies and Procedures Manual will be provided to the selected Consultant. The Consultant will review the current manual for compliance with HUD regulations and CDBG program administration.

### **III. CONSULTANT QUALIFICATIONS**

The following lists the minimum qualification requirements of the respondent(s):

- At least 5 years of experience providing similar consulting services
- At least 3 references of clients currently/previously served; at least one of the references to be a city
- Familiarity with HUD's eCon Planning Suite
- Knowledge of :
  - CDBG Regulations
  - Consolidated Plan Regulations
  - Urban planning principles
  - Methods of data collection, analysis and summarization (in narrative and graphic formats)
  - Various housing and community development resources and governmental agencies
- Past experience preparing Consolidated Plans using the eCon Planning Suite

### **IV. PROPOSAL FORMAT**

Proposals should include the following information:

1. Cover Letter, signed by the person authorized to bind the firm into an agreement
2. Complete legal name, address, telephone number, email address
3. DUNS number, and Tax Identification Number
4. Business organization including the date established, number of employees, and brief history of the firm.
5. Statement of qualifications included description of approach the Consultant will employ in carrying out the work described in the Scope of Services
6. Proposed time schedule for the Consolidated Plan, updates to the AI, and review of the City's internal CDBG Policies and Procedures Manual, including target dates for public participation
7. At least three (3) references of past clients with similar Scope of Services conducted and the period that was involved to complete the client's projects. Include company name, address, contact name, and phone number
8. Proposed budget for complete project and hourly rate for staff person(s) (by staff position/title)

### **V. EVALUATION OF PROPOSALS AND SELECTION PROCESS**

The City will review and evaluate each qualification and proposal submission. The City reserved the right to obtain clarification or request additional information, including an interview with up to three firms. If an interview is required, they will be scheduled for June 24, 2019 to June 25, 2019. Proposals will be evaluated and ranked according to the following criteria:

| <b>Criteria</b>                                                                                             | <b>Points</b> |
|-------------------------------------------------------------------------------------------------------------|---------------|
| Understanding of the project and scope of services                                                          | 40            |
| Experience of the consultant team in the disciplines directly relevant to the project and scope of services | 40            |
| Proposed budget and fee structure                                                                           | 20            |

Maximum Score: 100

Following an evaluation of the proposals, it is expected that a preferred consultant will be selected for recommendation to the City Council. After a mutually acceptable contract between the City and the selected consultant has been negotiated, it will be submitted for approval to the City Council.

If the City and selected consultant cannot agree on a satisfactory contract, the City reserves the right to terminate negotiations. The City may then negotiate an agreement with the consultant which ranked second.

The City reserves the right to reject any and all proposals. In addition, the City will not reimburse costs associated with the preparation or presentation of the proposals.

## **VI. RIGHTS TO PROPOSALS**

All proposals, upon submission to the City of Porterville, shall become the City's property for its use as deemed appropriate. By submitting a proposal, the consultant covenants not to make any claim for or have any right to damages because of any misinterpretation or misunderstanding of the specification, or because of any misinformation or lack of information. Nothing contained in this RFP shall create any contractual relationship between the consultant and the City of Porterville. The City accepts no financial responsibility for costs incurred by any consultant in responding to this RFP. The City of Porterville has the following prerogatives with regard to proposals submitted:

- To accept or reject any or all proposals
- To award all or part of the project at its discretion
- To adopt any or all parts of a proposal
- To utilize any or all ideas from proposals submitted
- To request additional information for the purposes of clarification
- To correct any arithmetic errors in any or all proposals submitted
- To change the deadline for submitting proposals upon appropriate notification to all consultants receiving the RFP
- To accept or negotiate any modifications to the scope and fee of any proposal following the deadline for receipt of all proposals and prior to contract award
- To waive any irregularity or any non-conformity of proposals with this RFP, whether of a technical or substantive nature

## **VII. DISCLOSURE OF CONTENTS**

All proposals accepted by the City shall become a matter of public record and shall be regarded as public, with the exception of those elements of each proposal that are identified by the consultant as business or trade secrets and plainly marked as "trade secret," "confidential," or "proprietary." Each element of a proposal that the consultant desires not to be considered a public record must be clearly marked. Any blanket statement (i.e. regarding entire pages, documents, or other non-specific

designations) shall not be sufficient and shall not bind the City in any way whatsoever. If disclosure is required under the California Public Records Act or otherwise by law (despite the consultant's request for confidentiality), the City shall not in any way be liable or responsible for the disclosure of any such records or part thereof.

#### **VIII. AGREEMENT FOR SERVICES**

The consultant will enter into an Agreement for Services with the City of Porterville based upon the contents of the RFP and the consultant's proposal. The City's standard form of agreement is included as Attachment A. The consultant must include with the proposal a description of any exceptions requested to the standard contract. If there are no exceptions requested, a statement to that effect must be included in the proposal.

#### **IX. INSURANCE REQUIREMENTS**

Prior to executing an Agreement for Services, the consultant will be required to provide to the City proof of the required insurance and endorsement. Consultants are encouraged to contact their insurance carriers during the proposal stage to ensure that the insurance requirements can be met if selected. Insurance requirements are listed in Section 16 of the attached standard Agreement for Services.

#### **X. CITY BUSINESS LICENSE**

A City of Porterville business license will be required for the consultant and any subcontractors.

#### **XI. ASSIGNED REPRESENTATIVES**

The City will assign a responsible representative to administer the contract, and to assist the consultant in obtaining information. The consultant also shall assign a responsible representative (project manager) and an alternate, who shall be identified in the proposal. The consultant's representative will remain in responsible charge of the consultant's duties from the notice to proceed through project completion.

If the consultant's primary representative should be unable to continue with the project, then the alternate representative identified in the proposal shall become the project manager. The City's representative shall first approve any substitution of representatives or subcontractors identified in the proposal in writing. The City reserves the right to review and approve/disapprove all key staff and subcontractor substitution or removal, and may consider such changes not approved to be a breach of contract.

#### **Attachment**

A – Agreement for Services

**ATTACHMENT A  
CITY OF PORTERVILLE  
AGREEMENT FOR SERVICES**

THIS AGREEMENT, made and entered into this \_\_\_\_ day of, 2019 between the CITY OF PORTERVILLE, a municipal corporation, hereinafter referred to as "City" and \_\_\_\_\_, hereinafter referred to as "Consultant". In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. **SCOPE OF SERVICES.** Consultant agrees to perform the services set forth in Exhibit A "SCOPE OF SERVICES" and made a part hereof. Consultant shall perform all of these services to the satisfaction of the City. Consultant represents and warrants that it has the qualifications, experience, licenses and facilities to properly perform said services in a thorough, competent and professional manner and shall, at all times during the term of this Agreement, have in full force and effect, all licenses required of it by law.
2. **STATUS OF CONSULTANT.** Consultant is and shall at all times remain as to the City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City nor any of its officers, employees or agents shall have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that it or any of its officers, employees or agents are in any manner officers, employees or agents of the City. Consultant shall not incur or have the power to incur any debt, obligation or liability whatever against City, or bind City in any manner. Consultant shall not disseminate any information or reports gathered or created pursuant to this Agreement without the prior written approval of City except information or reports required by government agencies to enable Consultant to perform its duties under this Agreement.
3. **CONSULTANT KNOWLEDGE OF APPLICABLE LAWS.** Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Consultant shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Consultant to comply with this section.
4. **PERSONNEL.** Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff assigned to perform the services hereunder. The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Consultant or any of Consultant's officers, employees or agents, except as set forth in this Agreement.

Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

5. **COMPENSATION AND METHOD OF PAYMENT.** Compensation and reimbursement to the Consultant shall be as set forth in Exhibit A attached hereto and made a part hereof. The total compensation, including reimbursement for actual expenses, shall not exceed [INSERT CONTRACT AMOUNT], unless additional compensation is approved in writing by the City Council or City Manager. Payments shall be made within thirty (30) days after receipt of each invoice as to undisputed fees. If the

City disputes any of Consultant's fees, it shall give written notice to Consultant in 30 days of receipt of an invoice of any disputed fees set forth on the invoice.

6. ADDITIONAL SERVICES OF CONSULTANT. Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Council. Consultant shall be compensated for any additional services in the amounts and in the manner as agreed to by the City Council and Consultant at the time City's written authorization is given to Consultant for the performance of said additional services.
7. ASSIGNMENT. The expertise and experience of Consultant are material considerations for this Agreement. City has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon Consultant under this Agreement. In recognition of that interest, Consultant shall not assign or transfer any of portion this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of the City Council. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including summary termination of this Agreement.
8. FACILITIES AND RECORDS. Consultant shall maintain complete and accurate records with respect to sales, costs, expenses, receipts and other such information required by City that relate to the performance of services under this Agreement. Consultant shall maintain adequate records of services provided in sufficient detail to permit an evaluation of services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. Consultant shall provide free access to the representatives of City or its designees at reasonable times to such books and records, shall give City the right to examine and audit said books and records, shall permit City to make transcripts there from as necessary, and shall allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a period of five years after receipt of final payment.
9. TERMINATION OF AGREEMENT. This Agreement will commence on [INSERT CONTRACT START DATE] and shall terminate on [INSERT CONTRACT END DATE], unless otherwise extended by written agreement of the parties. This Agreement may be terminated with or without cause by either party upon ten (10) days written notice. In the event of such termination, Consultant shall be compensated for non-disputed fees under the terms of this Agreement up to the date of termination.
10. COOPERATION BY CITY. All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the work as outlined in the Scope of Services, shall be furnished to Consultant in every reasonable way to facilitate, without undue delay, the work to be performed under this Agreement.
11. OWNERSHIP OF DOCUMENTS. Upon satisfactory completion of, or in the event of termination, suspension or abandonment of, this Agreement, all original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared in the course of providing the services to be performed pursuant to this Agreement shall become the sole property of City. With respect to computer files, Consultant shall make available to the City, upon reasonable written request by the City, the necessary computer software and hardware for purposes of accessing, compiling, transferring and printing computer files.
12. RELEASE OF INFORMATION. All information gained by Consultant in performance of this Agreement shall be considered confidential and shall not be released by Consultant without City's prior written authorization excepting that information which is a public record and subject to disclosure pursuant to the California Public Records Act, Government Code §6250, et seq. Consultant, its officers, employees, agents or subcontractors, shall not without written authorization from the City Manager or unless



requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

If Consultant or any of its officers, employees, Consultants or subcontractors does voluntarily provide information in violation of this Agreement, City has the right to reimbursement and indemnity from Consultant for any damages caused by Consultant's conduct, including the City's attorney's fees.

Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed hereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent Consultant and/or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

13. CONFLICTS OF INTEREST. Consultant covenants that neither Consultant nor any officer or principal of Consultant's firm has any interest in, or shall acquire any interest, directly or indirectly, which will conflict in any manner or degree with the performance of services herein. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed by Consultant as an officer, employee, agent, or subcontractor without the express written consent of the City Manager. If required by the City Manager, Consultant's principles, officers, employees or agents shall file disclosure statements pursuant to the Political Reform Act, Government Code Section 87200.

City understands and acknowledges that Consultant is, as of the effective date of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section, unless otherwise proscribed by law.

14. DEFAULT. In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default and may terminate this Agreement immediately by written notice to the Consultant. Default shall mean any failure to comply with any covenant, condition or term of this Agreement.
15. INDEMNIFICATION. To the fullest extent permitted by law, City, its elected and appointed officials, officers, agents, employees and volunteers (individually and collectively, "Indemnitees") shall have no liability to Consultant or to any other person for, and Consultant shall indemnify, defend, and hold harmless the Indemnitees from and against, any and all liabilities, claims, obligations, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "Claims"), arising out of Consultant's performance of its obligations under this Agreement or out of the operations conducted by Consultant, including City's active or passive negligence except for such loss or damage arising out of the sole negligence or willful misconduct of the City.

If any action or proceeding is brought against the Indemnitees by reason of any of the matters against which Consultant has agreed to indemnify the Indemnitees as above provided, Consultant, upon notice from the City, shall defend the Indemnitees at Consultant's expense by counsel acceptable to the City. The Indemnitees need not have first paid any of the matters as to which the Indemnitees are entitled to

indemnity in order to be so indemnified. The insurance required to be maintained by Consultant under paragraph 16 shall ensure Consultant's obligations under this paragraph 15, but the limits of such insurance shall not limit the liability of Consultant hereunder. The provisions of this paragraph 15 shall survive the expiration or earlier termination of this agreement.

16. INSURANCE. The Consultant agrees to maintain in force at all times the following insurance with a current A.M. Best's rating of no less than A:VII:

- A. Worker's Compensation insurance covering employees of the Consultant in such amounts as required by law.
- B. Commercial General Liability insurance in the amount of Two Million Dollars (\$2,000,000), naming the City as an additional insured.
- C. Professional liability insurance in an amount of Two Million Dollars (\$2,000,000).
- D. Errors and Omissions liability insurance in the amount of Two Million Dollars (\$2,000,000) per occurrence.
- E. Automobile liability insurance in the amount of Two Million Dollars (\$2,000,000) per accident for bodily injury and property damage.
- F. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the Consultant shall reduce or eliminate such deductible or self-insured retentions as respects the City, its officers, employees and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- G. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:
  - 1. The City, its officers, officials, employees and volunteers to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.
  - 2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Consultant, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
  - 3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
  - 4. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after (30) day's prior written notice by Certified Mail, Return Receipt Requested, has been given to the City.

H. Consultant shall furnish the City Clerk annually with original endorsements affecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the City. All endorsements are to be received and approved by the City before work commences. As an alternative to the City forms, the Consultant's insurer may provide complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications in the form of a Certificate of Insurance.

17. NON-DISCRIMINATION CLAUSE. Consultant shall not discriminate, in any way, against any person on the basis of race, religious creed, color, national origin, ancestry, sex, sexual orientation, age, physical handicap, medical condition, marital status, or any other classification protected by law in connection with or related to the performance of this Agreement and shall comply with the provisions of the State Fair Employment Practices Act as set forth in Part 4.5 of the Division 2 of the California Labor Code; the Federal Civil Rights Act of 1964, as set forth in Public Law 88- 352, and all amendments thereto; Executive Order No. 11246; and all administrative rules and regulations issued pursuant to such acts and order.
18. FEDERAL IMMIGRATION AND NATIONALITY ACT. To the extent required by all applicable laws, Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act. Should Consultant so employ unauthorized persons for the performance of work and/or services covered by this contract, and should the Federal Government impose sanctions against the City for such use of unauthorized persons, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.
19. ENTIRE AGREEMENT. This Agreement is the complete, final, entire and exclusive expression of the Agreement between the parties hereto and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter herein. Each party to this Agreement acknowledges that no representations by any party which are not embodied herein and that no other agreement, statement, or promise not contained in this Agreement shall be valid and binding.
20. NO PRESUMPTION RE: DRAFTER. The parties acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties and their attorneys, and this Agreement reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore no presumption for or against validity or as to any interpretation hereof, based upon the identity of the drafter shall be applicable in interpreting or enforcing this Agreement.
21. ASSISTANCE OF COUNSEL. Each party to this Agreement warrants to each other party, as follows:
  - A. That each party either had the assistance of counsel or had counsel available to it, in the negotiation for, and execution of, this Agreement, and all related documents; and
  - B. That each party has lawfully authorized the execution of this Agreement.
22. GOVERNING LAW. The City and Consultant understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. This Agreement is entered into and is to be performed

in Tulare County, California.

23. MODIFICATION OF AGREEMENT. The terms of this Agreement can only be modified in writing approved by the City Council and the Consultant. The parties agree that this requirement for written modifications cannot be waived and any attempted waiver shall be void.
24. AUTHORITY TO EXECUTE. The person or persons executing this Agreement on behalf of Consultant warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of his/her/their corporation and warrants and represents that he/she/they has/have the authority to bind Consultant to the performance of its obligations hereunder.
25. NOTICES. All notices required or permitted to be given pursuant to this Agreement shall be in writing and shall be personally delivered, or sent by facsimile and certified mail, postage prepaid and return receipt requested, on the party to be notified, addressed as follows:

To City  
Attention: Jason Ridenour  
City of Porterville  
291 N Main St.  
Porterville, California 93257

To Consultant  
Attention:  
Name Address

The notices shall be deemed to have been given as of the date of personal service, or three (3) days after the date of deposit of the same in the custody of the United States Postal Service.

26. SEVERABILITY. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of the other provisions of this Agreement.
27. ATTORNEYS' FEES. If any litigation is commenced between the parties to this Agreement concerning the Agreement or the rights and duties of either in relation to the Agreement, the party prevailing in that litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to a reasonable sum as and for its attorneys' fees in the litigation, which shall be determined by the court in that litigation or in a separate action brought for that purpose.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF PORTERVILLE

NAME (Consultant)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Authorization of Street Closure for "Great Day" Broadcast

**SOURCE:** Parks and Leisure Services

**COMMENT:** KMPH-TV, FOX 26 contacted the City of Porterville requesting to host its "Great Day" broadcast of "Kopi's Hometown Connections" from Downtown Porterville on Wednesday, May 8, 2019. KMPH will be bringing a large satellite transmission truck and at least four (4) news vehicles and has requested the City to block off a large enough space to park these vehicles. Staff is recommending, which KMPH is amenable to, a street closure on Cleveland Avenue between Main Street and Second Street. The program broadcasts from 6:00 to 10:00 AM and the street closure is recommended to be from 3:00 to 11:00 AM.

**RECOMMENDATION:** That the City Council authorize the street closure of Cleveland Avenue between Main Street and Second Street on May 8, 2019, from 3:00 AM to 11:00 AM.

**ATTACHMENTS:**

**Appropriated/Funded:**

**Review By:**

Department Director:

Donnie Moore, Parks and Leisure Services Director

Final Approver: John Lollis, City Manager



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Authorization to Partner with the Tule River Tribe to Provide Tribal Transit Services on the Tule River Reservation

**SOURCE:** Public Works

**COMMENT:** On January 2, 2014, the Tule River Tribe executed a Federal Transit Administration (FTA) grant for the purpose of establishing and operating a Tribal Transit Program on the Tule River Reservation. Since that date, the Tribe has purchased both a revenue and non-revenue vehicle, and bus shelters to support the program.

The City of Porterville was identified in the grant application as the agency with which the Tribe would contract with to operate the Tribal Transit services. However, this contract never materialized due to the Tribal Council's desire to self-operate the service.

Until February 2019, the Tribe has been unable to implement a Tribal Transit program and received notice from the FTA that the funding for the program was going to lapse unless the Tribe submitted a revised plan and budget to expend the funding by May of 2020.

In March 2019, City staff provided assistance to the Tribe in the development of a revised budget, milestones, and draft implementation plan to be submitted to the FTA as justification to expend the funding for the Tribal Transit Program.

On March 20, 2019, the FTA approved the Tribe's revised budget and plan for the Tribal Transit program.

Staff is requesting authorization to commit appropriate staff time and resources to continue working with the Tribe to finalize the Tribal Transit program. Once complete, staff will seek authorization to amend its current Agreement, Transit Services (Route 9), with the Tribe to include Tribal Transit services on the Reservation.

**RECOMMENDATION:** That the City Council authorize staff to work with the Tule River Tribe on the development and implementation of a Tribal Transit Program on the Tule River Reservation.

**ATTACHMENTS:**

Appropriated/Funded:

Review By:

Department Director:

Mike Reed, Acting Public Works Director

Final Approver: John Lollis, City Manager



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Authorization to File Applications with the Federal Transit Administration (FTA) for Federal Financial Assistance

**SOURCE:** Public Works

**COMMENT:** Under the provisions of Fixing America's Surface Transportation Act (FAST Act) and other federal statutes, the FTA distributes a variety of transit-related funds, including FTA 5307 urbanized formula funds. The City of Porterville may apply for and receive FTA funds.

In order to apply for FTA funds, the City of Porterville must have an annual Resolution in place that authorizes the filing of applications with the Federal Transit Administration. Upon Council approval of the authorizing Resolution, staff will be able to apply for FTA funds as approved by the Council.

Staff has prepared and submitted the following two (2) applications:

- 1) FY 2019 Operating Assistance
- 2) Battery-Electric Charging Station Infrastructure

**RECOMMENDATION:** That the City Council adopt the Draft Resolution authorizing the filing of applications with the Federal Transit Administration for federal financial assistance.

**ATTACHMENTS:** 1. FY19 FTA 5307 Draft Resolution

**Appropriated/Funded:**

**Review By:**

Department Director:

Mike Reed, Acting Public Works Director

Final Approver: John Lollis, City Manager



**RESOLUTION #\_\_\_\_\_ - 2019**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF PORTERVILLE AUTHORIZING STAFF TO ACT ON BEHALF  
OF THE CITY OF PORTERVILLE FOR THE PURPOSE OF OBTAINING FEDERAL  
FINANCIAL ASSISTANCE AND COMMITTING THE NECESSARY LOCAL MATCH  
FOR THE PROJECT(S) UNDER FTA SECTION 5307 ADMINISTERED BY THE  
FEDERAL TRANSIT ADMINISTRATION**

**WHEREAS**, the Federal Transit Administration has been authorized to provide funding to support public transportation under 49 U.S.C. Chapter 53; and

**WHEREAS**, grants or cooperative agreements for Federal Financial assistance will impose certain obligations upon the City of Porterville and may require the City of Porterville to provide the non-Federal share of transportation-related expenses supported with Federal financial assistance; and

**WHEREAS**, the City of Porterville is legally authorized under Federal, state, or local law to apply for and receive Federal assistance; and

**WHEREAS**, the City of Porterville is the Designated Recipient as defined at 49 U.S.C. 5307 (a)(2) and has authority to apply for and receive Urbanized Area Formula Program assistance authorized by 49 U.S.C. 5307; and

**WHEREAS**, the City of Porterville is required to provide certain certifications and assurances to the Federal Transit Administration at least annually;

**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY  
OF PORTERVILLE:**

1. The City of Porterville will provide the necessary local matching funds; and
2. Authorize the City Manager or designee to execute and file applications for Federal assistance on behalf of the City of Porterville with the Federal Transit Administration for Federal assistance authorized by 49 U.S.C. Chapter 53 or any other Federal statutes authorizing activities administered by the Federal Transit Administration.
3. Authorize the City Manager or designee to execute and file with the Federal Transit Administration the annual certifications and assurances and other documents the Federal Transit Administration requires before awarding a Federal assistance grant or cooperative agreement.
4. Authorize the City Manager or designee to execute and file such applications, assurances or any other documents required by the Federal Transit Administration for the purpose of complying with Title VI of the Civil Rights Act of 1964.

5. Authorize the City Manager or designee to furnish such additional information as the Federal Transit Administration may require in connection with the program or projects identified in applications.
6. Authorize the City Manager or designee to execute the grant and cooperative agreements with the Federal Transit Administration on behalf of the City of Porterville.
7. Authorize the Finance Director or designee to drawdown payments against available grant funding using the Electronic Clearing House Operation (ECHO)-Web application.

PASSED, ADOPTED AND APPROVED this 7<sup>th</sup> day of May, 2019.

---

Martha A. Flores, Mayor

ATTEST:  
John D. Lollis, City Clerk

---

By: Patrice Hildreth, Chief Deputy City Clerk



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Assignment of Airport Lease - Lot 32C

**SOURCE:** Finance

**COMMENT:** Ms. Pamela D. Hughes, Trustee of the William E. Parham Irrevocable Trust u/t/d July 29, 2013, has sold the hangar on Lot 32C to Mr. Mike Quatacker. The new owner is requesting Council authorization to assume the existing lease between the City of Porterville and Ms. Pamela D. Hughes, Trustee of the William E. Parham Irrevocable Trust u/t/d July 29, 2013, effective May 7, 2019, and expiring September 30, 2026.

**RECOMMENDATION:** That the City Council approve the Assignment of the Airport Lease for Lot 32C between the City of Porterville and Ms. Pamela D. Hughes, Trustee of the William E. Parham Irrevocable Trust u/t/d July 29, 2013, to Mr. Mike Quatacker; and authorize the Mayor to sign the Lessor's Consent to Assignment of Lease Agreement on behalf of the City.

**ATTACHMENTS:**

1. Locator Map
2. Assignment of Lease
3. Lessor's Consent to Assignment of Lease
4. Bill of Sale
5. Letter of Request from Mr. Quatacker

**Appropriated/Funded:**

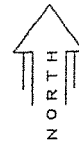
**Review By:**

Department Director:

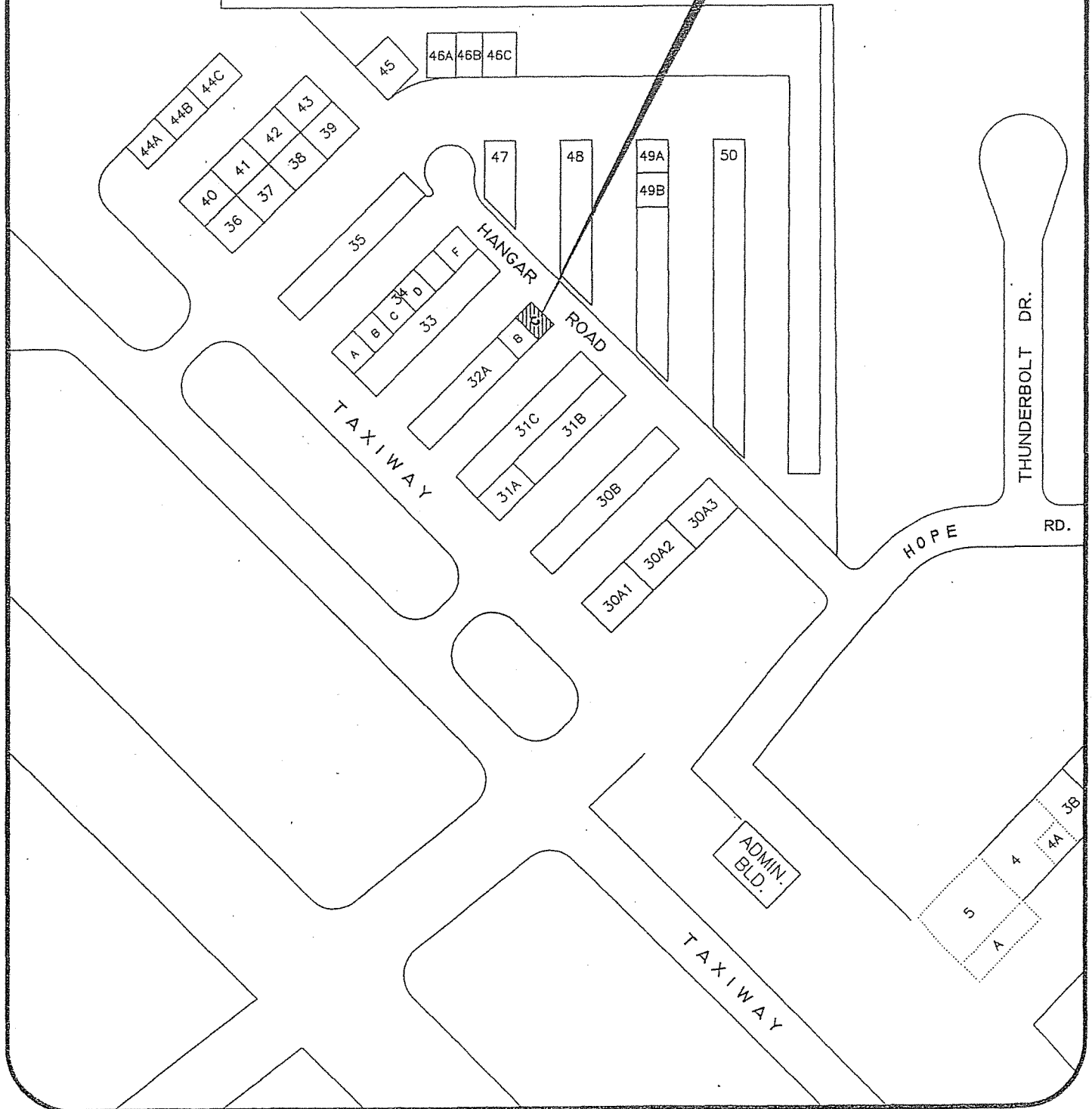
Maria Bemis, Finance Director

Final Approver: John Lollis, City Manager

# AIRPORT LEASE SITES



*SUBJECT LOCATION*



**ASSIGNMENT OF LEASE  
PORTERVILLE MUNICIPAL AIRPORT**

**THIS AGREEMENT**, made this 7th day of May, 2019, by and between Pamela D. Hughes, Trustee of the William E. Parham Irrevocable Trust u/t/d July 29, 2013, 177 N. Main Street, Porterville, CA, lessee of Lot 32C at the Porterville Municipal Airport, as the Assignor, and Mike Quatacker, 52 W. Orange, Porterville, CA, as the Assignee.

In consideration of the mutual covenants herein contained, each act to be performed hereunder, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Effective May 7, 2019, Assignor hereby assigns, transfers and conveys to Assignee all of his right, title and interest as Lessee, in, to and under a certain Lease Agreement dated October 1, 2016 (hereinafter "Lease"), executed by and between the City of Porterville, as Lessor, and William Parham, as original Lessee, and assumed by Pamela D. Hughes, Trustee of the William E. Parham Irrevocable Trust u/t/d July 29, 2013, on May 15, 2018, providing for the letting of certain premises located at the Porterville Municipal Airport, Porterville, California, being more particularly described as follows:

Airport Hangar Lot No. 32C, containing a total area of approximately 2,100 square feet, and establishing a Lease terminating on September 30, 2026.

2. Effective May 7, 2019, Assignee hereby accepts and assumes all of the obligations, responsibilities and liabilities of Assignor under said Lease, and agrees to perform said Lease Agreement according to its terms, covenants and conditions, without exception, and Assignee understands and agrees that Landlord makes no warranty or representation that either Assignor or Assignee would be given an exclusive use in the Porterville Municipal Airport for the use thereof by Assignor and/or Assignee, except as provided in the Lease.

3. Upon execution of this Assignment of Lease and Landlord's consent hereto, the parties' Noticed Address shall be as set forth herein above. The parties understand there is a \$150 assignment fee, payable to the City of Porterville, and the Assignee must provide proof of aircraft and liability insurance within thirty (30) days of Council approval.

4. Assignor hereby covenants said Lease as valid and existing and is not in default as of the date of this Assignment.

5. This Assignment shall be binding upon and shall inure to the benefit of the respective parties, their successors and assigns.

**IN WITNESS WHEREOF**, the parties hereto have executed this Assignment of Lease as of the date first above written.

**ASSIGNOR:**

William E. Parham Irrevocable Trust  
u/t/d July 29, 2013

BY: Pamela D. Hughes  
Pamela D. Hughes, Trustee

**ASSIGNEE:**

BY: Mike Quatacker  
Mike Quatacker

**LESSOR'S CONSENT TO ASSIGNMENT OF LEASE AGREEMENT  
PORTERVILLE MUNICIPAL AIRPORT  
AIRPORT HANGAR LOT NO. 32C**

The City of Porterville, a municipal corporation of the State of California, being the Landlord under the Lease for Airport Hangar Lot No. 32C, described in the foregoing Assignment, hereby consents to the foregoing Assignment of Lease upon the expressed condition, however, that there shall be no further assignment without the prior written consent of the Landlord.

Dated this 7<sup>th</sup> day of May, 2019.

CITY OF PORTERVILLE

BY: \_\_\_\_\_  
Martha A. Flores  
MAYOR, CITY OF PORTERVILLE

"LESSOR"

ATTEST: \_\_\_\_\_  
John D. Lollis, CITY CLERK

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
Julia Lew, City Attorney

## BILL OF SALE

Airplane Hangar

[insert hangar address], Lot 32C

Porterville, CA 93257

Effective Date: 04 / 18 / 2019

In consideration of the sum of \$ 12,000.00 receipt which is hereby acknowledged,  
Pamela D. Hughes, Trustee of the William E. Parham Irrevocable Trust u/t/d July 29, 2013,  
hereby sells and conveys to new owner Mike Quatacker and assigns airplane hangar located at:  
[insert address], Lot 32C, Porterville, CA 93257.

IN WITNESS WHEREOF, the undersigned have executed this document on the dates

William E. Parham Irrevocable Trust u/t/d July 29, 2013

BY: Pamela D Hughes  
Pamela D. Hughes, Trustee

04 / 18 / 2019  
Date

4-18-19

I Mike Butalke would like  
to know how on Houston  
32 C at the Porterville Airport







## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Quarterly Portfolio Summary

**SOURCE:** Finance

**COMMENT:** This report reflects the investment portfolio of the City of Porterville as of March 31, 2019, and is in compliance with California Government Code Section 27000, etc., Section 53600, etc., and the City of Porterville's Statement of Investment Policy. Investments are selected based on the statutory objectives of safety, liquidity and yield.

Items identified in the summary include portfolio composition, weighted average rate of earnings, weighted average days to maturity, and the percentage of liquid holdings.

**RECOMMENDATION:** That the City Council accept the quarterly Investment Portfolio Summary Report.

**ATTACHMENTS:** 1. 03-31-19 Portfolio Summary

Appropriated/Funded:

Review By:

Department Director:  
Maria Bemis, Finance Director

Final Approver: John Lollis, City Manager

**CITY OF PORTERVILLE**  
**PORTFOLIO SUMMARY AS OF MARCH 31, 2019**

| INVESTMENT<br>OR CUSIP<br>NUMBER | INSTITUTION                                               | PURCHASE<br>PRICE | MARKET<br>VALUE | COUPON<br>INTEREST<br>RATE | PURCHASE<br>DATE | MATURITY<br>DATE | DAYS TO<br>MATURITY |
|----------------------------------|-----------------------------------------------------------|-------------------|-----------------|----------------------------|------------------|------------------|---------------------|
| 1006                             | LOCAL AGENCY INVESTMENT FUND                              | \$ 11,758,639     | \$ 11,758,639   | 2.550%                     | DAILY            | DAILY            | 1                   |
| 1007                             | CSJVRMA INVESTMENT FUND                                   | 6,842,585         | 6,957,318       | 2.280%                     | DAILY            | DAILY            | 30                  |
| 866                              | TULARE COUNTY INVESTMENT POOL                             | 9,133,168         | 9,121,970       | 2.220%                     | DAILY            | DAILY            | 30                  |
|                                  | TULARE COUNTY JUNIOR LIVESTOCK SHOW<br>AND COMMUNITY FAIR | 979,577           | 979,577         | 4.000%                     | 1/15/2015        | 7/15/2037        | 6,681               |
|                                  | CORNERSTONE MAIN PARTNERS, L.P.                           | 2,720,000         | 2,739,726       | 2.400%                     | 12/12/2018       | 11/30/2038       | 7,184               |
|                                  | JP MORGAN SEC LLC COMML PAPER                             | 985,491           | 993,900         | 2.910%                     | 12/21/2018       | 6/21/2019        | 82                  |
| 3133EGKA2                        | FEDERAL FARM CREDIT BANK                                  | 1,000,000         | 981,460         | 1.500%                     | 6/29/2016        | 7/6/2021         | 828                 |
| 3130A9VY4                        | FEDERAL HOME LOAN BANKS                                   | 1,000,000         | 981,960         | 1.650%                     | 11/23/2016       | 11/23/2021       | 968                 |
| 3130AARH3                        | FEDERAL HOME LOAN BANKS                                   | 1,000,000         | 995,230         | 2.250%                     | 2/28/2017        | 2/28/2022        | 1,065               |
| 3130ABCS3                        | FEDERAL HOME LOAN BANKS                                   | 1,000,000         | 991,820         | 2.100%                     | 5/18/2017        | 5/18/2022        | 1,144               |
| 3134GBYP1                        | FEDERAL HOME LOAN MTG CORP                                | 1,000,000         | 1,000,740       | 2.250%                     | 7/26/2017        | 7/26/2022        | 1,213               |
| 3130ACF66                        | FEDERAL HOME LOAN BANKS                                   | 1,000,000         | 992,210         | 2.150%                     | 9/26/2017        | 9/26/2022        | 1,275               |
| 3134GBM74                        | FEDERAL HOME LOAN MTG CORP                                | 1,000,000         | 993,390         | 2.150%                     | 9/29/2017        | 9/29/2022        | 1,278               |
| 3134GB6A5                        | FEDERAL HOME LOAN MTG CORP                                | 1,000,000         | 998,580         | 2.400%                     | 12/28/2017       | 12/28/2022       | 1,368               |
| 24422ESW0                        | JOHN DEERE CAP CORP                                       | 1,000,000         | 994,540         | 2.050%                     | 3/10/2015        | 3/10/2020        | 345                 |
| 38148TMC0                        | GOLDMAN SACHS GROUP INC                                   | 1,000,000         | 989,430         | 2.000%                     | 4/29/2016        | 4/29/2021        | 760                 |
| 46625HQJ2                        | JP MORGAN CHASE & CO NOTE                                 | 997,500           | 996,680         | 2.550%                     | 12/28/2016       | 3/1/2021         | 701                 |
| 06744CFN6                        | BARCLAYS BANK PLC MTN                                     | 1,000,000         | 977,538         | 2.250%                     | 8/25/2017        | 8/25/2022        | 1,243               |
| 89236TEC5                        | TOYOTA MOTOR CRD CORP                                     | 1,000,000         | 986,120         | 2.150%                     | 9/8/2017         | 9/8/2022         | 1,257               |
| 037833DE7                        | APPLE INC NOTE                                            | 993,000           | 992,530         | 2.400%                     | 1/16/2018        | 1/13/2023        | 1,384               |
| 084670BR8                        | BERKSHIRE HATHAWAY                                        | 981,970           | 1,005,970       | 2.750%                     | 4/23/2018        | 3/15/2023        | 1,445               |
| 06406RAG2                        | BANK NEW YORK MELLON CORP MTN                             | 1,000,000         | 1,025,440       | 3.500%                     | 10/16/2018       | 4/23/2023        | 1,484               |
| 90331HNV1                        | US BANK ASSN MTN                                          | 995,000           | 1,024,480       | 3.400%                     | 11/15/2018       | 7/24/2023        | 1,576               |
| 36160NS83                        | CERTIFICATE OF DEPOSIT                                    | 245,000           | 244,880         | 2.000%                     | 5/23/2014        | 5/23/2019        | 53                  |
| 48126XF8                         | CERTIFICATE OF DEPOSIT                                    | 200,000           | 194,504         | 1.700%                     | 9/30/2016        | 9/30/2021        | 914                 |
| 02587CAF7                        | CERTIFICATE OF DEPOSIT                                    | 246,383           | 246,716         | 1.950%                     | 7/17/2014        | 7/17/2019        | 108                 |
| 74267GUQ8                        | CERTIFICATE OF DEPOSIT                                    | 247,000           | 246,704         | 2.000%                     | 7/22/2014        | 7/22/2019        | 113                 |
| 29266NB30                        | CERTIFICATE OF DEPOSIT                                    | 247,000           | 246,649         | 2.050%                     | 8/28/2014        | 8/28/2019        | 150                 |
| 254672NN4                        | CERTIFICATE OF DEPOSIT                                    | 247,000           | 245,693         | 2.000%                     | 5/13/2015        | 5/13/2020        | 409                 |
| 20033AKP0                        | CERTIFICATE OF DEPOSIT                                    | 249,000           | 247,496         | 1.900%                     | 5/26/2015        | 5/26/2020        | 422                 |
| 140420RT9                        | CERTIFICATE OF DEPOSIT                                    | 247,380           | 246,480         | 1.850%                     | 6/3/2015         | 6/3/2020         | 430                 |
| 46147UQL7                        | CERTIFICATE OF DEPOSIT                                    | 248,378           | 247,279         | 1.900%                     | 6/17/2015        | 6/17/2020        | 444                 |
| 981571BN1                        | CERTIFICATE OF DEPOSIT                                    | 200,000           | 198,842         | 2.300%                     | 6/25/2015        | 6/25/2020        | 452                 |
| 29976DYV6                        | CERTIFICATE OF DEPOSIT                                    | 246,382           | 245,399         | 1.950%                     | 6/30/2015        | 6/30/2020        | 457                 |
| 14042E4P2                        | CERTIFICATE OF DEPOSIT                                    | 246,000           | 245,141         | 2.300%                     | 7/15/2015        | 7/15/2020        | 472                 |
| 31938QN26                        | CERTIFICATE OF DEPOSIT                                    | 247,000           | 245,661         | 2.050%                     | 7/17/2015        | 7/17/2020        | 474                 |
| 58403BY67                        | CERTIFICATE OF DEPOSIT                                    | 247,000           | 246,153         | 2.250%                     | 7/27/2015        | 7/27/2020        | 484                 |
| 05580ACW2                        | CERTIFICATE OF DEPOSIT                                    | 247,000           | 246,222         | 2.200%                     | 9/22/2015        | 9/18/2020        | 537                 |
| 02587DL30                        | CERTIFICATE OF DEPOSIT                                    | 246,000           | 244,462         | 2.300%                     | 12/23/2015       | 12/23/2020       | 633                 |
| 9497486Z5                        | CERTIFICATE OF DEPOSIT                                    | 249,000           | 242,810         | 1.600%                     | 8/3/2016         | 8/3/2021         | 856                 |
| 06062QXG4                        | CERTIFICATE OF DEPOSIT                                    | 247,000           | 241,988         | 1.850%                     | 11/23/2016       | 11/23/2021       | 968                 |
| 58733ADT3                        | CERTIFICATE OF DEPOSIT                                    | 240,000           | 236,081         | 2.100%                     | 1/27/2017        | 1/27/2022        | 1,033               |
| 38148PGX9                        | CERTIFICATE OF DEPOSIT                                    | 245,000           | 242,009         | 2.300%                     | 3/8/2017         | 3/8/2022         | 1,073               |
| 857894SK6                        | CERTIFICATE OF DEPOSIT                                    | 249,000           | 244,730         | 2.050%                     | 1/13/2017        | 1/13/2022        | 1,019               |
| 71270QQJ8                        | CERTIFICATE OF DEPOSIT                                    | 246,000           | 241,749         | 2.050%                     | 1/18/2017        | 1/18/2022        | 1,024               |
| 8562845Z3                        | CERTIFICATE OF DEPOSIT                                    | 246,000           | 243,670         | 2.350%                     | 1/26/2017        | 1/26/2022        | 1,032               |
| 33767A2G5                        | CERTIFICATE OF DEPOSIT                                    | 249,000           | 244,204         | 2.100%                     | 4/19/2017        | 4/19/2022        | 1,115               |
| 55266CVB9                        | CERTIFICATE OF DEPOSIT                                    | 248,502           | 243,039         | 1.950%                     | 4/28/2017        | 4/28/2022        | 1,124               |
| 67054NAK9                        | CERTIFICATE OF DEPOSIT                                    | 249,000           | 245,312         | 2.300%                     | 6/21/2017        | 6/21/2022        | 1,178               |
| 9819962K6                        | CERTIFICATE OF DEPOSIT                                    | 200,000           | 191,904         | 2.400%                     | 4/19/2017        | 4/19/2022        | 1,115               |
| 795450D36                        | CERTIFICATE OF DEPOSIT                                    | 240,000           | 236,491         | 2.350%                     | 8/23/2017        | 8/23/2022        | 1,241               |
| 06740KKD8                        | CERTIFICATE OF DEPOSIT                                    | 247,000           | 242,463         | 2.200%                     | 7/12/2017        | 7/12/2022        | 1,199               |
| 33715LAP5                        | CERTIFICATE OF DEPOSIT                                    | 248,378           | 244,314         | 2.250%                     | 9/28/2017        | 9/28/2022        | 1,277               |
| 62384RAB2                        | CERTIFICATE OF DEPOSIT                                    | 249,000           | 244,642         | 2.300%                     | 10/12/2017       | 10/12/2022       | 1,291               |
| 01748DAY2                        | CERTIFICATE OF DEPOSIT                                    | 248,402           | 243,656         | 2.200%                     | 11/3/2017        | 11/3/2022        | 1,313               |
| 61747MF63                        | CERTIFICATE OF DEPOSIT                                    | 246,000           | 244,216         | 2.650%                     | 1/11/2018        | 1/11/2023        | 1,382               |
| 22239MAR9                        | CERTIFICATE OF DEPOSIT                                    | 249,000           | 246,642         | 2.600%                     | 2/2/2018         | 2/2/2023         | 1,404               |
| 366526AR2                        | CERTIFICATE OF DEPOSIT                                    | 248,378           | 247,030         | 2.650%                     | 2/16/2018        | 2/16/2023        | 1,418               |
| 819866AE4                        | CERTIFICATE OF DEPOSIT                                    | 249,000           | 248,335         | 2.800%                     | 3/5/2018         | 3/6/2023         | 1,436               |
| 319141KL0                        | CERTIFICATE OF DEPOSIT                                    | 245,000           | 247,460         | 3.150%                     | 6/6/2018         | 6/6/2023         | 1,528               |
| 74934YAH4                        | CERTIFICATE OF DEPOSIT                                    | 245,000           | 247,475         | 3.150%                     | 6/20/2018        | 6/20/2023        | 1,542               |
| 17312QJ26                        | CERTIFICATE OF DEPOSIT                                    | 245,410           | 246,162         | 2.900%                     | 4/11/2018        | 4/11/2023        | 1,472               |
| 25665QAX3                        | CERTIFICATE OF DEPOSIT                                    | 246,000           | 246,157         | 2.900%                     | 4/13/2018        | 4/13/2023        | 1,474               |
| 91435LAG2                        | CERTIFICATE OF DEPOSIT                                    | 249,000           | 250,559         | 3.050%                     | 5/14/2018        | 5/15/2023        | 1,506               |
| 080515CQ0                        | CERTIFICATE OF DEPOSIT                                    | 246,000           | 247,525         | 3.050%                     | 5/16/2018        | 5/16/2023        | 1,507               |
| 90348JCW8                        | CERTIFICATE OF DEPOSIT                                    | 249,000           | 252,503         | 3.250%                     | 6/13/2018        | 6/13/2023        | 1,535               |

| INVESTMENT<br>OR CUSIP<br>NUMBER | INSTITUTION            | PURCHASE<br>PRICE | MARKET<br>VALUE | COUPON<br>INTEREST<br>RATE | PURCHASE<br>DATE | MATURITY<br>DATE | DAYS TO<br>MATURITY |
|----------------------------------|------------------------|-------------------|-----------------|----------------------------|------------------|------------------|---------------------|
| 74160NGF1                        | CERTIFICATE OF DEPOSIT | 248,415           | 252,010         | 3.200%                     | 6/22/2018        | 6/22/2023        | 1,544               |
| 45581EAX9                        | CERTIFICATE OF DEPOSIT | 249,000           | 253,004         | 3.300%                     | 6/30/2018        | 6/30/2023        | 1,552               |
| 201282HW3                        | CERTIFICATE OF DEPOSIT | 249,000           | 249,725         | 3.250%                     | 7/25/2018        | 7/25/2023        | 1,577               |
| 31911QFK6                        | CERTIFICATE OF DEPOSIT | 248,427           | 252,003         | 3.200%                     | 8/10/2018        | 8/10/2023        | 1,593               |
| 499724AD4                        | CERTIFICATE OF DEPOSIT | 249,000           | 252,513         | 3.250%                     | 8/30/2018        | 8/30/2023        | 1,613               |
| 64017AAH7                        | CERTIFICATE OF DEPOSIT | 245,000           | 248,952         | 3.300%                     | 9/19/2018        | 9/19/2023        | 1,633               |
| 92891CBK7                        | CERTIFICATE OF DEPOSIT | 249,000           | 253,572         | 3.350%                     | 10/16/2018       | 10/16/2023       | 1,660               |
| 474067AQ8                        | CERTIFICATE OF DEPOSIT | 249,000           | 253,544         | 3.350%                     | 10/19/2018       | 10/19/2023       | 1,663               |
| 59452WAE8                        | CERTIFICATE OF DEPOSIT | 249,000           | 254,655         | 3.450%                     | 11/9/2018        | 11/9/2023        | 1,684               |
| 61760ASL4                        | CERTIFICATE OF DEPOSIT | 245,000           | 251,603         | 3.550%                     | 11/26/2018       | 11/24/2023       | 1,699               |
| 635573AL2                        | CERTIFICATE OF DEPOSIT | 245,000           | 250,035         | 3.400%                     | 12/26/2018       | 12/21/2023       | 1,726               |
| 32110YLY9                        | CERTIFICATE OF DEPOSIT | 200,000           | 200,556         | 3.200%                     | 2/15/2019        | 1/25/2024        | 1,761               |
| 1204                             | CERTIFICATE OF DEPOSIT | 249,000           | 249,000         | 2.700%                     | 4/24/2018        | 4/24/2023        | 1,485               |
| 1248                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 2.480%                     | 5/25/2018        | 5/8/2020         | 404                 |
| 1254                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 2.100%                     | 9/8/2014         | 9/8/2019         | 161                 |
| 1281                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 2.800%                     | 5/14/2018        | 5/14/2023        | 1,505               |
| 1282                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 3.000%                     | 6/21/2018        | 6/21/2023        | 1,543               |
| 1283                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 2.458%                     | 5/10/2018        | 5/10/2020        | 406                 |
| 1285                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 2.650%                     | 4/29/2018        | 4/29/2023        | 1,490               |
| 1286                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 3.100%                     | 6/25/2018        | 6/25/2023        | 1,547               |
| 1292                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 2.000%                     | 7/31/2014        | 7/31/2019        | 122                 |
| 1293                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 1.940%                     | 7/18/2014        | 7/18/2019        | 109                 |
| 1294                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 2.030%                     | 4/3/2015         | 4/3/2020         | 369                 |
| 1295                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 2.084%                     | 4/20/2015        | 4/20/2020        | 386                 |
| 1296                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 2.000%                     | 5/8/2015         | 5/8/2020         | 404                 |
| 1297                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 2.000%                     | 5/14/2015        | 5/14/2020        | 410                 |
| 1298                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 2.150%                     | 11/4/2015        | 11/4/2020        | 584                 |
| 1299                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 2.030%                     | 4/30/2015        | 3/30/2020        | 365                 |
| 1300                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 2.100%                     | 12/8/2015        | 12/8/2020        | 618                 |
| 1301                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 2.080%                     | 2/4/2016         | 2/4/2021         | 676                 |
| 1302                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 2.150%                     | 1/11/2016        | 1/11/2021        | 652                 |
| 1303                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 2.150%                     | 4/19/2016        | 4/19/2021        | 750                 |
| 1304                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 2.000%                     | 5/19/2016        | 5/19/2021        | 780                 |
| 1305                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 2.000%                     | 6/3/2016         | 6/3/2021         | 795                 |
| 1306                             | CERTIFICATE OF DEPOSIT | 249,000           | 249,000         | 1.935%                     | 10/28/2016       | 10/28/2021       | 942                 |
| 1307                             | CERTIFICATE OF DEPOSIT | 249,000           | 249,000         | 1.900%                     | 12/20/2016       | 12/20/2021       | 995                 |
| 1308                             | CERTIFICATE OF DEPOSIT | 256,140           | 256,140         | 2.000%                     | 1/20/2017        | 1/20/2022        | 1,026               |
| 1309                             | CERTIFICATE OF DEPOSIT | 249,000           | 249,000         | 2.150%                     | 2/14/2017        | 2/14/2022        | 1,051               |
| 1310                             | CERTIFICATE OF DEPOSIT | 249,000           | 249,000         | 2.100%                     | 5/1/2017         | 5/2/2022         | 1,128               |
| 1311                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 2.110%                     | 6/23/2017        | 6/23/2022        | 1,180               |
| 1312                             | CERTIFICATE OF DEPOSIT | 249,000           | 249,000         | 2.500%                     | 7/26/2017        | 7/26/2022        | 1,213               |
| 1313                             | CERTIFICATE OF DEPOSIT | 249,000           | 249,000         | 2.230%                     | 7/11/2017        | 7/11/2022        | 1,198               |
| 1314                             | CERTIFICATE OF DEPOSIT | 249,000           | 249,000         | 2.500%                     | 7/21/2017        | 7/21/2022        | 1,208               |
| 1315                             | CERTIFICATE OF DEPOSIT | 249,000           | 249,000         | 2.350%                     | 9/22/2017        | 9/22/2022        | 1,271               |
| 1316                             | CERTIFICATE OF DEPOSIT | 249,000           | 249,000         | 2.600%                     | 10/6/2017        | 10/6/2022        | 1,285               |
| 1317                             | CERTIFICATE OF DEPOSIT | 249,000           | 249,000         | 2.428%                     | 11/16/2017       | 11/16/2022       | 1,326               |
| 1318                             | CERTIFICATE OF DEPOSIT | 249,000           | 249,000         | 2.500%                     | 3/22/2018        | 3/22/2023        | 1,452               |
| 1319                             | CERTIFICATE OF DEPOSIT | 250,000           | 250,000         | 3.000%                     | 8/3/2018         | 8/3/2021         | 856                 |
| 1320                             | CERTIFICATE OF DEPOSIT | 249,000           | 249,000         | 3.250%                     | 9/12/2018        | 9/12/2023        | 1,626               |
| 1321                             | CERTIFICATE OF DEPOSIT | 249,000           | 249,000         | 2.970%                     | 10/16/2018       | 5/16/2020        | 412                 |
| 1322                             | CERTIFICATE OF DEPOSIT | 249,000           | 249,000         | 3.150%                     | 11/30/2018       | 11/30/2020       | 610                 |
| 1323                             | CERTIFICATE OF DEPOSIT | 249,000           | 249,000         | 3.150%                     | 10/23/2018       | 10/23/2021       | 937                 |
| 1324                             | CERTIFICATE OF DEPOSIT | 249,000           | 249,000         | 3.350%                     | 1/11/2019        | 1/11/2024        | 1,747               |
| 1325                             | CERTIFICATE OF DEPOSIT | 249,000           | 249,000         | 3.150%                     | 1/23/2019        | 1/23/2021        | 664                 |
| 1326                             | CERTIFICATE OF DEPOSIT | 249,000           | 249,000         | 3.500%                     | 1/29/2019        | 1/29/2024        | 1,765               |
| 1327                             | CERTIFICATE OF DEPOSIT | 245,000           | 245,000         | 3.500%                     | 2/28/2019        | 2/25/2024        | 1,792               |
| 1328                             | CERTIFICATE OF DEPOSIT | 249,000           | 249,000         | 3.250%                     | 3/22/2019        | 3/22/2024        | 1,818               |
| TOTALS                           |                        | \$ 74,019,505     | \$ 74,073,967   |                            |                  |                  |                     |

| WEIGHTED AVERAGE RATE OF EARNINGS |           |           |            |           | % OF LIQUID<br>PORTFOLIO<br>HOLDINGS | WEIGHTED<br>AVERAGE<br>DAYS TO<br>MATURITY |
|-----------------------------------|-----------|-----------|------------|-----------|--------------------------------------|--------------------------------------------|
| ONE YEAR HISTORY                  |           |           |            | CURRENT   |                                      |                                            |
| 3/31/2018                         | 6/30/2018 | 9/30/2018 | 12/31/2018 | 3/31/2019 |                                      |                                            |
| 1.939%                            | 2.110%    | 2.230%    | 2.334%     | 2.436%    | 37.469%                              | 701                                        |

**Comments:**

Portfolio holdings as of March 31, 2019, are in compliance with the current Investment Policy. With 38.898% of the portfolio being held in liquid instruments, the cash needs of the City will be met. The next portfolio report will be calculated for the second calendar quarter ending June 30, 2019, and will be presented during the August 6, 2019 Council meeting.



## CITY COUNCIL AGENDA – MAY 7, 2019

SUBJECT: Financial Status Reports

SOURCE: Finance

COMMENT: The City Charter requires financial status reports to be provided to City Council on a monthly basis. Council Minute Order No. 10-011607 approved the recommended change in submittal of the interim financial status reports and established requirements and parameters in the presentation of the reports.

In accordance with Council Minute Order No. 10-011607, the financial status reports for the quarter ending March 31, 2019, are submitted.

RECOMMENDATION: That the City Council accept the Financial Status Reports as presented.

ATTACHMENTS: 1. 03-31-19 Financial Status Reports

Appropriated/Funded:

Review By:

Department Director:

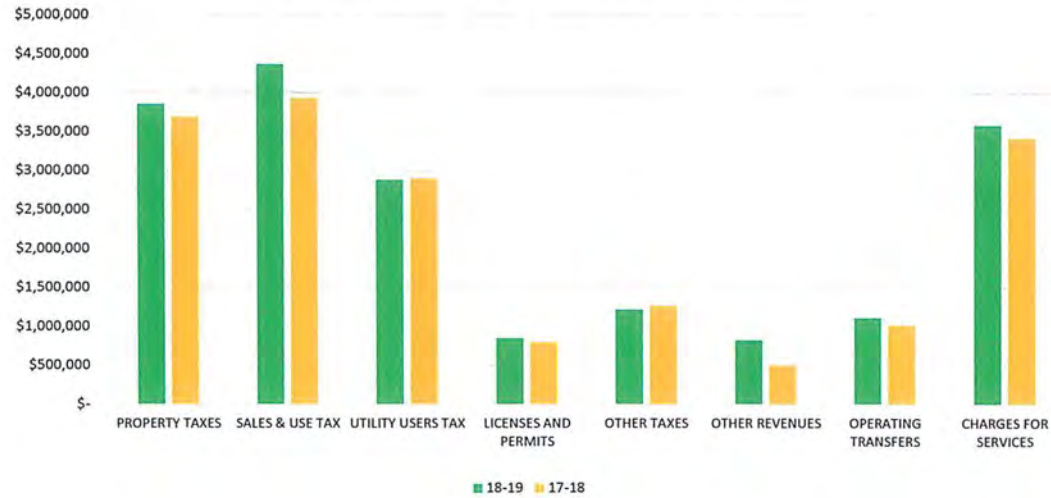
Final Approver: John Lollis, City Manager

CITY OF PORTERVILLE

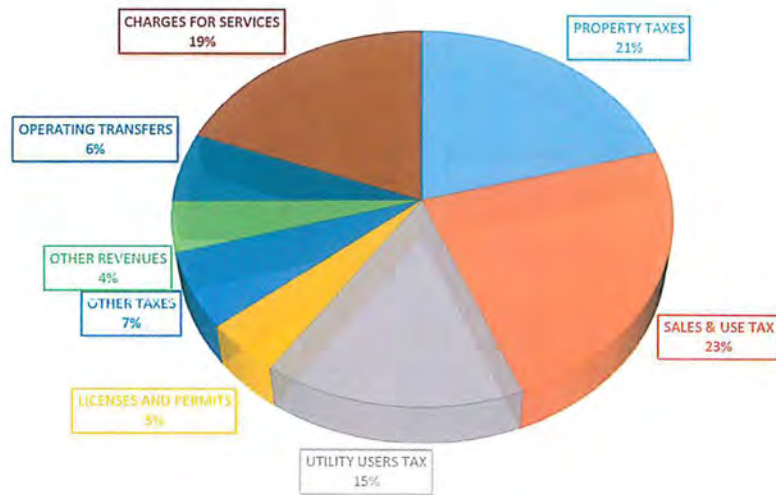
REVENUE STATUS REPORT - GENERAL FUND  
FOR THE NINE MONTHS ENDED  
MARCH 31, 2019 AND MARCH 31, 2018

| REVENUE SOURCE               | 2018-2019<br>ESTIMATED<br>REVENUE | 2018-2019<br>YEAR-TO-DATE<br>REVENUE | % OF<br>ESTIMATE | 2017-2018<br>ESTIMATED<br>REVENUE | 2017-2018<br>YEAR-TO-DATE<br>REVENUE | % OF<br>ESTIMATE |
|------------------------------|-----------------------------------|--------------------------------------|------------------|-----------------------------------|--------------------------------------|------------------|
| PROPERTY TAXES               | \$ 6,889,846                      | \$ 3,850,429                         | 55.89%           | \$ 6,500,000                      | \$ 3,692,074                         | 56.80%           |
| OTHER TAXES:                 |                                   |                                      |                  |                                   |                                      |                  |
| SALES AND USE TAX            | 5,998,601                         | 4,185,401                            | 69.77%           | 5,909,737                         | 3,777,490                            | 63.92%           |
| UTILITY USERS TAX            | 4,125,000                         | 2,880,458                            | 69.83%           | 4,000,000                         | 2,898,912                            | 72.47%           |
| TRANSIENT OCCUPANCY TAX      | 620,000                           | 268,382                              | 43.29%           | 500,000                           | 311,320                              | 62.26%           |
| PROPERTY TRANSFER TAX        | 85,000                            | 47,780                               | 56.21%           | 65,000                            | 63,695                               | 97.99%           |
| FRANCHISE TAX                | 1,611,134                         | 855,574                              | 53.10%           | 1,561,134                         | 847,661                              | 54.30%           |
| SALES TAX - PUBLIC SAFETY    | 220,000                           | 178,453                              | 81.12%           | 200,000                           | 161,552                              | 80.78%           |
| LICENSES AND PERMITS:        |                                   |                                      |                  |                                   |                                      |                  |
| BUSINESS LICENSES            | 481,800                           | 458,274                              | 95.12%           | 464,800                           | 457,628                              | 98.46%           |
| CONSTRUCTION PERMITS         | 440,000                           | 392,765                              | 89.26%           | 475,000                           | 339,112                              | 71.39%           |
| REVENUE FROM AGENCIES-TAXES: |                                   |                                      |                  |                                   |                                      |                  |
| VEHICLE LICENSE FEES         | 32,000                            | 29,183                               | 91.20%           | 25,000                            | 31,535                               | 126.14%          |
| OTHER TAXES                  | 25,000                            | 12,240                               | 48.96%           | 25,000                            | 12,411                               | 49.64%           |
| REVENUE FROM AGENCIES-GRANTS | 172,741                           | 140,324                              | 81.23%           | 187,535                           | 61,987                               | 33.05%           |
| USE OF MONEY AND PROPERTY    | 405,800                           | 387,079                              | 95.39%           | 470,000                           | 359,016                              | 76.39%           |
| FINES AND FORFEITURES        | 34,000                            | 15,323                               | 45.07%           | 36,000                            | 22,634                               | 62.87%           |
| CHARGES FOR SERVICES:        |                                   |                                      |                  |                                   |                                      |                  |
| PLANNING AND ENGINEERING     | 129,000                           | 108,446                              | 84.07%           | 107,000                           | 120,837                              | 112.93%          |
| POLICE                       | 519,000                           | 163,105                              | 31.43%           | 334,000                           | 124,539                              | 37.29%           |
| FIRE                         | 45,000                            | 40,802                               | 90.67%           | 45,000                            | 45,056                               | 100.12%          |
| LIBRARY                      | 40,000                            | 25,023                               | 62.56%           | 40,000                            | 31,561                               | 78.90%           |
| RECREATIONAL                 | 2,738,739                         | 1,437,187                            | 52.48%           | 2,374,100                         | 1,330,862                            | 56.06%           |
| INTERDEPARTMENTAL            | 2,400,000                         | 1,753,872                            | 73.08%           | 2,200,000                         | 1,751,092                            | 79.60%           |
| OTHER                        | 41,272                            | 51,226                               | 124.12%          | 9,954                             | 16,892                               | 169.70%          |
| OTHER REVENUES               | 80,200                            | 277,236                              | 345.68%          | 87,200                            | 62,026                               | 71.13%           |
| SUBTOTALS                    | \$ 27,134,133                     | \$ 17,558,561                        | 64.71%           | \$ 25,616,460                     | \$ 16,519,890                        | 64.49%           |
| OPERATING TRANSFERS          | 1,230,625                         | 771,487                              | 62.69%           | 1,205,696                         | 870,735                              | 72.22%           |
| DEBT SERVICE TRANSFERS       | 199,250                           | 168,849                              | 84.74%           | 199,455                           | 143,430                              | 71.91%           |
| TOTALS                       | \$ 28,564,008                     | \$ 18,498,898                        | 64.76%           | \$ 27,021,611                     | \$ 17,534,056                        | 64.89%           |

City of Porterville  
General Fund Revenues  
Nine Months Ended March 31, 2019 and March 31, 2018



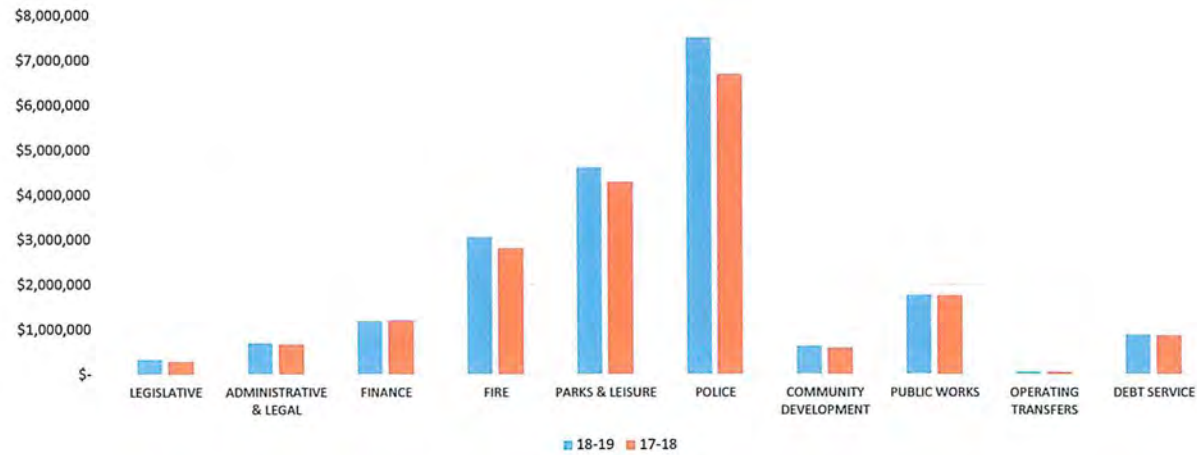
City of Porterville  
General Fund Revenues  
Nine Months Ended March 31, 2019



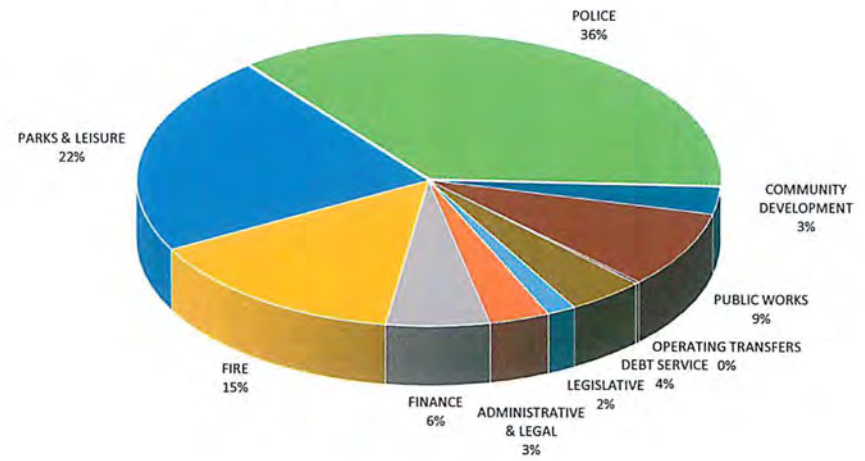
CITY OF PORTERVILLE  
EXPENDITURE STATUS REPORT - GENERAL FUND  
FOR THE NINE MONTHS ENDED  
MARCH 31, 2019 AND MARCH 31, 2018

|                                 | 2018-2019<br>AMENDED<br>APPROP | 2018-2019<br>YEAR-TO-DATE<br>EXPEND | % OF<br>APPROP | 2017-2018<br>AMENDED<br>APPROP | 2017-2018<br>YEAR-TO-DATE<br>EXPEND | % OF<br>APPROP |
|---------------------------------|--------------------------------|-------------------------------------|----------------|--------------------------------|-------------------------------------|----------------|
| LEGISLATIVE:                    |                                |                                     |                |                                |                                     |                |
| CITY COUNCIL                    | \$ 252,917                     | \$ 213,061                          | 84.2%          | \$ 262,917                     | \$ 117,751                          | 44.8%          |
| COMMUNITY PROMOTION             | 236,653                        | 119,518                             | 50.5%          | 223,583                        | 166,204                             | 74.3%          |
| EMERGENCY OPERATIONS            |                                |                                     |                |                                |                                     |                |
| ADMINISTRATIVE & LEGAL:         |                                |                                     |                |                                |                                     |                |
| CITY MANAGER                    | 318,526                        | 199,275                             | 62.6%          | 308,902                        | 226,719                             | 73.4%          |
| CITY CLERK                      | 190,463                        | 134,545                             | 70.6%          | 189,358                        | 122,564                             | 64.7%          |
| HUMAN RESOURCES                 | 308,614                        | 240,541                             | 77.9%          | 264,520                        | 224,311                             | 84.8%          |
| CITY ATTORNEY                   | 225,000                        | 118,076                             | 52.5%          | 225,000                        | 98,402                              | 43.7%          |
| FINANCE:                        |                                |                                     |                |                                |                                     |                |
| FINANCE & ACCOUNTING            | 902,024                        | 653,162                             | 72.4%          | 903,042                        | 678,584                             | 75.1%          |
| INFORMATION SERVICES            | 472,829                        | 321,937                             | 68.1%          | 442,125                        | 315,502                             | 71.4%          |
| ADMINISTRATIVE SERVICES         | 348,497                        | 215,586                             | 61.9%          | 364,286                        | 212,986                             | 58.5%          |
| POLICE PROTECTION               | 10,498,068                     | 7,513,526                           | 71.6%          | 10,069,130                     | 6,695,217                           | 66.5%          |
| FIRE PROTECTION                 | 4,408,354                      | 3,061,075                           | 69.4%          | 4,081,607                      | 2,816,534                           | 69.0%          |
| COMMUNITY DEVELOPMENT:          |                                |                                     |                |                                |                                     |                |
| PLANNING & ZONING               | 643,169                        | 422,716                             | 65.7%          | 599,243                        | 404,388                             | 67.5%          |
| ECONOMIC DEVELOPMENT            | 385,874                        | 205,574                             | 53.3%          | 368,288                        | 181,291                             | 49.2%          |
| PUBLIC WORKS:                   |                                |                                     |                |                                |                                     |                |
| ENGINEERING & BUILDING          | 1,161,034                      | 849,922                             | 73.2%          | 1,155,870                      | 816,583                             | 70.6%          |
| STREET MAINTENANCE              | 482,842                        | 402,878                             | 83.4%          | 457,032                        | 369,707                             | 80.9%          |
| SIGNALS, SIGNING & STRIPING     | 384,414                        | 200,081                             | 52.0%          | 368,776                        | 181,983                             | 49.3%          |
| STREET LIGHTING                 | 507,517                        | 223,926                             | 44.1%          | 507,421                        | 334,199                             | 65.9%          |
| STORM DRAINS                    | 83,818                         | 49,577                              | 59.1%          | 106,707                        | 23,303                              | 21.8%          |
| PARKING LOTS                    | 47,381                         | 36,881                              | 77.8%          | 47,285                         | 33,684                              | 71.2%          |
| PARKS & LEISURE:                |                                |                                     |                |                                |                                     |                |
| PARK MAINTENANCE & OPERATION    | 1,990,891                      | 1,488,417                           | 74.8%          | 1,906,589                      | 1,400,230                           | 73.4%          |
| STREET TREES & PARKWAYS         | 232,964                        | 162,725                             | 69.8%          | 214,028                        | 159,629                             | 74.6%          |
| COMMUNITY CENTERS               | 224,086                        | 169,594                             | 75.7%          | 229,255                        | 177,003                             | 77.2%          |
| LEISURE SERVICES                | 282,955                        | 243,003                             | 85.9%          | 276,091                        | 217,592                             | 78.8%          |
| LEISURE SERVICES - SPECIAL PROG | 2,524,117                      | 1,880,714                           | 74.5%          | 2,130,920                      | 1,689,277                           | 79.3%          |
| SWIMMING POOL                   | 169,023                        | 96,824                              | 57.3%          | 153,238                        | 97,842                              | 63.8%          |
| LIBRARY OPERATIONS              | 781,635                        | 556,324                             | 71.2%          | 764,416                        | 535,507                             | 70.1%          |
| SPECIAL PROJECTS                | 24,645                         | 12,699                              | 51.5%          | 24,519                         | 13,190                              | 53.8%          |
| SUB TOTALS                      | 28,088,310                     | \$ 19,792,156                       | 70.5%          | 26,644,148                     | 18,310,182                          | 68.7%          |
| OPERATING TRANSFERS             | 79,000                         | 51,750                              | 65.5%          | 79,000                         | 51,750                              | 65.5%          |
| DEBT SERVICE                    | 1,723,011                      | 875,956                             | 50.8%          | 1,727,854                      | 865,035                             | 50.1%          |
|                                 | <u>\$ 29,890,321</u>           | <u>\$ 20,719,862</u>                | 69.3%          | <u>\$ 28,451,002</u>           | <u>\$ 19,226,967</u>                | 67.6%          |

City of Porterville  
General Fund Expenditures  
Nine Months Ended March 31, 2019 and March 31, 2018



City of Porterville  
General Fund Expenditures  
Nine Months Ended March 31, 2019



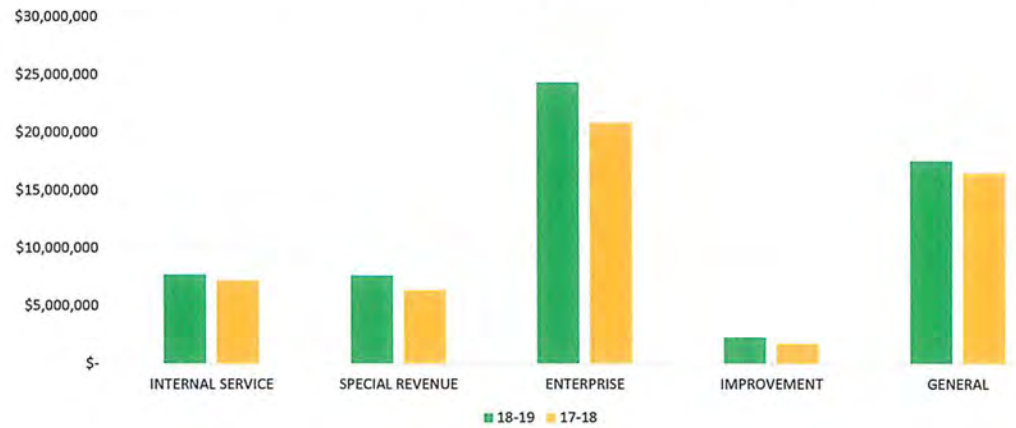


CITY OF PORTERVILLE

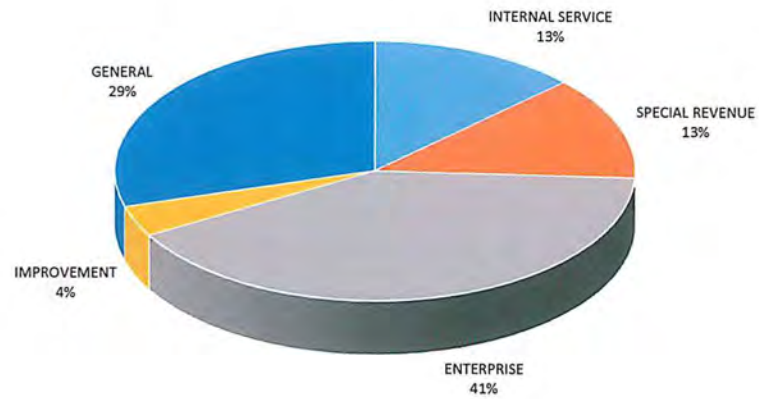
REVENUE STATUS REPORT - ALL OTHER FUNDS  
FOR THE NINE MONTHS ENDED  
MARCH 31, 2019 AND MARCH 31, 2018

| REVENUE SOURCE                    | 2018-2019<br>ESTIMATED<br>REVENUE | 2018-2019<br>YEAR-TO-DATE<br>REVENUE | % OF<br>ESTIMATE | 2017-2018<br>ESTIMATED<br>REVENUE | 2017-2018<br>YEAR-TO-DATE<br>REVENUE | % OF<br>ESTIMATE |
|-----------------------------------|-----------------------------------|--------------------------------------|------------------|-----------------------------------|--------------------------------------|------------------|
| MEASURE H SALES TAX               | \$ 3,719,011                      | \$ 2,576,596                         | 69.3%            | \$ 3,574,391                      | \$ 2,355,661                         | 65.9%            |
| SPECIAL GAS TAX                   | 3,925,439                         | 2,135,413                            | 54.4%            | 2,658,716                         | 1,571,877                            | 59.1%            |
| LOCAL TRANSPORTATION FUNDS (LTF)  | 11,239,674                        | 1,783,905                            | 15.9%            | 4,232,000                         | 1,152,999                            | 27.2%            |
| TRAFFIC SAFETY FUND               | 150,400                           | 65,084                               | 43.3%            | 150,400                           | 80,110                               | 53.3%            |
| ZALUD ESTATE                      | 7,700                             | 5,441                                | 70.7%            | 7,600                             | 7,226                                | 95.1%            |
| COMMUNITY DEVELOPMENT BLOCK GRANT | 775,500                           | 594,971                              | 76.7%            | 747,540                           | 626,861                              | 83.9%            |
| TRANSIT                           | 15,452,340                        | 4,179,919                            | 27.1%            | 18,505,246                        | 620,855                              | 3.4%             |
| SPECIAL SAFETY GRANTS             | 291,800                           | 149,275                              | 51.2%            | 328,700                           | 154,614                              | 47.0%            |
| SEWER OPERATING                   | 7,148,447                         | 5,261,684                            | 73.6%            | 7,118,596                         | 5,380,305                            | 75.6%            |
| REFUSE REMOVAL                    | 5,980,000                         | 4,496,637                            | 75.2%            | 5,913,000                         | 4,467,173                            | 75.5%            |
| AIRPORT OPERATIONS                | 1,788,900                         | 967,924                              | 54.1%            | 1,661,882                         | 1,386,169                            | 83.4%            |
| GOLF COURSE                       | 171,500                           | 112,769                              | 65.8%            | 198,000                           | 116,636                              | 58.9%            |
| WATER OPERATING                   | 11,903,750                        | 9,318,465                            | 78.3%            | 11,200,000                        | 8,897,332                            | 79.4%            |
| RISK MANAGEMENT                   | 6,635,519                         | 5,062,058                            | 76.3%            | 6,571,520                         | 4,705,611                            | 71.6%            |
| EQUIPMENT MAINTENANCE             | 3,315,000                         | 2,647,573                            | 79.9%            | 3,235,000                         | 2,525,939                            | 78.1%            |
| LANDSCAPE MAINTENANCE DISTRICT    | 85,000                            | 60,183                               | 70.8%            | 115,500                           | 39,318                               | 34.0%            |
| WATER REPLACEMENT                 | 21,420,524                        | 649,584                              | 3.0%             | 14,389,100                        | 391,806                              | 2.7%             |
| SOLID WASTE RESERVE               | 2,319,462                         | 786,355                              | 33.9%            | 2,260,188                         | 749,538                              | 33.2%            |
| SEWER REVOLVING                   | 317,058                           | 293,812                              | 92.7%            | 308,426                           | 227,550                              | 73.8%            |
| TRANSPORTATION DEVELOPMENT        | 210,000                           | 107,344                              | 51.1%            | 210,000                           | 179,393                              | 85.4%            |
| PARK DEVELOPMENT                  | 50,050                            | 51,820                               | 103.5%           | 50,055                            | 28,494                               | 56.9%            |
| TREATMENT PLANT RESERVE           | 581,248                           | 537,001                              | 92.4%            | 565,364                           | 378,309                              | 66.9%            |
| STORM DRAIN DEVELOPMENT           | 120,000                           | 99,636                               | 83.0%            | 118,000                           | 182,282                              | 154.5%           |
| BUILDING CONSTRUCTION             | 5,000                             | 8,946                                | 178.9%           | 5,000                             | 6,700                                | 134.0%           |
| TOTALS                            | \$ 97,613,322                     | \$ 41,952,393                        | 43.0%            | \$ 84,124,224                     | \$ 36,232,759                        | 43.1%            |

City of Porterville  
Revenue by Fund Type  
Nine Months Ended March 31, 2019 and March 31, 2018



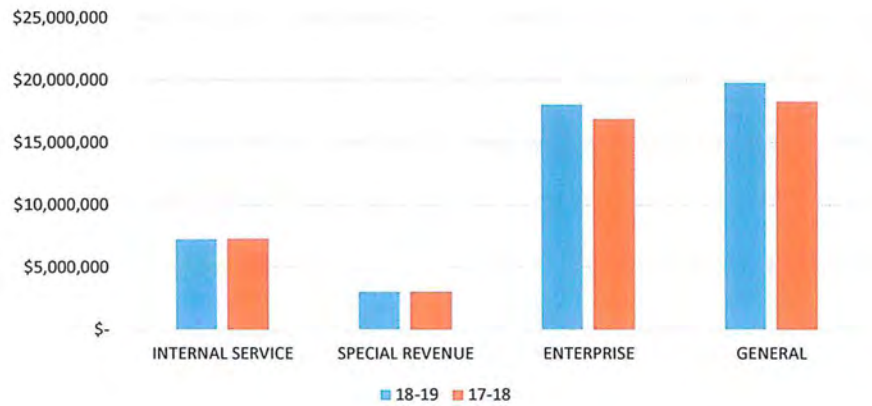
City of Porterville  
Revenue by Fund Type  
Nine Months Ended March 31, 2019



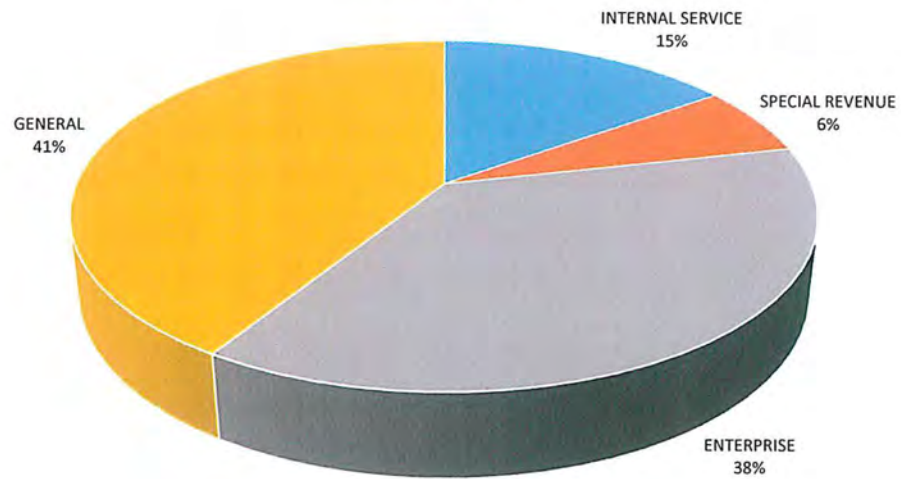
CITY OF PORTERVILLE  
EXPENDITURE STATUS REPORT - ALL OTHER FUNDS  
FOR THE NINE MONTHS ENDED  
MARCH 31, 2019 AND MARCH 31, 2018

|                                   | 2018-2019<br>AMENDED<br>APPROP | 2018-2019<br>YEAR-TO-DATE<br>EXPEND | % OF<br>APPROP | 2017-2018<br>AMENDED<br>APPROP | 2017-2018<br>YEAR-TO-DATE<br>EXPEND | % OF<br>ACTUAL |
|-----------------------------------|--------------------------------|-------------------------------------|----------------|--------------------------------|-------------------------------------|----------------|
| MEASURE H SALES TAX               | \$ 3,869,533                   | \$ 2,673,441                        | 69.1%          | \$ 3,684,193                   | \$ 2,587,370                        | 70.2%          |
| MEASURE I SALES TAX               | -                              | 22,277                              | -              | -                              | -                                   | -              |
| ZALUD ESTATE                      | 22,505                         | 17,025                              | 75.6%          | 22,305                         | 17,241                              | 77.3%          |
| COMMUNITY DEVELOPMENT BLOCK GRANT | 734,480                        | 126,363                             | 17.2%          | 735,972                        | 118,358                             | 16.1%          |
| TRANSIT                           | 4,011,228                      | 2,724,749                           | 67.9%          | 4,076,426                      | 2,788,701                           | 68.4%          |
| SPECIAL SAFETY GRANTS             | 351,017                        | 167,964                             | 47.9%          | 427,926                        | 260,407                             | 60.9%          |
| SEWER OPERATING                   | 6,411,634                      | 4,641,902                           | 72.4%          | 6,436,780                      | 4,093,453                           | 63.6%          |
| REFUSE REMOVAL                    | 6,391,645                      | 4,531,713                           | 70.9%          | 6,317,200                      | 4,378,513                           | 69.3%          |
| AIRPORT                           | 1,551,236                      | 890,631                             | 57.4%          | 1,467,186                      | 1,117,833                           | 76.2%          |
| GOLF COURSE                       | 417,196                        | 324,865                             | 77.9%          | 395,502                        | 309,856                             | 78.3%          |
| WATER OPERATING                   | 7,304,698                      | 4,930,092                           | 67.5%          | 7,180,425                      | 4,202,900                           | 58.5%          |
| RISK MANAGEMENT                   | 6,503,564                      | 4,537,270                           | 69.8%          | 6,351,146                      | 4,920,922                           | 77.5%          |
| EQUIPMENT MAINTENANCE             | 3,311,647                      | 2,733,786                           | 82.6%          | 3,289,286                      | 2,409,589                           | 73.3%          |
| LANDSCAPE MAINTENANCE DISTRICT    | 174,970                        | 92,135                              | 52.7%          | 164,336                        | 101,216                             | 61.6%          |
| TOTALS                            | \$ <u>41,055,353</u>           | \$ <u>28,414,213</u>                | 69.2%          | \$ <u>40,548,683</u>           | \$ <u>27,306,360</u>                | 67.3%          |

City of Porterville  
Expenditures by Fund Type  
Nine Months Ended March 31, 2019 and March 31, 2018



City of Porterville  
Expenditures by Fund Type  
Nine Months Ended March 31, 2019



**CITY OF PORTERVILLE**  
**INTERIM PERFORMANCE REPORT - MEASURE H**  
**For the Nine Months Ended March 31, 2019 and March 31, 2018**

|                                   | <u>FY 2018-19</u>  | <u>FY 2017-18</u>   |
|-----------------------------------|--------------------|---------------------|
| REVENUES                          |                    |                     |
| Sales Tax - Measure H             | \$ 2,566,652       | \$ 2,346,257        |
| Interest                          | 9,367              | 6,120               |
| Police Services                   | 577                | 3,284               |
| TOTAL REVENUES                    | <u>2,576,596</u>   | <u>2,355,661</u>    |
| EXPENDITURES                      |                    |                     |
| Police Department                 | 1,262,988          | 1,161,483           |
| Fire Department                   | 1,030,138          | 1,068,665           |
| Public Safety Station             | 25,199             | 24,146              |
| Library & Literacy                | 355,116            | 333,075             |
| TOTAL EXPENDITURES                | <u>2,673,441</u>   | <u>2,587,370</u>    |
| REVENUE OVER/(UNDER) EXPENDITURES | \$ <u>(96,845)</u> | \$ <u>(231,709)</u> |

**CITY OF PORTERVILLE**  
**INTERIM PERFORMANCE REPORT - ENTERPRISE FUNDS**  
**For the Nine Months Ended March 31, 2019 and March 31, 2018**

| <u>FUND</u>     | <u>REVENUES</u> | <u>EXPENSES</u> | <u>3/31/2019<br/>NET OPERATING<br/>PROFIT (LOSS)</u> | <u>3/31/2018<br/>NET OPERATING<br/>PROFIT (LOSS)</u> |
|-----------------|-----------------|-----------------|------------------------------------------------------|------------------------------------------------------|
| Zalud Estate    | \$ 5,441        | \$ (17,025)     | \$ (11,584)                                          | \$ (10,016)                                          |
| Transit         | \$ 4,179,919    | \$ (7,233,562)  | \$ (3,053,643)                                       | \$ (3,971,178)                                       |
| Sewer Operating | \$ 5,261,684    | \$ (4,641,902)  | \$ 619,781                                           | \$ 1,286,852                                         |
| Solid Waste     | \$ 4,496,637    | \$ (4,531,713)  | \$ (35,077)                                          | \$ 88,660                                            |
| Airport         | \$ 967,924      | \$ (890,631)    | \$ 77,293                                            | \$ 268,336                                           |
| Golf            | \$ 112,769      | \$ (324,865)    | \$ (212,096)                                         | \$ (193,220)                                         |
| Water Operating | \$ 9,318,465    | \$ (4,930,092)  | \$ 4,388,374                                         | \$ 4,694,432                                         |



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Request for Proclamation - Letter Carriers' Food Drive Day - May 11, 2019

**SOURCE:** Administrative Services

**COMMENT:** At its meeting of October 1, 2013, the City Council amended the process by which Proclamations are approved, and affirmed the process at its meeting on February 21, 2017. The process requires that all Proclamations must be sponsored by one (1) Council Member, after which the request is then placed on the Council's agenda for consideration and approval by a majority of the Council.

The National Association of Letter Carriers and the United States Postal Service has requested that the Council consider a request to proclaim May 11, 2019, as "Letter Carriers' Food Drive Day." Mayor Flores is sponsoring this Proclamation request. If approved, the applicant requests that the Proclamation be presented following its approval.

**RECOMMENDATION:** That the City Council consider approval of the request to proclaim May 11, 2019, as "Letter Carriers' Food Drive Day."

**ATTACHMENTS:** 1. Proclamation Request

Appropriated/Funded: N/A

Review By:

Department Director:

Patrice Hildreth, Administrative Services Dir

Final Approver: John Lollis, City Manager





City of Porterville  
REQUEST FOR PROCLAMATION



Date of Request: 4/2/19 27<sup>th</sup> ANNUAL  
Name of Event/Individual: LETTER CARRIERS' STAMP OUT HUNGER FOOD DRIVE,  
i.e. "Porterville Tourism Week", "Mr. John Doe"  
Name of Sponsoring Organization: NAT'L. ASSOC. OF LETTER CARRIERS & USPS  
Name of Contact Person: RAY HOLDSWORTH  
Address: 23064 AVE 178, PORTERVILLE, CA. 93257  
Phone: 559-202-9010 FAX: N/A  
E-mail: HOLDSWORTH86@SBCGLOBAL.NET  
I would like the proclamation: ☒ presented at a Council Mtg. ☐ mailed ☐ call for pick-up  
Date(s) of Event: SAT. MAY 11<sup>th</sup> 2019  
Date of Council Meeting to be presented, if applicable: 5/7/19  
(Council meets 1<sup>st</sup> and 3<sup>rd</sup> Tuesdays of each month.)

Individual or representative attending Council Meeting to receive proclamation:

RAY HOLDSWORTH

Please attach a sample of your proclamation, or the pertinent information needed to formulate your proclamation. If assistance is needed, or if you need a sample provided, or to return this form, contact:

Office of City Clerk  
291 North Main Street  
Porterville, CA 93257  
(559) 782-7464 / Fax (559) 782-7452

All requests require a sponsorship by a member of the Council prior to being placed on a City Council Agenda for consideration, and are subject to approval by a majority of the Council. To allow for this process it is recommended that you submit your proclamation request one month in advance. Please see the attached language regarding the process and timelines for submittal.

City Clerk's Section

Request Received: 4/5/19 Sponsored by: Flores Date: 4/2/19  
Approved by Council: yes ☐ no ☐ Date: \_\_\_\_\_  
Notification to Contact person done (date): \_\_\_\_\_ in writing ☐ by phone ☐  
Items (s) ☐ mailed \_\_\_\_\_ ☐ faxed \_\_\_\_\_ ☐ picked up \_\_\_\_\_  
Comment: \_\_\_\_\_



On May 11, 2019 the letter carriers of the Porterville Office and the United States Postal Service will participate in the 27<sup>th</sup> annual nation- wide Letter Carrier's Food Drive. This is the largest single day food collection drive in the nation.

Branch 1469 of the National Association of Letter Carriers, The National Association of Rural Letter Carriers, and the Postal Service will collect donated food on our routes. All the food collected will remain in Porterville to supply local food pantries for the summer. The Porterville Gleaners graciously sort and help distribute the food to the local food pantries and organizations helping those in need in our community. We are proud to have participated in all of the 26 previous drives.

We are requesting a proclamation that the 11<sup>th</sup> of May 2019 be declared Letter Carriers Food Drive Day in the City of Porterville.

*Respectfully submitted  
Ray Holdsworth  
Food Drive Coordinator Branch 1469  
559-202-9010*

WHEREAS: Millions of Americans live from one day to the next uncertain where their next meal will come from; and

WHEREAS: On May 11<sup>th</sup> the letter carriers of the Porterville Office and the United States Postal Service will participate in the 27<sup>th</sup> annual "Stamp Out Hunger" Food Drive event, which is the largest single day food collection drive in the nation; and

WHEREAS: Branch 1469 of the National Association of Letter Carriers, the National Association of Rural Letter Carriers, and the Postal Service will collect donated food on their routes; and

WHEREAS: Residents of the community are encouraged to participate and support the efforts to alleviate hunger by setting out non-perishable food items well before your letter carrier's normal delivery time; and

WHEREAS: The Porterville Gleaners graciously sort and help distribute the food to the local food pantries and organizations helping those in need in our community; and

WHEREAS: Our local letter carriers have proudly participated in all twenty six (26) previous food drives, and will once again be collecting food donations to raise awareness about the real, ongoing problem of hunger.

NOW THEREFORE, I, Martha A. Flores, Mayor of the City of Porterville, on behalf of the Porterville City Council, do hereby proclaim May 11, 2019, as,

**"LETTER CARRIERS' FOOD DRIVE DAY"**

and recognize the commitment of letter carriers to support their communities and "Stamp Out Hunger."

PROCLAIMED this \_\_ day of May, 2019.



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Approval for Community Civic Event - Porterville Chamber of Commerce - 2019 KJUG Concert Series - May 16, 2019, July 9, 2019, August TBD, 2019

**SOURCE:** Finance

**COMMENT:** The Porterville Chamber of Commerce is requesting approval to hold the KJUG Summer Concerts at Centennial Park on Thursday, May 16, 2019, Tuesday, July 9, 2019 and another date to be determined in August, 2019. They are requesting the use of the Park and the closure of Main Street, from Harrison Avenue to Putnam Avenue; Thurman Avenue, from Division Street to East Alley; and Cleveland Avenue from Division Street to East Alley, from 4:00 PM to 10:00 PM.

In addition, the Chamber is requesting the use of the Centennial Plaza community room as the green room for the artist, and the use of the Centennial Plaza patio for a VIP section. KJUG will be providing the table and chairs for this section. The principal sponsor will be serving beer only to the VIP section, but there will be no alcohol sales during the events. The Chamber is also requesting the exclusive use of the Centennial Park gazebo for its members.

It is estimated that each concert will draw between 800-2500 attendees. The City will make sure that there will be adequate ADA parking and restroom facilities available during the concert. The Police Department will monitor the event but no special or exclusive provisions will be made. As a partner in the event, the City would waive the Park Rental Fee and Facility Use Fee, as well as provide barricades for the street closures and street sweeping after the event.

This request is made under the Community Civic Events Ordinance No. 1326, as amended. The application has been routed according to the ordinance regulations and reviewed by all departments involved. The requirements are listed on the attached copy of the application and agreement, Exhibit A and Exhibit B.

**RECOMMENDATION:** That the City Council approve the Community Civic Event Application and Agreement from the Porterville Chamber of Commerce subject to the Restrictions and Requirements contained in the Application, Agreement, Exhibit A and Exhibit B of the Community Civic Event Application.

**ATTACHMENTS:** 1. Community Civic Event Application and Agreement,  
Item No. 14.

Exhibit A, Exhibit B, Map, Outside Amplifier and  
Certificate of Liability Insurance.

Appropriated/Funded:

Review By:

Department Director:

Maria Bemis, Finance Director

Final Approver: John Lollis, City Manager

## CITY OF PORTERVILLE

291 N. Main Street, Porterville, CA 93257  
559-782-7451 Fax: 784-4569 www.ci.porterville.ca.us



(Incomplete applications can delay permit process)

**APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A  
COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY**

DO YOU HAVE? Event Flyer? E-mail address? (THURS) Website (TUES) (last week of Aug. TBD)  
Application date: 4/16/19 Event date: May 16<sup>th</sup>, July 9<sup>th</sup>, Aug 28, 29, 30 or 31  
Event time: 4pm - 10pm  
Name of Event: KJUG Concerts 2019

Sponsoring organization: Porterville Chamber Phone # 784-7502  
Address: 93 N. Main St. #A  
Authorized representative: Monte Reyes Phone # 784-7502  
Address: Same as Above  
Event chairperson: Monte Reyes Phone # 784-7502

Location of event Downtown Main St., At Centennial Park Area  
(Location map must be attached)

Type of event: Free Concerts and vendors

Non-profit organization status: 501 (C) (6) BL #0248

(IRS Determination)

City services requested (fees associated with these services will be billed separately):

Barricades (quantity): 20 Street sweeping Yes ☒ No ☐  
Police protection Yes ☒ No ☐ Refuse pickup Yes ☒ No ☐  
Other: 40 chairs (VIP Area)

Parks facility application required: Yes ☐ No ☐ Attached pending  
Assembly permit required: Yes ☐ No ☐ Attached ☐

STAFF COMMENTS (list special requirements or conditions for event):

Appr. Deny

|       |       |                   |       |
|-------|-------|-------------------|-------|
| _____ | _____ | Bus. Lic. Spvr.   | _____ |
| _____ | _____ | Pub. Works Dir    | _____ |
| _____ | _____ | Comm. Dev. Dir.   | _____ |
| _____ | _____ | Field Svcs. Mgr.  | _____ |
| _____ | _____ | Fire Chief        | _____ |
| _____ | _____ | Parks Dir.        | _____ |
| _____ | _____ | Police Chief      | _____ |
| _____ | _____ | Admin. Svcs. Dir. | _____ |

# CITY OF PORTERVILLE

## APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

### ***What constitutes a Community Civic Event?***

A non-profit organization wishes to sponsor an event that is open to the community at large and will utilize public property. Most of the time, Community Civic Events require street or sidewalk closures. This application must be submitted **NO LESS THAN 30 DAYS PRIOR** to the date of the event in order to obtain City Council approval.

**All City Code requirements** are described in ordinance 15-20 (e) 1-23 and as amended in ordinance 1613. For a full description please visit our City of Porterville website at [www.ci.porterville.ca.us/gov/CityClerk/](http://www.ci.porterville.ca.us/gov/CityClerk/), Porterville Municipal Codes. For questions or concerns please call 559-782-7451 or 559-782-7457. Any person who violates the provisions in this code, shall be deemed guilty of either a misdemeanor or an infraction, with penalties of one hundred (\$100) for the first violation.

**Liability insurance:** The sponsoring organization/applicant agrees to provide and keep in force during the term of this permit a policy of liability and property damage insurance against liability for personal injury, including accidental death, as well as liability for property damage which may arise in any way during the term of this permit. The City of Porterville and Successor Agency to the Porterville Redevelopment Agency shall be named as additional insured. A Certificate of Liability Insurance and Additional Insured Endorsement sample forms are enclosed for your convenience. This original certificate and endorsement shall be submitted to the Finance Department prior to the City of Porterville Council's approval. *The council shall condition the granting of a CCE permit upon the sponsoring entity's filing with the council a policy of public liability insurance in which the city has been named as insured or coinsured with the permittee. The policy of insurance shall insure the city, its officers, and its employees against all claims arising out of, or in connection with, the issuance of the CCE permit or the operation of the permittee or its agents or representatives, pursuant to the permit. The policy of insurance shall provide coverage of no less than one million dollars (\$1,000,000.00) per occurrence of bodily injury and property damage, combined single limit.* (Ordinance 15-20(e) 18)

*[Signature]*

Authorized Representative Initial

**Alcohol liability insurance:** Organization/Applicant will obtain an alcohol permit if any alcoholic beverages are to be served. The insurance policy shall be endorsed to include full liquor liability in an amount not less than one million dollars (\$1,000,000) per occurrence. The City of Porterville shall be named as additional insured against all claims arising out of or in connection with the issuance of this permit or the operation of the permitted, his/her agents or representatives pursuant the permit. Claims-made policies are not acceptable.

*[Signature]*

Authorized Representative Initials

**Health permit:** Organization/Applicant will obtain or ensure that all participants obtain a 'Temporary Food Facilities' permit(s) from the Tulare County Public Health Department, if any food is to be served in connection with this Community Civic Event. To contact the Tulare County Environmental Health Department located at 5957 S. Mooney Blvd., Visalia, CA, 93277, call 559-733-6441, or fax information to 559-733-6932; or visit their website: [www.tularehhsa.org](http://www.tularehhsa.org).

*[Signature]*

Authorized Representative Initials

**First aid station:** Organization/Applicant will establish a first aid station, with clearly posted signs, to provide basic emergency care, such as ice/hot packs, bandages, and compresses.

*[Signature]*

Authorized Representative Initials

**Toilet rental service:** Applicant shall have care, custody and control of the equipment and shall bear responsibility and liability for all loss and damage to the equipment and for its contents while at the City's location. Applicant shall not overload, move or alter the equipment and shall use the equipment for its intended purpose. Applicant shall be responsible for any damages to City's property resulting from company's provision of services hereunder. Applicant shall confirm with the service company the number of portable toilets, standard and handicap, and wash sinks needed for the number of expected attendees.

*[Signature]*

Authorized Representative Initials

**Agreement:** The sponsoring organization/applicant agrees to comply with all provisions of the Community Civic Event Ordinance 15-20(e), as amended, and the terms and conditions set forth by City Council and stated in Exhibit 'A.' The sponsoring organization/applicant agrees, during the term of this permit, to secure and hold the City free and harmless from all loss, liability, and claims for damages, costs and charges of any kind or character arising out of, relating to, or in any way connected with his/her performance of this permit. Said agreement to hold harmless shall include and extend to any injury to any person or persons, or property of any kind whatsoever and to whomever belonging, including, but not limited to, said organization/applicant, and shall not be liable to the City for any injury to persons or property which may result solely or primarily from the action or non-action of the City or its directors, officers, or employees. Approval of the Community Civic Events Permit by the Porterville City Council pertains only to authorized activities conducted at designated locations within the incorporated area of the City of Porterville, and such approval shall not be construed or interpreted to authorize sponsor utilization of public right-of-ways outside of the jurisdiction of the City of Porterville.

Porterville Chamber of Commerce

(Name of Organization)

*[Signature]*

(Signature)

4/16/19

(Date)

VENDOR/PARTICIPANT LIST IN CONNECTION WITH THE APPLICATION AND  
AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY  
TO BE HELD ON PUBLIC PROPERTY

Location: Downtown Mall / Centennial Park Event date: May 16<sup>th</sup>, July 9<sup>th</sup> Event time: 4pm - 10pm  
(1 Day in last week of Aug. TBD)

[illegible]

The nonprofit sponsor shall collect said fee and remit the fee to the city within five (5) working days following the CCE. Said remittance shall be accompanied by a complete list of participants and consecutively numbered receipts written in triplicate, containing the name, address and telephone number of the licensee, and the licensee's California seller's permit number. Said receipts shall be furnished by the city. One copy of the receipt shall be furnished to the licensee, one copy filed with the finance department of the city, and one copy retained by the CCE sponsor for a period of three (3) years for audit purposes.



# CITY OF PORTERVILLE

REQUEST FOR STREET CLOSURES AND PUBLIC PROPERTY USAGE IN CONNECTION WITH THE APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

Name of event: KJUG Concerts 2019

Sponsoring organization: Porterville Chamber of Commerce

Event date: May 16<sup>th</sup>, July 9<sup>th</sup>, Aug<sup>(TBD last week)</sup> Hours: 4pm - 10pm

ATTACH MAP MARKING AREAS TO BE CLOSED OR USED:

## Closed

| Street Name             | From               | To        | Activity         |
|-------------------------|--------------------|-----------|------------------|
| Main                    | Harrison           | Artnam    | Seating, vendors |
| Cleveland               | Division St.       | The Alley | Seating, vendors |
| Thurman                 | Division St.       | The Alley | Seating, vendors |
|                         |                    |           |                  |
|                         |                    |           |                  |
|                         |                    |           |                  |
|                         |                    |           |                  |
|                         |                    |           |                  |
|                         |                    |           |                  |
| Sidewalks               | From               | To        | Activity         |
| Main                    | Cleveland          | Thurman   | Seating          |
| Cleveland               | The Alley          | Main      | Vendors, seating |
|                         |                    |           |                  |
|                         |                    |           |                  |
|                         |                    |           |                  |
| Parking lots and spaces | Location           |           | Activity         |
| Main                    | Artnam to Harrison |           | Seating, vendors |
| Cleveland               | Alley to Main      |           | Seating, vendors |
|                         |                    |           |                  |
|                         |                    |           |                  |



Requirements for Community Civic Event  
Porterville Chamber of Commerce  
KJUG Summer Concert  
May 16, July 19, August TBD, 2019

Finance Director:  
*M. Bemis*

City Engineer:  
*J. Sanchez*

Community Development Manager:      No comments.  
*J. Phillips*

Field Services Manager:      Please coordinate pick up and return  
*M. Knight*      of all barricades to city corporation yard  
located at 555 N. Prospect. In addition, you  
will also need to schedule the requested  
street sweeping and refuse pick up with  
Wyndi Ferguson at 559-782-7518

Fire Marshal:      No comments.  
*M. Sandoval*

Parks and Leisure Services Director:      Public to remain out of Main Street  
*D. Moore*      planters.

Police Lieutenant:      Please see attached Exhibit B.  
*J. Maniss*

Administrative Services Director:      See attached Exhibit A, page 2.  
*P. Hildreth*

## Requirements for Community Civic Event

Sponsors: Porterville Chamber of Commerce  
Event: KJUG Summer Concert  
Event Chairman: Monte Reyes  
Location: Centennial Park  
Date of Event: May 16, July 19, August TBD, 2019  
Time of Event: 4:00 p.m. to 10:00 pm

### RISK MANAGEMENT: Conditions of Approval

That the Porterville Chamber of Commerce provide a Certificate of Commercial General Liability Insurance Coverage at least as broad as Insurance Services Office form CG 00 01, evidencing coverage of not less than \$1,000,000 per occurrence, and having the appropriate Endorsement naming the City of Porterville, its Officers, Officials, Employees, Agents, and Volunteers as Additional Insured for bodily injury and property damage, including without limitation, blanket contractual liability arising from, or in connection with, the Permittee's operation and sponsorship of the aforementioned Community Civic Event. Applicant's general liability policies shall be primary and non-contributory, and be endorsed using Insurance Services Office form CG 20 10.

- A. Said Certificate of Insurance shall be an original (fax and xerographic copies not acceptable), the Certificate shall be signed by an agent authorized to bind insurance coverage with the carrier, and the deductible, if any, shall not be greater than \$1,000.
- B. Said insurance shall be primary to the insurance held by the City of Porterville, be with a company having an A.M. Best Rating of no less than A: VII, and the insurance company must be an 'admitted' insurer in the State of California

**CITY OF PORTERVILLE/POLICE DEPARTMENT**  
**Community Civic Event Application**

**KJUG Summer Concerts, May 16 & July 9, 2019**

Proposed Conditions/Requirements for Downtown Event:

- City Council approval is required for all street closures.
- On all streets approved for closure, ensure adequate barricades/barriers are used to warn motorists of non-access and prevent vehicle access to those designated areas.
- If event organizers anticipate the need for removal of parked vehicles from public roadways related to the event, the affected public roadways must be posted by organizer with appropriate signage no less than 24 hours in advance of the event. Said signs and associated posting must meet minimum requirements as established by the California Vehicle Code. (Recommend event organizers contact Sergeant Carl Jordan of the Porterville Police Department/Traffic Unit in order to ensure that signs meet the requirements as established by law).
- Food vendors should provide inspection certificates from the Tulare County Health Department to members of the organizing committee, to ensure food product safety.
- An Outside Amplifier Permit has been approved and granted. However, event organizers shall not allow music to be played so loud as to unreasonably disturb the peace and good order of any residents or business establishments in the surrounding area.
- At conclusion of event, event organizers shall ensure streets are promptly cleared of any vehicles, equipment, booths or anything that could present a hazard to pedestrians or vehicles traveling through this area.

Josh Maniss, Lieutenant  
Porterville Police Department

CITY OF PORTERVILLE  
OUTSIDE AMPLIFIER PERMIT  
(City Ordinances #18-9 & 18-14)



This application must be submitted ten (10) days prior to the date of the event. A copy of this permit must be at the operating premises of the amplifying equipment for which this registration is issued.

1 Name and home address of the applicant:

Porterville Chamber 93 N. Main St. #A  
Porterville, Ca 93257

2 Address where amplification equipment is to be used:

Centennial Park Area

3 Names and addresses of all persons who will use or operate the amplification equipment:

KJ06

4 Type of event for which amplification equipment will be used:

Free Concert in the park

5 Dates and hours of operation of amplification equipment:

5pm - 9pm

6 A general description of the sound amplifying equipment to be used:

Speakers - Lighting

**Section 18-9**

It shall be unlawful for any person within the city to use or operate or cause to be operated or to play any radio, phonograph, jukebox, record player, loudspeaker, musical instrument, mechanical device, machine, apparatus, or instrument for intensification or amplification of the human voice or any sound or noise in a manner so loud as to be calculated to disturb the peace and good order of the neighborhood or sleep of ordinary persons in nearby residences or so loud as to unreasonably disturb and interfere with the peace and comfort of the occupants of nearby residences.

The operation of any such instrument, phonograph, jukebox, machine or device in such manner as to be plainly audible at a distance of one hundred feet (100') from the building, structure, vehicle, or place in which, or on which it is situated or located shall be prima facie evidence of a violation of this section. (Ord. Code § 6311)

**Section 18-14**

It shall be unlawful for any person to maintain, operate, connect, or suffer or permit to be maintained, operated, or operated, or connected any or sound amplifier in such a manner as to cause any sound to be projected outside of any building or out of doors in any part of the city, except as may be necessary to amplify sound for the proper presentation of moving picture shows, or exhibiting for the convenient hearing of patrons within the building or enclosure in which the show or or exhibition is given, without having first procured a permit from the chief of police, which permit shall be granted at the will of the chief of police upon application in writing therefore, but which permit, when granted, shall be revocable by the city council whenever any such loudspeaker or sound amplifier shall by the council be deemed objectionable, and any such permit may be so revoked with or without notice, or with or without a formal hearing, at the option of the council, and in the event of the revocation of any such permit, the same shall not be renewed, except upon application as the first instance. (Ord. Code § 6312)

**Penal Code Section 415 (2)**

Any of the following persons shall be punished by imprisonment in the county jail for a period of not more than 90 days, a fine of not more than four hundred dollars (\$400), or both such imprisonment and fine: (2) Any person who maliciously and willfully disturbs another person by loud and unreasonable noise.

I hereby certify that I have read and answered all statements on this registration form and that they are true and correct.

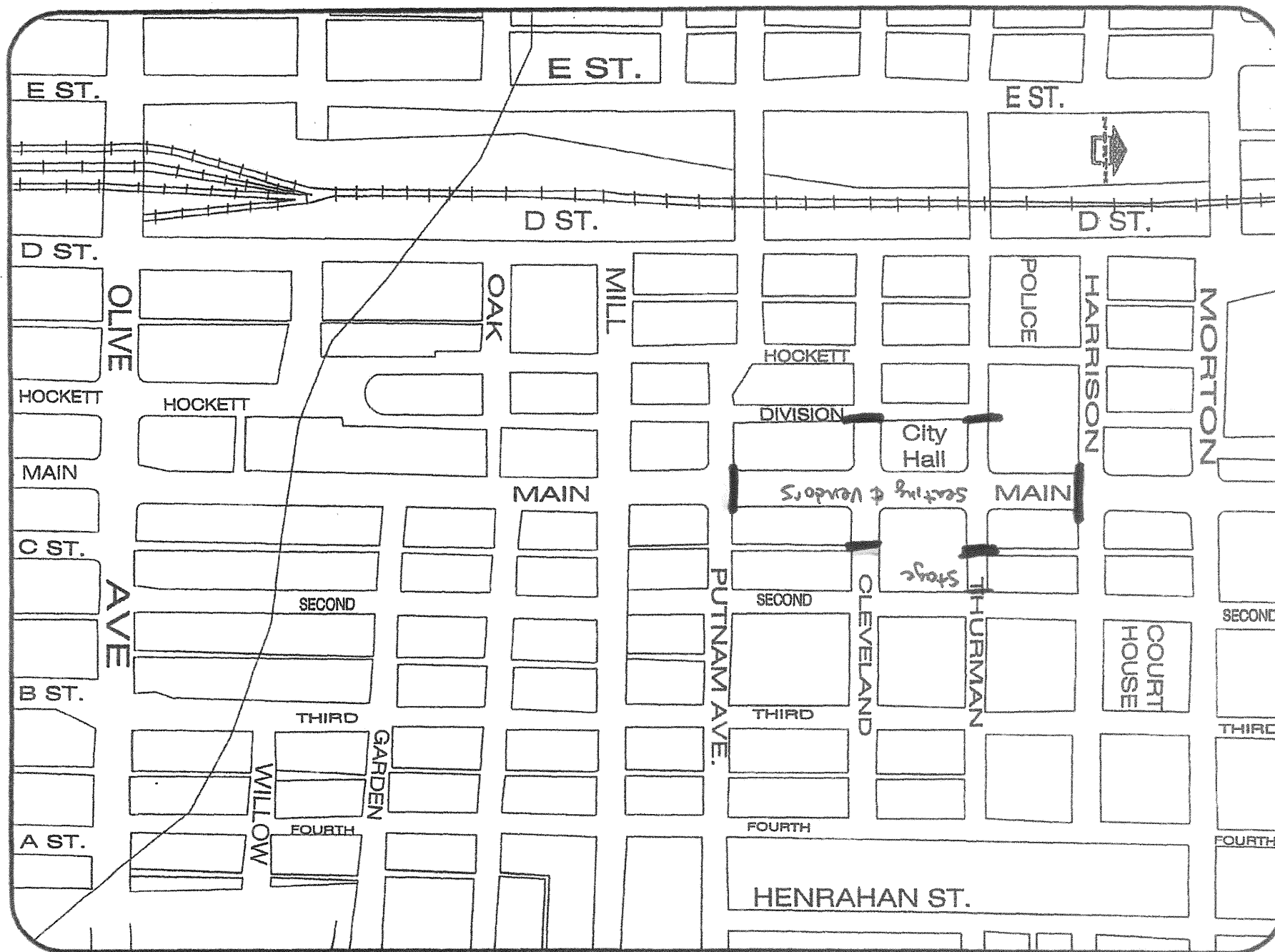
Signature of Applicant

Date

THIS OUTSIDE AMPLIFIER PERMIT HAS BEEN APPROVED. HOWEVER, WE URGE YOU TO REMAIN CONSIDERATE OF THE GENERAL PEACE AND ORDER OF THE NEIGHBORS IN THE AREA. FAILURE TO ABIDE BY THESE REGULATIONS CAN RESULT IN REVOCATION OF THE PERMIT.

A. Manion # 4101  
City of Porterville, Chief of Police/Designee

Date





PORTCHA-01

JMADRIGAL

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

03/04/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|                                                                                                                           |  |                                                                                                                                                                                      |  |               |
|---------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|---------------|
| <b>PRODUCER</b> License # 0D44424<br>Walter Mortensen Insurance / INSURICA<br>126 N. Main Street<br>Porterville, CA 93257 |  | <b>CONTACT</b> Jacqueline Madrigal<br><b>PHONE</b> (A/C, No, Ext): (559) 560-3215<br><b>FAX</b> (A/C, No): (559) 781-3229<br><b>E-MAIL</b> ADDRESS: Jacqueline.Madrigal@INSURICA.com |  |               |
| <b>INSURED</b><br><br>Porterville Chamber of Commerce<br>93 N. Main St.<br>Porterville, CA 93257-3711                     |  | <b>INSURER(S) AFFORDING COVERAGE</b>                                                                                                                                                 |  | <b>NAIC #</b> |
|                                                                                                                           |  | <b>INSURER A:</b> NOVA Casualty Company                                                                                                                                              |  | 42552         |
|                                                                                                                           |  | <b>INSURER B:</b>                                                                                                                                                                    |  |               |
|                                                                                                                           |  | <b>INSURER C:</b>                                                                                                                                                                    |  |               |
|                                                                                                                           |  | <b>INSURER D:</b>                                                                                                                                                                    |  |               |
|                                                                                                                           |  | <b>INSURER E:</b>                                                                                                                                                                    |  |               |
| <b>INSURER F:</b>                                                                                                         |  |                                                                                                                                                                                      |  |               |

## COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE                                                                              | ADDL INSD | SUBR WVD | POLICY NUMBER      | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                               |
|----------|------------------------------------------------------------------------------------------------|-----------|----------|--------------------|-------------------------|-------------------------|------------------------------------------------------|
| A        | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY                               |           |          |                    |                         |                         |                                                      |
|          | <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR                 | X         |          | CF1-ML-10000756-01 | 05/28/2018              | 05/28/2019              | EACH OCCURRENCE \$ 1,000,000                         |
|          |                                                                                                |           |          |                    |                         |                         | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 |
|          |                                                                                                |           |          |                    |                         |                         | MED EXP (Any one person) \$ 5,000                    |
|          |                                                                                                |           |          |                    |                         |                         | PERSONAL & ADV INJURY \$ 1,000,000                   |
|          |                                                                                                |           |          |                    |                         |                         | GENERAL AGGREGATE \$ 3,000,000                       |
|          |                                                                                                |           |          |                    |                         |                         | PRODUCTS - COMPIOP AGG \$ 3,000,000                  |
|          |                                                                                                |           |          |                    |                         |                         |                                                      |
|          | GEN'L AGGREGATE LIMIT APPLIES PER:                                                             |           |          |                    |                         |                         |                                                      |
|          | <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC |           |          |                    |                         |                         |                                                      |
|          | OTHER:                                                                                         |           |          |                    |                         |                         |                                                      |
|          | AUTOMOBILE LIABILITY                                                                           |           |          |                    |                         |                         | COMBINED SINGLE LIMIT (Ea accident) \$               |
|          | <input type="checkbox"/> ANY AUTO                                                              |           |          |                    |                         |                         | BODILY INJURY (Per person) \$                        |
|          | <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS             |           |          |                    |                         |                         | BODILY INJURY (Per accident) \$                      |
|          | <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY        |           |          |                    |                         |                         | PROPERTY DAMAGE (Per accident) \$                    |
|          |                                                                                                |           |          |                    |                         |                         |                                                      |
|          | UMBRELLA LIAB                                                                                  |           |          |                    |                         |                         | EACH OCCURRENCE \$                                   |
|          | EXCESS LIAB                                                                                    |           |          |                    |                         |                         | AGGREGATE \$                                         |
|          | DED RETENTION \$                                                                               |           |          |                    |                         |                         |                                                      |
|          | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY                                                  |           |          |                    |                         |                         | PER STATUTE OTH-ER                                   |
|          | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)                    | Y/N       | N/A      |                    |                         |                         | E.I. EACH ACCIDENT \$                                |
|          | If yes, describe under DESCRIPTION OF OPERATIONS below                                         |           |          |                    |                         |                         | E.I. DISEASE - EA EMPLOYEE \$                        |
|          |                                                                                                |           |          |                    |                         |                         | E.I. DISEASE - POLICY LIMIT \$                       |
|          |                                                                                                |           |          |                    |                         |                         |                                                      |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate holder is listed as additional insured with respect to the general liability if required or agreed to in a written contract subject to all provisions and limitations of the policy.

## CERTIFICATE HOLDER

## CANCELLATION

City of Porterville  
291 N Main Street  
Porterville, CA 93257

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**ADDITIONAL INSURED – DESIGNATED  
PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

**Name Of Additional Insured Person(s) Or Organization(s):**

CITY OF PORTERVILLE  
291 N MAIN ST  
PORTERVILLE, CA 93257-3737

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



PORTCHA-01

JMDRIGAL

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
03/04/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 0D44424

Walter Mortensen Insurance / INSURICA  
126 N. Main Street  
Porterville, CA 93257

CONTACT NAME: Jacqueline Madrigal

PHONE (A/C, No, Ext): (559) 560-3215

FAX (A/C, No): (559) 781-3229

E-MAIL ADDRESS: Jacqueline.Madrigal@INSURICA.com

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A : NOVA Casualty Company

42552

INSURER B :

INSURER C :

INSURER D :

INSURER E :

INSURER F :

INSURED

Porterville Chamber of Commerce  
93 N. Main St.  
Porterville, CA 93257-3711

## COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE                                                                              | ADDL INSD | SUBR WVD | POLICY NUMBER      | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                               |
|----------|------------------------------------------------------------------------------------------------|-----------|----------|--------------------|-------------------------|-------------------------|------------------------------------------------------|
| A        | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY                               |           |          |                    |                         |                         |                                                      |
|          | <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR                 | X         |          | CF1-ML-10000756-01 | 05/28/2018              | 05/28/2019              | EACH OCCURRENCE \$ 1,000,000                         |
|          |                                                                                                |           |          |                    |                         |                         | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 |
|          |                                                                                                |           |          |                    |                         |                         | MED EXP (Any one person) \$ 5,000                    |
|          |                                                                                                |           |          |                    |                         |                         | PERSONAL & ADV INJURY \$ 1,000,000                   |
|          |                                                                                                |           |          |                    |                         |                         | GENERAL AGGREGATE \$ 3,000,000                       |
|          |                                                                                                |           |          |                    |                         |                         | PRODUCTS - COMP/OP AGG \$ 3,000,000                  |
|          |                                                                                                |           |          |                    |                         |                         |                                                      |
|          | GEN'L AGGREGATE LIMIT APPLIES PER:                                                             |           |          |                    |                         |                         |                                                      |
|          | <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC |           |          |                    |                         |                         |                                                      |
|          | OTHER:                                                                                         |           |          |                    |                         |                         |                                                      |
|          | AUTOMOBILE LIABILITY                                                                           |           |          |                    |                         |                         |                                                      |
|          | <input type="checkbox"/> ANY AUTO                                                              |           |          |                    |                         |                         | COMBINED SINGLE LIMIT (Ea accident) \$               |
|          | <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS             |           |          |                    |                         |                         | BODILY INJURY (Per person) \$                        |
|          | <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY        |           |          |                    |                         |                         | BODILY INJURY (Per accident) \$                      |
|          |                                                                                                |           |          |                    |                         |                         | PROPERTY DAMAGE (Per accident) \$                    |
|          |                                                                                                |           |          |                    |                         |                         |                                                      |
|          | UMBRELLA LIAB                                                                                  |           |          |                    |                         |                         | EACH OCCURRENCE \$                                   |
|          | EXCESS LIAB                                                                                    |           |          |                    |                         |                         | AGGREGATE \$                                         |
|          | DED                                                                                            |           |          |                    |                         |                         |                                                      |
|          | RETENTION \$                                                                                   |           |          |                    |                         |                         |                                                      |
|          | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY                                                  |           |          |                    |                         |                         |                                                      |
|          | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)                    | Y/N       | N/A      |                    |                         |                         | PER STATUTE                                          |
|          | If yes, describe under DESCRIPTION OF OPERATIONS below                                         |           |          |                    |                         |                         | OTH-ER                                               |
|          |                                                                                                |           |          |                    |                         |                         | E.I. EACH ACCIDENT \$                                |
|          |                                                                                                |           |          |                    |                         |                         | E.I. DISEASE - EA EMPLOYEE \$                        |
|          |                                                                                                |           |          |                    |                         |                         | E.I. DISEASE - POLICY LIMIT \$                       |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Certificate holder is listed as additional insured with respect to the general liability if required or agreed to in a written contract subject to all provisions and limitations of the policy.

## CERTIFICATE HOLDER

## CANCELLATION

Successor Agency to the City of Porterville  
Redevelopment Agency  
291 N Main Street  
Porterville, CA 93257

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

**Name Of Additional Insured Person(s) Or Organization(s):**

SUCCESSOR AGENCY TO THE CITY OF PORTERVILLE REDEVELOPMENT AGENCY  
291 N MAIN ST  
PORTERVILLE, CA 93257-3737

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Approval for Community Civic Event - Tulare County Junior Livestock Show and Community Fair - Porterville Fair - May 15 - 19, 2019

**SOURCE:** Finance

**COMMENT:** The Tulare County Jr. Livestock Show and Community Fair (Fair) is requesting approval to set up this year's carnival on the City of Porterville's ten (10) acre site next to the fairgrounds during the annual fair, from Wednesday, May 15, 2019, to Sunday, May 19, 2019.

At the City Council meeting of April 15, 2014, a request was made by the Fair Board, for a one-year exception to the terms of the License and Development Agreement regarding the sale and consumption of alcoholic beverages during the fair. The exception requested is to allow the patrons of the fair to purchase and consume alcoholic beverages outside the established Adult Refreshment Area (beer garden). The City Council approved the request by authorizing the Police Chief to work directly with the Fair. Exhibit B incorporates the conditions and requirements by the Porterville Police Department for the establishment of the beer garden and the sale and consumption of alcoholic beverages inside and outside the confines of the beer garden.

This application is submitted in accordance with the Community Civic Events Ordinance No. 1326, as amended. It has been routed according to the Ordinance regulations and reviewed by all of the Departments involved. All requirements are listed on the attached Exhibit A and Exhibit B.

**RECOMMENDATION:** That the City Council approve the Community Civic Event Application and Agreement from the Tulare County Jr. Livestock Show and Community Fair, subject to the Restrictions and Requirements contained in the Application and Agreement, Exhibit A and Exhibit B.

**ATTACHMENTS:**

1. Community Civic Event Application and Agreement, Exhibit A, Exhibit B, Outside Amplifier Permit, Map, and Certificate of Liability Insurance.

Appropriated/Funded:

Review By:

Department Director:

Maria Bemis, Finance Director

Final Approver: John Lollis, City Manager

CM 5/7/19

# CITY OF PORTERVILLE

291 N. Main Street, Porterville, CA 93257  
559-782-7451 Fax: 784-4569 www.ci.porterville.ca.us



(Incomplete applications can delay permit process)

## APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

DO YOU HAVE? Event Flyer? YES E-mail address? YES Website? YES  
Application date: 3/29/19 Event date: MAY 15-19 2019  
Event time: 5/15-5/16 4pm-11pm 5/17 4pm-12am 5/18 12pm-12am 5/19 12pm-11pm  
Name of Event: PORTERVILLE FAIR

Sponsoring organization: Tulare County Jr Livestock Community Fair Phone # 559-781-6582  
Address: 2700 W. TEAPOT DOME AVE.  
Authorized representative: SUSIE GODFREY, MANAGER Phone # 781-6582  
Address: 2700 W. TEAPOT DOME AVE.  
Event chairperson: MITCH BROWN Phone # 333-2994

Location of event 2700 W Teapot Dome  
(Location map must be attached)

Type of event: COMMUNITY FAIR

Non-profit organization status: 501(C)3 BL#00358

(IRS Determination)

City services requested (fees associated with these services will be billed separately):  
Barricades (quantity): YES (16) Street sweeping Yes        No X  
Police protection Yes X No        Refuse pickup Yes X No         
Other:       

Parks facility application required: Yes        No X Attached         
Assembly permit required: Yes        No X Attached       

STAFF COMMENTS (list special requirements or conditions for event):

| Appr. | Deny  |                         |
|-------|-------|-------------------------|
| _____ | _____ | Bus. Lic. Spvr. _____   |
| _____ | _____ | Pub. Works Dir _____    |
| _____ | _____ | Comm. Dev. Dir. _____   |
| _____ | _____ | Field Svcs. Mgr. _____  |
| _____ | _____ | Fire Chief _____        |
| _____ | _____ | Parks Dir. _____        |
| _____ | _____ | Police Chief _____      |
| _____ | _____ | Admin. Svcs. Dir. _____ |

# CITY OF PORTERVILLE

## APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

### What constitutes a Community Civic Event?

A non-profit organization wishes to sponsor an event that is open to the community at large and will utilize public property. Most of the time, Community Civic Events require street or sidewalk closures. This application must be submitted **NO LESS THAN 30 DAYS PRIOR** to the date of the event in order to obtain City Council approval.

**All City Code requirements** are described in ordinance 15-20 (e) 1-23 and as amended in ordinance 1613. For a full description please visit our City of Porterville website at [www.ci.porterville.ca.us/govt/CityClerk/](http://www.ci.porterville.ca.us/govt/CityClerk/), Porterville Municipal Codes. For questions or concerns please call 559-782-7451 or 559-782-7457. Any person who violates the provisions in this code, shall be deemed guilty of either a misdemeanor or an infraction, with penalties of one hundred (\$100) for the first violation.

**Liability insurance:** The sponsoring organization/applicant agrees to provide and keep in force during the term of this permit a policy of liability and property damage insurance against liability for personal injury, including accidental death, as well as liability for property damage which may arise in any way during the term of this permit. **The City of Porterville and Successor Agency to the Porterville Redevelopment Agency shall be named as additional insured.** A Certificate of Liability Insurance and Additional Insured Endorsement sample forms are enclosed for your convenience. **This original certificate and endorsement shall be submitted to the Finance Department prior to the City of Porterville Council's approval.** *The council shall condition the granting of a CCE permit upon the sponsoring entity's filing with the council a policy of public liability insurance in which the city has been named as insured or coinsured with the permittee. The policy of insurance shall insure the city, its officers, and its employees against all claims arising out of, or in connection with, the issuance of the CCE permit or the operation of the permittee or its agents or representatives, pursuant to the permit. The policy of insurance shall provide coverage of no less than one million dollars (\$1,000,000.00) per occurrence of bodily injury and property damage, combined single limit.* (Ordinance 15-20(e) 18)

SG Authorized Representative Initial

**Alcohol liability insurance:** Organization/Applicant will obtain an alcohol permit if any alcoholic beverages are to be served. The insurance policy shall be endorsed to include **full liquor liability** in an amount not less than one million dollars (\$1,000,000) per occurrence. The City of Porterville shall be named as additional insured against all claims arising out of or in connection with the issuance of this permit or the operation of the permitted, his/her agents or representatives pursuant to the permit. **Claims-made policies are not acceptable.**

*\* Fraternal Order of Eagles Robert Keely 359-3077*  
**Health permit:** Organization/Applicant **will obtain or ensure** that all participants obtain a 'Temporary Food Facilities' permit(s) from the Tulare County Public Health Department, if any food is to be served in connection with this Community Civic Event. To contact the Tulare County Environmental Health Department located at 5957 S. Mooney Blvd., Visalia, CA, 93277, call 559-733-6441, or fax information to 559-733-6932; or visit their website: [www.tularehhsa.org](http://www.tularehhsa.org).

SG Authorized Representative Initials

**First aid station:** Organization/Applicant will establish a first aid station, with clearly posted signs, to provide basic emergency care, such as ice/hot packs, bandages, and compresses.

SG Authorized Representative Initials

**Toilet rental service:** Applicant shall have care, custody and control of the equipment and shall bear responsibility and liability for all loss and damage to the equipment and for its contents while at the City's location. Applicant shall not overload, move or alter the equipment and shall use the equipment for its intended purpose. Applicant shall be responsible for any damages to City's property resulting from company's provision of services hereunder. Applicant shall confirm with the service company the number of portable toilets, standard and handicap, and wash sinks needed for the number of expected attendees.

SG Authorized Representative Initials

**Agreement:** The sponsoring organization/applicant agrees to comply with all provisions of the Community Civic Event Ordinance 15-20(e), as amended, and the terms and conditions set forth by City Council and stated in Exhibit 'A.' The sponsoring organization/applicant agrees, during the term of this permit, to secure and hold the City free and harmless from all loss, liability, and claims for damages, costs and charges of any kind or character arising out of, relating to, or in any way connected with his/her performance of this permit. Said agreement to hold harmless shall include and extend to any injury to any person or persons, or property of any kind whatsoever and to whomever belonging, including, but not limited to, said organization/applicant, and shall not be liable to the City for any injury to persons or property which may result solely or primarily from the action or non-action of the City or its directors, officers, or employees. Approval of the Community Civic Events Permit by the Porterville City Council pertains only to authorized activities conducted at designated locations within the incorporated area of the City of Porterville, and such approval shall not be construed or interpreted to authorize sponsor utilization of public right-of-ways outside of the jurisdiction of the City of Porterville.

|                        |                    |         |
|------------------------|--------------------|---------|
| Porterville Fair       | <i>Steve Goddy</i> | 4/10/19 |
| (Name of Organization) | (Signature)        | (Date)  |

VENDOR/PARTICIPANT LIST IN CONNECTION WITH THE APPLICATION AND  
AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY  
TO BE HELD ON PUBLIC PROPERTY

5/5-5/16 4pm-11pm  
t time: 5/12 - 4pm-12am  
5/18 12pm-12am 5/19  
organizations, etc., 12pm-11p

[illegible]

The nonprofit sponsor shall collect said fee and remit the fee to the city within five (5) working days following the CCE. Said remittance shall be accompanied by a complete list of participants and consecutively numbered receipts written in triplicate, containing the name, address and telephone number of the licensee, and the licensee's California seller's permit number. Said receipts shall be furnished by the city. One copy of the receipt shall be furnished to the licensee, one copy filed with the finance department of the city, and one copy retained by the CCE sponsor for a period of three (3) years for audit purposes.

REQUEST FOR STREET CLOSURES AND PUBLIC PROPERTY USAGE IN CONNECTION WITH THE APPLICATION AND AGREEMENT FOR A PERMIT TO HOLD A COMMUNITY CIVIC EVENT OR OTHER ACTIVITY TO BE HELD ON PUBLIC PROPERTY

Event date: May 15-19 2019 Hours: N/A

ATTACH MAP MARKING AREAS TO BE CLOSED OR USED:

[illegible]

Requirements for Community Civic Event  
Tulare County Jr. Livestock Show and Community Fair  
Porterville Fair  
May 15-19, 2019

Finance Director:  
*M. Bemis*

City Engineer:  
*J. Sanchez*

Community Development Manager:  
*J. Phillips*

Field Services Manager:  
*M. Knight*

Fire Marshal:  
*M. Sandoval*

Parks and Leisure Services Director:      No comments.  
*D. Moore*

Police Lieutenant:      See proposed conditions/requirements  
*J. Maniss*      attached in Exhibit B.

Administrative Services Director:      Please see revised requirements in Exhibit A,  
*P. Hildreth*      page 2.



## Requirements for Community Civic Event

Sponsor: Tulare County Jr. Livestock Show and Community Fair  
Event: Porterville Fair  
Event Chairman: Mitch Brown  
Location: 2700 W. Teapot Dome Ave.  
Date of Event: May 15-19, 2019

### RISK MANAGEMENT: Conditions of Approval

That the Tulare County Jr. Livestock Show and Community Fair provide a Certificate of Commercial General Liability Insurance Coverage at least as broad as Insurance Services Office form CG 00 01, evidencing coverage of not less than \$2,000,000 per occurrence, and having the appropriate Endorsement naming the City of Porterville, its Officers, Officials, Employees, Agents, and Volunteers as Additional Insured for bodily injury and property damage, including without limitation, blanket contractual liability arising from, or in connection with, the Permittee's operation and sponsorship of the aforementioned Community Civic Event. Applicant's general liability policies shall be primary and non-contributory, and be endorsed using Insurance Services Office form CG 20 10.

A Certificate of Liquor Liability Insurance Coverage evidencing coverage of not less than \$1,000,000 per occurrence and having the appropriate Endorsement naming the City of Porterville, its Officers, Officials, Employees, Agents, and Volunteers as Additional Insured for bodily injury and property damage, including without limitation, blanket contractual liability arising from, or in connection with, the Permittee's operation of a beer garden. Applicant's general liability policies shall be primary and non-contributory, and be endorsed using Insurance Services Office form CG 20 10.

- A. Said Certificate of Insurance shall be an original (fax and xerographic copies not acceptable); the Certificate shall be signed by an agent authorized to bind insurance coverage with the carrier, and the deductible, if any, shall not be greater than \$1,000.
- B. Said insurance shall be primary to the insurance held by the City of Porterville, be with a company having an A.M. Best Rating of no less than A:VII, and the insurance company must be an "admitted" insurer in the State of California

**CITY OF PORTERVILLE**  
**Community Civic Event Application**

**Porterville Fair- May 15 -19, 2019**

Proposed Conditions/Requirements

- A Beer Garden shall be established as the primary location for the sales and consumption of alcoholic beverages. A minimum of two (2) security guards shall be assigned to control the Beer Garden while it is in operation. No persons under the age of 21 shall be allowed to enter the Beer Garden and no alcoholic beverages shall leave the Beer Garden except by patrons wearing authorized wristbands or on carts authorized for the sales of alcoholic beverages in other designated areas of the fairgrounds.
- Patrons wishing to purchase and consume alcohol inside or outside the confines of the Beer Garden must have an authorized wristband clearly displayed on one wrist in order to purchase and consume alcoholic beverages.
- Alcoholic beverages may only be purchased, possessed or consumed in certain areas when outside the confines of the Beer Garden. At no time shall alcoholic beverages be possessed or consumed within the area designated as "Kiddy Land" or areas set aside for the entertainment of small children.
- Porterville Fair officials shall have been granted a temporary license to sell alcohol from the CA Dept. of Alcoholic Beverage Control.
- Porterville Fair officials will meet with Police Dept. Lt. Azevedo (559-782-7410 or 559-782-7400) to coordinate and schedule appropriate number of law enforcement officers to provide security, police the fairgrounds, and ensure safety during the fair event.
- An Outside Amplifier Permit has been approved and granted. However, event organizers shall not allow music to be played so loud as to unreasonably disturb the peace and good order of the neighborhoods or businesses surrounding the area.
- Amplified music shall not continue after 12:00 midnight.
- Porterville Fair officials shall reserve "no less" than two (2) parking spaces for on-duty police vehicles "at" the front (main) entrance to the fair and the same amount "at" the rear entrance to the fair. This will guarantee the officers working the event will have immediate access to their vehicles to acquire equipment or detain/transport prisoners and shall not detract from the number of similar spaces needed for the staging of emergency equipment and crews inside the fairgrounds.

Josh Maniss, Lieutenant  
Porterville Police Department  
(559) 782-7424

Exhibit B

CITY OF PORTERVILLE  
OUTSIDE AMPLIFIER PERMIT  
(City Ordinances #18-9 & 18-14)



This application must be submitted ten (10) days prior to the date of the event. A copy of this permit must be at the operating premises of the amplifying equipment for which this registration is issued.

- 1 Name and home address of the applicant: PORTERVILLE FAIR  
2700 W. TEAPOT DOWNS AVENUE, PORTERVILLE, CA 93257
- 2 Address where amplification equipment is to be used: SALE
- 3 Names and addresses of all persons who will use or operate the amplification equipment: RIO PRODUCTIONS  
PAUL SERPA (OWNER) 1129 BATAVIA ST. TULARE, CA 93274
- 4 Type of event for which amplification equipment will be used: MUSIC ON BUD'S ROTARY STAGES
- 5 Dates and hours of operation of amplification equipment: MAY 15-19, 2019 - NO LATER THAN  
12:00 AM - MIDNIGHT
- 6 A general description of the sound amplifying equipment to be used: MICROPHONES, SPEAKERS AND  
SOUND AMPLIFICATION EQUIPMENT.

Section 18-9

It shall be unlawful for any person within the city to use or operate or cause to be operated or to play any radio, phonograph, jukebox, record player, loudspeaker, musical instrument, mechanical device, machine, apparatus, or instrument for intensification or amplification of the human voice or any sound or noise in a manner so loud as to be calculated to disturb the peace and good order of the neighborhood or sleep of ordinary persons in nearby residences or so loud as to unreasonably disturb and interfere with the peace and comfort of the occupants of nearby residences.

The operation of any such instrument, phonograph, jukebox, machine or device in such manner as to be plainly audible at a distance of one hundred feet (100') from the building, structure, vehicle, or place in which, or on which it is situated or located shall be prima facie evidence of a violation of this section. (Ord. Code § 6311)

Section 18-14

It shall be unlawful for any person to maintain, operate, connect, or suffer or permit to be maintained, operated, or operated, or connected any or sound amplifier in such a manner as to cause any sound to be projected outside of any building or out of doors in any part of the city, except as may be necessary to amplify sound for the proper presentation of moving picture shows, or exhibiting for the convenient hearing of patrons within the building or enclosure in which the show or or exhibition is given, without having first procured a permit from the chief of police, which permit shall be granted at the will of the chief of police upon application in writing therefore, but which permit, when granted, shall be revocable by the city council whenever any such loudspeaker or sound amplifier shall by the council be deemed objectionable, and any such permit may be so revoked with or without notice, or with or without a formal hearing, at the option of the council, and in the event of the revocation of any such permit, the same shall not be renewed, except upon application as the first instance. (Ord. Code § 6312)

Penal Code Section 415 (2)

Any of the following persons shall be punished by imprisonment in the county jail for a period of not more than 90 days, a fine of not more than four hundred dollars (\$400), or both such imprisonment and fine: (2) Any person who maliciously and willfully disturbs another person by loud and unreasonable noise.

I hereby certify that I have read and answered all statements on this registration form and that they are true and correct.

[Signature]  
Signature of Applicant

4/10/19  
Date

THIS OUTSIDE AMPLIFIER PERMIT HAS BEEN APPROVED. HOWEVER, WE URGE YOU TO REMAIN CONSIDERATE OF THE GENERAL PEACE AND ORDER OF THE NEIGHBORS IN THE AREA. FAILURE TO ABIDE BY THESE REGULATIONS CAN RESULT IN REVOCATION OF THE PERMIT.

[Signature]  
City of Porterville, Chief of Police/Designee

4-29-19  
Date

4/15/2016

Google Maps

Google Maps



Map data ©2016 Google 1000 ft

Google Maps



PORTFAI-01

MHERNANDEZ

## CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
04/30/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 0D44424  
Walter Mortensen Insurance / INSURICA  
126 N. Main Street  
Porterville, CA 93257

CONTACT NAME: Mayra Hernandez

PHONE (A/C, No, Ext): (559) 784-5113

FAX (A/C, No):

E-MAIL ADDRESS: Mayra.Hernandez@INSURICA.com

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A : Scottsdale Indemnity Company

15580

INSURED

Porterville Fair  
2700 W. Teapot Dome Ave.  
Porterville, CA 93257

INSURER B :

INSURER C :

INSURER D :

INSURER E :

INSURER F :

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE                                                                                          | ADDL INSD | SUBR WVD | POLICY NUMBER    | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                                               |
|----------|------------------------------------------------------------------------------------------------------------|-----------|----------|------------------|-------------------------|-------------------------|----------------------------------------------------------------------|
| A        | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY                                           |           |          |                  |                         |                         |                                                                      |
|          | <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR                             |           |          | KKI0000022391500 | 10/01/2018              | 10/01/2019              | EACH OCCURRENCE \$ 1,000,000                                         |
|          |                                                                                                            |           |          |                  |                         |                         | DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000                 |
|          |                                                                                                            |           |          |                  |                         |                         | MED EXP (Any one person) \$ 0                                        |
|          |                                                                                                            |           |          |                  |                         |                         | PERSONAL & ADV INJURY \$ 1,000,000                                   |
|          | GEN'L AGGREGATE LIMIT APPLIES PER:                                                                         |           |          |                  |                         |                         | GENERAL AGGREGATE \$                                                 |
|          | <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC             |           |          |                  |                         |                         | PRODUCTS - COMP/OP AGG \$ 5,000,000                                  |
|          | OTHER:                                                                                                     |           |          |                  |                         |                         |                                                                      |
|          | AUTOMOBILE LIABILITY                                                                                       |           |          |                  |                         |                         | COMBINED SINGLE LIMIT (Ea accident) \$                               |
|          | <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS                |           |          |                  |                         |                         | BODILY INJURY (Per person) \$                                        |
|          | <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY                    |           |          |                  |                         |                         | BODILY INJURY (Per accident) \$                                      |
|          |                                                                                                            |           |          |                  |                         |                         | PROPERTY DAMAGE (Per accident) \$                                    |
|          |                                                                                                            |           |          |                  |                         |                         |                                                                      |
|          | UMBRELLA LIAB <input type="checkbox"/> OCCUR                                                               |           |          |                  |                         |                         | EACH OCCURRENCE \$                                                   |
|          | EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE                                                           |           |          |                  |                         |                         | AGGREGATE \$                                                         |
|          | DED <input type="checkbox"/> RETENTION \$                                                                  |           |          |                  |                         |                         |                                                                      |
|          | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY                                                              |           |          |                  |                         |                         | PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> |
|          | ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y / N |           | N / A    |                  |                         |                         | E.L. EACH ACCIDENT \$                                                |
|          | If yes, describe under DESCRIPTION OF OPERATIONS below                                                     |           |          |                  |                         |                         | E.L. DISEASE - EA EMPLOYEE \$                                        |
|          |                                                                                                            |           |          |                  |                         |                         | E.L. DISEASE - POLICY LIMIT \$                                       |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate Holder is an Additional Insured with respect to General Liability if required or agreed to in a written contract subject to all provisions and limitations of the policy, per attached form CG2026 04/13

## CERTIFICATE HOLDER

City of Porterville  
Successor Agency to the Porterville Redevelopment Agency  
291 N. Main St.  
Porterville, CA 93257

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

**Name Of Additional Insured Person(s) Or Organization(s):**

SPONSORS; CO-PROMOTERS; MANAGERS OR LESSORS OF PREMISES; MORTGAGEES, ASSIGNEES OR RECEIVERS; INTERESTS FROM WHOM LAND HAS BEEN LEASED. WITH RESPECT TO AN ADDITIONAL INSURED OWNER AND/OR LESSOR OF PREMISES, THIS INSURANCE DOES NOT APPLY TO STRUCTURAL ALTERATIONS, NEW CONSTRUCTION OR DEMOLITION OPERATIONS PERFORMED BY OR FOR THAT PERSON(S) OR ORGANIZATION(S); ANY DESIGN DEFECT OR STRUCTURAL MAINTENANCE OF THE PREMISES; OR ANY PREMISES DEFECT.

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the

insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

04/16/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

|                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                        |
|-------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PRODUCER</b><br>Armstrong Fairway Insurance Agency<br>17072 Silica Dr. #103<br>Victorville, CA 92395<br>License #: 0I29627 | <b>CONTACT NAME:</b> Casey Armstrong<br><b>PHONE (A/C, No, Ext):</b> (760)245-2561<br><b>FAX (A/C, No):</b> (760)245-2637<br><b>E-MAIL ADDRESS:</b> casey@armstrong-fairway.com<br><b>INSURER(S) AFFORDING COVERAGE</b><br><b>INSURER A:</b> Mercury Casualty Company - 11908<br><b>INSURER B:</b><br><b>INSURER C:</b><br><b>INSURER D:</b><br><b>INSURER E:</b><br><b>INSURER F:</b> |
| <b>INSURED</b><br>Fraternal Order Of Eagles Porterville #1351<br>P.O. Box 989<br>Porterville, CA 93257                        | <b>NAIC #</b>                                                                                                                                                                                                                                                                                                                                                                          |

**COVERAGES****CERTIFICATE NUMBER:** 00000000-248606**REVISION NUMBER:** 3

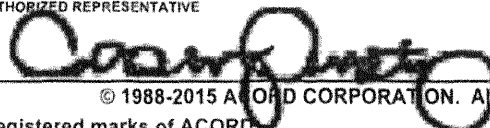
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE                                                                                                                                                                                                                                                                                                   | ADD'L SUBR INSD WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS                                                                                                                                                                                                                                    |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|---------------|-------------------------|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A        | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY<br><input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR<br><br>GEN'L AGGREGATE LIMIT APPLIES PER:<br><input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC<br>OTHER: |                     | CCP0023804    | 12/01/2018              | 12/01/2019              | EACH OCCURRENCE \$ 1,000,000<br>DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000<br>MED EXP (Any one person) \$ 10,000<br>PERSONAL & ADV INJURY \$ 1,000,000<br>GENERAL AGGREGATE \$ 2,000,000<br>PRODUCTS - COMP/OP AGG \$ 2,000,000 |
|          | <b>AUTOMOBILE LIABILITY</b><br><input type="checkbox"/> ANY AUTO<br><input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS<br><input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY                                                                   |                     |               |                         |                         | COMBINED SINGLE LIMIT (Ea accident) \$<br>BODILY INJURY (Per person) \$<br>BODILY INJURY (Per accident) \$<br>PROPERTY DAMAGE (Per accident) \$                                                                                           |
|          | <b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR<br><b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE<br><b>DED</b> <input type="checkbox"/> RETENTION \$                                                                                                                                                  |                     |               |                         |                         | EACH OCCURRENCE \$<br>AGGREGATE \$                                                                                                                                                                                                        |
|          | <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b><br>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y <input checked="" type="checkbox"/> N<br>(Mandatory in NH)<br>If yes, describe under DESCRIPTION OF OPERATIONS below                                                   |                     |               |                         |                         | PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/><br>E.L. EACH ACCIDENT \$<br>E.L. DISEASE - EA EMPLOYEE \$<br>E.L. DISEASE - POLICY LIMIT \$                                                                          |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Certificate holder is hereby named as additional insured. \*10 days notice of cancellation for non-payment of premium

**CERTIFICATE HOLDER****CANCELLATION**

|                                                                                                                      |                                                                                                                                                                                                                                                                                                  |
|----------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| City of Porterville<br>Successors Agency to the City Redevelopment Agency<br>291 N. Main St<br>Porterville, CA 93257 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.<br><br>AUTHORIZED REPRESENTATIVE<br><br>(CLA) |
|----------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

© 1988-2015 ACORD CORPORATION. All rights reserved.



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Status and Review of Declaration of Local Emergency

**SOURCE:** City Manager's Office

**COMMENT:** Governor Brown issued Executive Order B-29-15 on Wednesday, April 1, 2015, which established drought-related mandates and restrictions in addition to those already stipulated in previous Executive Orders B-26-14 and B-28-14. Of significance, the Governor directed the State Water Resources Control Board to impose restrictions to achieve a statewide 25% reduction in potable urban water usage through February 28, 2016, in comparison to the amount used in 2013, and with consideration given to per capita usage as a basis. The Governor further directed the Board to impose additional restrictions on commercial, industrial, and institutional properties with significant landscaping (cemeteries, golf courses, parks, schools, etc.), to also achieve a 25% reduction in potable water usage. Also of significance, the Board was directed to prohibit irrigation with potable water outside of newly constructed homes and buildings that is not delivered by drip or micro-spray systems.

On November 13, 2015, Governor Brown issued Executive Order B-36-15, which extends emergency conservation regulations through October 2016, if drought conditions persist through January 2016. On February 2, 2016, the State Water Resources Control Board adopted extended emergency water conservation regulations, to be in effect March 1 through October 31, 2016. The City of Porterville benefited somewhat from the extended regulations as the City's water conservation rate has been reduced from 32% to 26%, due to new water connections that have been made and population served (4%), as well as a new climate adjustment factor that was considered (2%).

On May 9, 2016, Governor Brown issued Executive Order B-37-16 ("Making Water Conservation a California Way of Life"), which directs the State Water Resources Control Board to establish new regulations making permanent the emergency conservation regulations. On May 18, 2016, the State Water Resources Control Board adopted a statewide water conservation approach that replaces the percentage reduction-based water conservation standard with a localized "stress test" approach that mandates urban water suppliers act immediately to ensure at least a three-year supply of water to their customers under continued drought conditions.

On April 7, 2017, Governor Brown issued Executive Order B-40-17, which ended the drought state of emergency in most of California, with the exception of Fresno, Kings, Tulare and Tuolumne counties where emergency water supply



and reliability projects are continuing toward addressing diminishing groundwater supplies. The Order maintains monthly reporting requirements and prohibitions on wasteful practices. It is anticipated that the Governor will end the drought state of emergency in the four remaining counties in the near future.

On May 31, 2018, Governor Brown signed both AB 1668 (Friedman) and SB 606 (Hertzberg), which set permanent overall targets for indoor and outdoor water consumption. The legislation sets an initial limit for indoor water use of 55 gallons per-person per-day in 2022, reducing to 52.5 gallons per-person per-day in 2025, and finally to 50 gallons per-person per-day in 2030. The amount of residential outdoor use is yet-to-be determined, but will allow for varying regional climates. In addition, a standard for water loss due to leak rates in water system pipes will be established. As an urban water provider, the City of Porterville will need to submit its plan for compliance for approval by the State Water Resources Control Board.

At its last meeting on April 16, 2019, the City Council took action in the continued affirmation of the adoption of a Resolution of Declaration of Local Emergency due to local residences within the city having been identified as having wells that are now dry as a result of the drought. Twenty-six (26) residences within the city have been determined to have dry wells, for which City staff submitted a Mutual Aid Request to Tulare County OES to initiate the household tank program for identified properties within the city where wells are dry and challenged for permanent connection. City, County, State and non-profit partner representatives have continued to discuss solutions toward addressing these challenged residences given the State is expected to end its drought emergency funding. The State had committed funding through June 30, 2018 for non-profit agencies to continue drought-related activities, which Self-Help Enterprises has continued the household tank program locally. Although a new appropriation of State funding has not yet been made, there are sufficient residual funds from the original appropriation to fund the continuance of the program through September 30, 2018. Assemblyman Joaquin Arambula (Fresno) had requested of the Assembly Budget Committee the appropriation of \$3.5 million in the State's 2018-2019 fiscal year budget to continue to support the approximate 300 residences in the Central Valley that still have dry wells and receive temporary water deliveries, however, that appropriation request has not been granted. Should continued funding not be appropriated by the State, representatives for the State Water Resources Control Board have indicated that they will attempt to secure continued funding through Cleanup and Abatement Account (CAA) emergency funds.

Representatives for the City, County, State (CalOES, DDW, DWR, and SWB) and non-profit partners have continued to meet in support of the long-term permanent water connection project for the entire East Porterville area and the estimated 1,800 expected future connections. DWR identified 423 residential units in the East Porterville area (381 of which are in the City's Urban Development Boundary), that were served by the County's Household Tank Program and desired by the State to be connected to the City's water distribution system as soon as possible. DWR has completed a significant City waterline

extension project to permanently connect those 423 residential units to the City's water system (considered Phase I of the project). To provide source water for the DWR extension project, CalOES desired to expeditiously connect the new well on Olive Avenue to the City's water system instead of being first equipped as a filling station. Given the new well has an estimated water production value of 800 gallons per minute, as well as a SWB assumed 1.5 gallons per minute per residence, the new well could effectively serve up to 500 single-family residential units. The City indicated its significant interest that the E. Vandalia Avenue area and its 80 residential units be included in the water connection project, to which the State was agreeable.

Given CalOES has paid for the development of the new well, and its connection to the City's water system, the City will be required under "Drought Redundancy and Resiliency Provisions" to make available to the State up to three million gallons of water per month without charge for emergency purposes.

To proceed with the connection of the new well to the City's water system and the 500 East Porterville and E. Vandalia Avenue residential units, the City Council approved modifications to the Draft Agreement between the City and County at its meeting on April 5, 2016, which the County Board of Supervisors subsequently approved at their meeting on May 10, 2016.

A Memorandum of Understanding between the State, County, and City on the East Porterville permanent water connection project was approved by the Council during a Special Meeting on Tuesday, June 21, 2016, and approved by the Board of Supervisors on Tuesday, June 28, 2016. With the approval of the MOU, the State began the permanent connection of approximately 40 homes that are located along existing City water mains. Subsequently, the State officially requested that the City approve the connection of an additional 30 residences as part of the first immediate connections, for up to a total of 70, which the Council approved at its meeting on August 2, 2016.

In regards to the new well's development and connection to the City's water distribution system, the Board of Supervisors awarded the contract for equipping and connecting the new well at their meeting of Tuesday, August 16, 2016, and construction activities commenced the week of October 10, 2016. County staff had previously indicated that the well would be in service and connected to the City's system no later than December 2016, however, the well was operational and connected to the City's water distribution as of Friday, February 17, 2017. Given the delay in the well's completion and connection, DWR requested that the City Council consider allowing the connection of residences as they become prepared for connection, to which the Council was receptive, and a Draft MOU Amendment was approved by the Council at its meeting on December 6, 2016, and subsequently approved by the Board of Supervisors at its meeting on December 20, 2016. City staff is currently working with County staff toward the transfer of the well's ownership from the County to the City.

As of Friday, March 31, 2017, the date the State established as the final day for property owners to complete the registration process to participate in the State-funded connection program opportunity, of the 1,017 eligible developed residential properties identified by the State for connection, 722 completed the required Extra-Territorial Services Agreement, leaving 295 developed residential properties non-responsive to this unique connection program, 23 of which were reported as having either dry or diminishing capacity wells. On February 6, 2018, the final residential connection was made of the approximate eligible 800 residences in East Porterville to the City's water system.

County OES and the State Division of Drinking Water (DDW) have reported to the City that the Central Mutual Water Company, located south of the city and south of Gibbons Avenue, has had its well run dry and desires an immediate emergency connection to the City's water system to serve the 41 connections currently without water. DDW is wishing to support a financial application to upgrade the small water system to City standards (new water lines, meters ,etc.), and to sponsor an Urban Development Boundary (UDB) Amendment application to Tulare County Local Agency Formation Commission (LAFCO), given this area is currently outside the City's UDB but within the City's Urban Area Boundary (UAB). Given several private wells have run dry in this area, DDW is also attempting to sponsor their connection to the City's water system. For source water capacity for the connections, DWR will include these new connections within the East Porterville water connection capacity development projects. At its Special meeting on August 30th, the City Council directed staff to proceed with the immediate emergency connection of the Central water system, with the permanent connection of the system contingent upon an Agreement with DDW to the sponsorship conditions they have offered.

State Division of Drinking Water (DDW) has also reported to the City that the Del Oro East Plano water system, located on Paul Street (southeast of the intersection of Plano Street and Worth Avenue), is experiencing problems with its existing well and have implemented severe water restrictions. The East Plano water system serves 14 residences and approximately 45 people. DDW is wishing to provide financial support to upgrade the small water system to City standards (new water lines, meters ,etc.), and for source water capacity for the connections, DDW would need to either pay appropriate fees and/or develop a capacity development project. The Council is aware that the Del Oro Grandview Gardens water system (north of W. North Grand Avenue) is also experiencing significant issues, and DDW may seek their future consolidation with the City's water system as well.

City staff continues to coordinate with Self-Help Enterprises and State representatives toward the extension of water mains to serve all residential properties within City limits and the city's periphery that are currently participating in the County's Household Tank Program. The two main areas of focus are N. Cobb Street (northwest of State Route 65 and Pioneer Avenue), and S. Cloverleaf Street (southeast of State Route 65 and Olive Avenue). The State has maintained its commitment to grant-fund the necessary infrastructure and connection fees, providing an official funding letter to the City on January 18,

2018, which commits up to \$2.81 million in funding until December 31, 2019. The authorization to advertise for bids for the water connection project was approved by the Council at its July 17th meeting, after which DWR reviewed the bid package for compliance and approved in December the package for advertisement. Council authorized award of the construction contract for approximately \$1.82 million at its meeting on January 15, 2019. City staff conducted a pre-construction public outreach meeting with the affected residents on the status of the project on Thursday, April 4, 2019.

RECOMMENDATION: That the City Council receive the report of status and review of the Declaration of Local Emergency and determine the need exists to continue said Declaration.

ATTACHMENTS:

1. Resolution 49-2015 - Declaration of Local Emergency
2. City-County Well Agreement
3. Memorandum of Understanding
4. Memorandum of Understanding Draft Amendment
5. SWRCB Letter Dated November 29, 2017
6. DWR Letter Dated January 18, 2018
7. Governor Brown Executive Order

Appropriated/Funded:

Review By:

Department Director:

Final Approver: John Lollis, City Manager

RESOLUTION NO. 49-2015

A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF PORTERVILLE DECLARING A DROUGHT EMERGENCY  
WITHIN THE CITY OF PORTERVILLE

WHEREAS: in response to the ongoing severe drought, the State Water Resources Control Board approved an emergency regulation to ensure water agencies, their customers, and state residents increase water conservation in urban settings or face possible fines or other enforcement; and

WHEREAS: as we enter the fourth year of severe drought, long-term forecasts indicate no relief of the current drought conditions, and suggest a warmer-than-average summer, resulting in increased domestic demand for water; and

WHEREAS: public and private potable water supplies continue to be threatened due to decreasing supplies of groundwater caused by the precipitation deficit and an extended state of groundwater overdraft; and

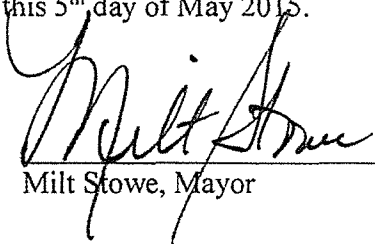
WHEREAS: the long-term ramifications of the current drought will have a significant impact on the city of Porterville and potentially pose a danger to the health and welfare of its residents; and

NOW, THEREFORE, BE IT RESOLVED: that the City Council of the City of Porterville does hereby proclaim that, due to drought conditions, a Local Emergency now exists in the city of Porterville and shall remain in effect for the duration of the emergency; and

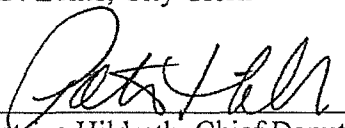
BE IT FURTHER RESOLVED: that the City Council of the City of Porterville requests the Governor and California Department of Water Resources make available California Disaster Assistance Act funding for the State of Local Emergency proclaimed on May 5, 2015, and seek all available forms of Federal assistance, to include a Presidential Declaration of Emergency and Individual Assistance and Public Assistance programs as applicable; and

BE IT FURTHER RESOLVED: that a copy of this resolution be forwarded to the State Director of the Office of Emergency Services.

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of May 2015.

  
Milt Stowe, Mayor

ATTEST:  
John D. Lollis, City Clerk

  
By: Patrice Hildreth, Chief Deputy City Clerk

## TULARE COUNTY – CITY OF PORTERVILLE WELL AGREEMENT

THIS AGREEMENT is entered into this day of, May 10, 2016, between the COUNTY OF TULARE, referred to as COUNTY, and the CITY OF PORTERVILLE, referred to as CITY, with reference to the following:

- A. WHEREAS, East Porterville/Doyle Colony area properties within the COUNTY's jurisdiction and within the CITY's Urban Development Boundary are experiencing serious water shortages due to the historical drought conditions. Attached hereto as Exhibit 'A' is a map defining the East Porterville/Doyle Colony and Vandalia areas; and
- B. WHEREAS, CITY and COUNTY have been and are collaborating to jointly develop a new municipal water well; and
- C. WHEREAS, COUNTY shall secure complete funding for a new well to be solely owned, operated and maintained by the CITY for the purpose of providing long-term capacity to enable permanent water connections to properties that comply with CITY'S Annexation and Extension of Municipal Services policy, with certain exceptions for specific properties in excess of the maximum lot size. These procedures are defined by two Resolutions, 74-2014 and 19-2016, which are attached hereto as Exhibit 'B'; and
- D. WHEREAS, the COUNTY owns a parcel at the southeast corner of the Tule River and Olive Avenue (APN 240-120-017), represented in Exhibit 'C', and has drilled a municipal supply well, and will equip said well utilizing CITY standards, after which the COUNTY shall convey the land to CITY at a cost of \$1; and
- E. WHEREAS, CITY operates an existing municipal water system, with limited infrastructure already established in the East Porterville/Doyle Colony and Vandalia areas, and has experience and qualifications necessary to provide such services; and
- F. WHEREAS, CITY and COUNTY mutually agree that a regional, collaborative solution to leverage and expand CITY'S municipal water system into the East Porterville/Doyle Colony and Vandalia areas is the most feasible means to address the area's water needs; and
- G. WHEREAS, CITY is willing to enter into this Agreement with COUNTY upon terms and conditions set forth herein; and
- H. WHEREAS, CITY and COUNTY mutually understand that due to the limited resources of the CITY's municipal water system, all future connections must comply with the CITY's Annexation and Extension of Municipal Services policies, with certain exceptions for specific properties in excess of the maximum lot size, attached hereto and made a part thereof as Exhibit 'B'.

### ACCORDINGLY, IT IS AGREED:

- 1. **TERM:** This agreement shall become effective as of the date the agreement is fully executed by both agencies.
- 2. **SERVICES TO BE PERFORMED & PAYMENT FOR SERVICES – EQUIPPING MUNICIPAL WELL FACILITY:** Refer to attached Exhibit 'D'.

TULARE COUNTY AGREEMENT NO. 27596

3. **SERVICE TO BE PERFORMED IN PERPETUITY:** The services described below shall be performed in perpetuity upon completion of all tasks enumerated in Exhibit 'D' and upon COUNTY securing the funds for equipping the well to CITY standards and requirements:
- A. CITY shall provide to STATE and/or COUNTY, upon STATE and COUNTY's request, a maximum of three million (3,000,000) gallons of water per month upon integration of the well provided under this Agreement, for the purposes of meeting emergency water needs in COUNTY's jurisdiction. CITY shall not charge COUNTY or STATE for said water.
  - B. CITY shall utilize water produced by the well provided under this Agreement as source capacity for new service connections and agreements in East Porterville/Doyle Colony and Vandalia areas. CITY agrees to provide source water for up to four hundred twenty-three (423) new connections in the East Porterville/Doyle Colony area subject to the CITY'S Annexation and Extension of Municipal Services policies, with certain exceptions for specific properties in excess of the maximum lot size, and up to 80 new connections in the Vandalia area. The 423 new connections noted above are inclusive of those properties immediately adjacent to an existing water main, estimated at 40 parcels, which can be connected to the City's water system immediately upon execution of this agreement and the Memorandum(a) of Understanding between CITY, COUNTY, and STATE. Upon connection to CITY services, the listed properties will be exempt from payment of CITY water impact fees, but will be subject to standard fees, such as, but not limited to, water service and meter installation, unless otherwise financed by STATE or other funding sources, and associated monthly fees. This section shall not be construed to limit additional connections beyond the above referenced 503 properties provided for herein, where CITY provides consumption documentation that determines additional source capacity is available as a result of the connection of this well to CITY's system.
  - C. CITY expressly agrees to own, operate, maintain, repair and otherwise care for the well provided under this Agreement, in order to maintain it in proper working order and to the highest standard, for the duration of the well's useful life.
  - D. COUNTY shall grant the parcel on which the well is located to the CITY by Grant Deed at a cost of \$1 upon formal acceptance of the project. A 50-foot control zone around the well site is a requirement of the State Water Resources Control Board, Drinking Water Program, therefore establishing the minimum parcel size to be conveyed to the CITY. Existing COUNTY infrastructure may encroach through or conflict with the subject parcel and if so, ownership, maintenance, repair and replacement of these facilities shall transition to the City's responsibility by separate maintenance agreement upon acceptance of the project.
  - E. CITY shall not be entitled to compensation by COUNTY, or any State or Federal agency providing funding for the activities enumerated in Exhibit 'D', for any ongoing costs related to owning, operating, maintaining, repairing, or replacing this well. CITY and COUNTY expressly agree that CITY's ongoing compensation for such ongoing costs shall be the use of the well for CITY's use within its water system, unrestricted except as noted in "A"



above. No part of this paragraph shall be construed to limit or restrict in any way CITY's ability to seek any grant funding or collect rates and fees from users of CITY's water system.

- F. All recipients of water are subject to CITY water policies, such as, but not limited to, water conservation and watering schedules. Connections made as noted in "B" above may be subject to further water conservation thresholds as required by the STATE.

4. This Agreement represents the entire agreement between CITY and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement may be modified without the written consent of both parties.

5. Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY: County Administrative Officer/Clerk of the Board  
of Supervisors of the County of Tulare  
Administrative Building  
2800 W. Burrell Avenue  
Visalia, CA 93291

(Fax No.: (559) 733-6318 / Phone No. (559) 636-5005)

CITY: City Manager  
291 N. Main St.  
Porterville, CA 93257

(Fax No.: (559) 715-4013/ Phone No. (559) 782-7466)

Notice delivered personally or sent by facsimile transmission is deemed to be received upon receipt. Notice sent by first class mail shall be deemed received on the fourth day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

6. This Agreement reflects the contributions of both parties and accordingly the provisions of Civil Code section 1654 shall not apply to address and interpret any uncertainty.
7. Unless specifically set forth, the parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.
8. This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. This Agreement is entered into and shall be performed in Tulare County, California. CITY waives the removal provisions of California Code of Civil Procedure Section 394.
9. The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party or either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.
10. The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.



11. This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court of other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party. In all other cases the remainder of the Agreement shall continue in full force and effect.
12. Each party agrees to execute any additional documents and to perform any further acts which may be reasonably required to affect the purposes of this Agreement.
13. CITY expressly agrees that it will not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.
14. Insurance
15. Permit
16. Dispute Resolution: If a dispute arises out of or relating to this Agreement, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.
17. Indemnification: CITY shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, the performance by CITY or its agents, officers and employees under this Agreement. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by CITY under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for CITY's failure to provide form DE-542, when applicable. This indemnification obligation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

///

///

///

///

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

COUNTY OF TULARE

BY Mike Ennis  
Mike Ennis Chairman,  
Board of Supervisors



ATTEST: Michael C. Spata,  
County Administrative Officer/Clerk of the Board  
of Supervisors of the County of Tulare

By Danisa A. Ybana  
Deputy Clerk

Approved as to Form  
County Counsel

By M. G. [Signature] for LMT  
Deputy 20151902

CITY OF PORTERVILLE

BY Milt Stowe  
Milt Stowe, Mayor

ATTEST:  
City Clerk of the City of Porterville

BY J. L. [Signature]  
John Lollis, City Manager

Approved as to Form

BY [Signature]  
City Attorney

EXHIBIT 'A'



## East Porterville Project Boundary

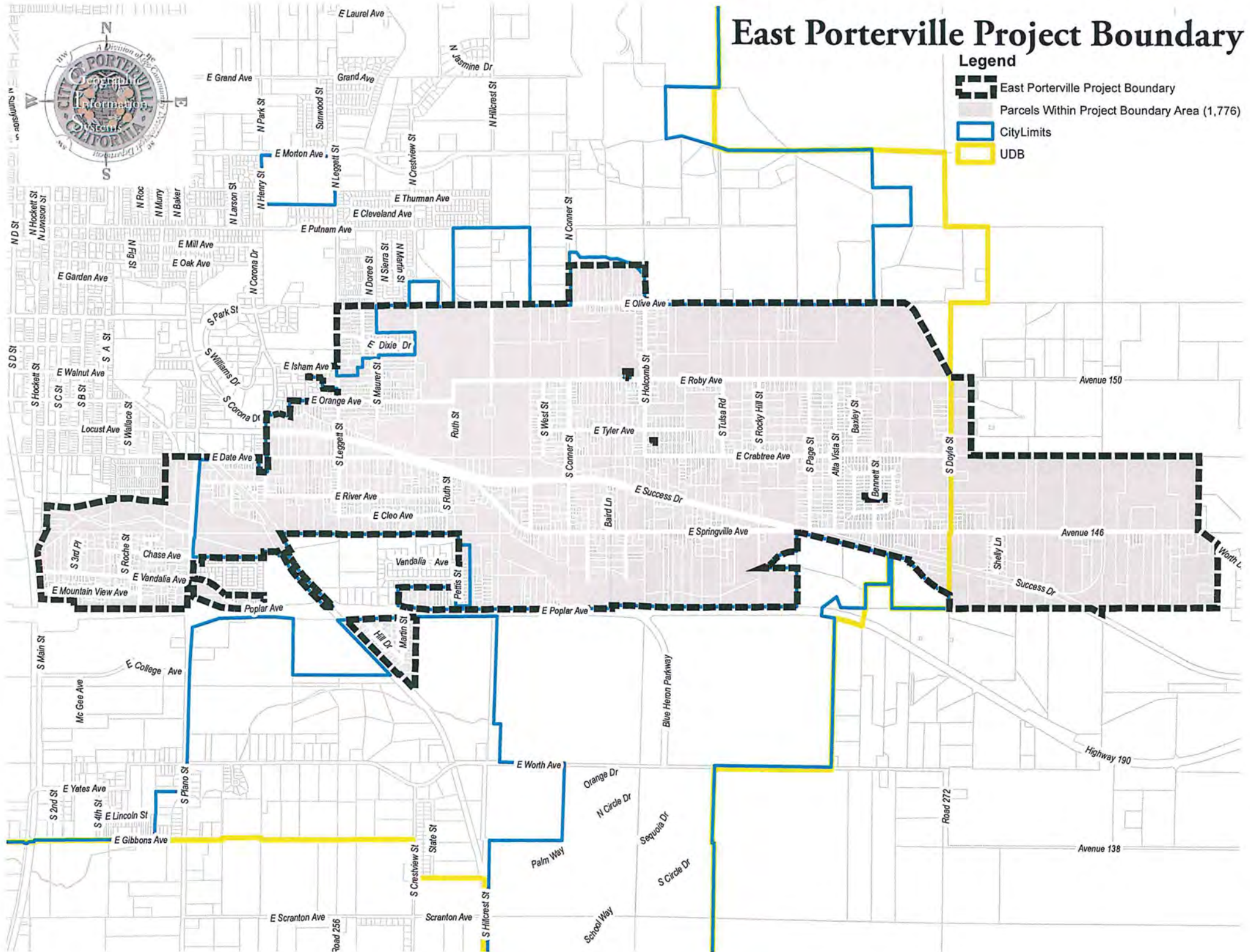


EXHIBIT 'B'

RESOLUTION NO. 74 -2014

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE DEFINING OBJECTIVES AND POLICIES FOR ANNEXATIONS AND MUNICIPAL SERVICES

WHEREAS: The City of Porterville established a policy concerning annexation and provision of municipal services in 1986, noting that “the City, in order to grow for reasons of economies of scale and quality of services must expand its boundaries within reason, generally encourages the owners of properties contiguous to the city of Porterville to annex to said City of Porterville”; and

WHEREAS: Since 1990, the population of the city of Porterville has increased 53% according to the California Department of Finance, and the land area of the city proper has increased by 38% according to City annexation records; and

WHEREAS: The City of Porterville accepts its responsibility to provide municipal services to those residents, businesses, and other land uses within the limits of the city. The City of Porterville has taken the position that the costs of all physical improvements within the city have been paid by property owners, and other taxes derived in the city, and, therefore, these same people should not be required to bear the expense of additional physical improvements needed to serve newly annexed areas.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Porterville does hereby define the following objectives related to annexations and municipal services:

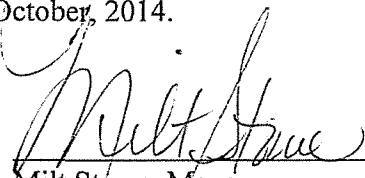
1. To promote orderly development while discouraging urban sprawl, preserving open space and prime agricultural lands, and efficiently extending government services.
2. To honor the City’s fundamental responsibility to provide efficient and sustainable public services to the inhabitants of the city, and where appropriate, to provide those services beyond the limits of the city within the Urban Development Boundary, and only in extreme cases to those properties beyond the Urban Development Boundary within the Urban Area Boundary.
3. To provide for land development and growth in a manner consistent with the General Plan, particularly as it relates to land use and circulation.
4. To consider an application upon its own merits, and identify what benefits would accrue to the City as an agency and service provider, to the residents of the city of Porterville, and to the applicant.
5. To identify the problems involved in any proposal considered for annexation or request for extra-territorial services and resolve them in the manner most beneficial to the properties within the city of Porterville.
6. To develop factual information to permit informed discussion between City representatives and property owners/residents of unincorporated territories.

BE IT FURTHER RESOLVED, that the City Council of the City of Porterville does hereby establish the following policies for consideration of annexations and municipal services:

1. It shall be the policy of the City of Porterville to consider annexation proposals only within the Urban Development Boundary, which is defined as the City of Porterville Annexation Boundary, as adopted by Tulare County Local Area Formation Commission (LAFCo).

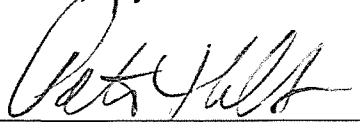
2. It shall be the policy of the City of Porterville to consider extra-territorial service requests primarily within the Urban Development Boundary, which is defined as the City of Porterville Annexation Boundary, as adopted by Tulare County LAFCo.
3. It shall be the policy of the City of Porterville, only where necessary in order to respond to an existing or impending threat to public health or safety of affected residents, to consider extra-territorial service requests within the Urban Area Boundary, as adopted by City Council and identified on the City of Porterville Zoning Map.
4. It shall be the policy of the City of Porterville to consider annexation proposals and extra-territorial service requests in a manner consistent with the policies and regulations adopted by the Tulare County LAFCo and the State of California, as applicable.
5. It shall be the policy of the City of Porterville to discourage single-family one (1) lot annexation proposals that may have an adverse fiscal impact on the City of Porterville.
6. It shall be the policy of the City Council that territory shall not be annexed to the city of Porterville, which as a result of such annexation, unincorporated territory is completely surrounded, or substantially surrounded by the city of Porterville.
7. It shall be the policy of the City of Porterville that annexation proposals shall be in conformance with the Cortese-Knox-Hertzberg Act of 2000, as amended.
8. It shall be the policy of the City Council to consider each petition/consent for annexation upon its relationship to what economic benefits will accrue to the City of Porterville, and to the area residents/property owners.
9. It shall be the policy of the City Council that the costs of all physical improvements will be borne by the property owners/resident or developer.
10. It shall be the policy of the City of Porterville to maintain the viability of agricultural productivity; i.e. protecting and conserving as much agricultural land as possible in the area surrounding the Porterville community.
11. It shall be the policy of the City of Porterville that the applicant for annexation present proposals to the Project Review Committee and explain the particulars of the area under consideration for possible annexation, including a plan for services.
12. It shall be the policy of the City of Porterville to consider any requests for annexation or extra-territorial services in a manner consistent with the procedures adopted by resolution of the City Council.

PASSED, APPROVED AND ADOPTED this 21<sup>st</sup> day of October, 2014.

  
Milt Stowe, Mayor

ATTEST:

John D. Lollis, City Clerk

By:   
Patrice Hildreth, Chief Deputy City Clerk

STATE OF CALIFORNIA    )  
CITY OF PORTERVILLE    )       SS  
COUNTY OF TULARE     )

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at regular meeting of the Porterville City Council duly called and held on the 21<sup>st</sup> day of October, 2014.

THAT said resolution was duly passed, approved, and adopted by the following vote:

|          |       |      |       |          |         |
|----------|-------|------|-------|----------|---------|
| Council: | REYES | WARD | STOWE | HAMILTON | GURROLA |
| AYES:    | X     |      | X     | X        | X       |
| NOES:    |       | X    |       |          |         |
| ABSTAIN: |       |      |       |          |         |
| ABSENT:  |       |      |       |          |         |

JOHN D. LOLLIS, City Clerk

  
By: Luisa M. Zavala, Deputy City Clerk



RESOLUTION 19-2016

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE  
ESTABLISHING PROCEDURES FOR ANNEXATIONS AND EXTENSION OF  
MUNICIPAL SERVICES

WHEREAS: On October 21, 2014, the City Council of the City of Porterville adopted two resolutions that defined objectives and policies, and established procedures for annexations and municipal services, respectively; and

WHEREAS: The on-going, severe drought of the past few years has created a situation where hundreds of parcels in the East Porterville area are experiencing dry wells, or wells of substandard water quality. State and regional agencies have come together with the City to identify and develop a long-term solution to this crisis, which will involve a significant infrastructure project to allow extension of municipal water services to the area. Not all parcels within the subject area meet the mandatory findings for extra-territorial service agreements as identified in the City's current procedures.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Porterville does hereby amend existing procedures to submit application for municipal services, and to have said application(s) processed as outlined in Exhibit "A", attached. The exemption identified for the East Porterville Feasibility Study Project Area will apply to the area represented in Exhibit "B".

PASSED, APPROVED AND ADOPTED this 19<sup>th</sup> day of April, 2016.

  
\_\_\_\_\_  
Milt Stowe, Mayor

ATTEST:

John D. Lollis, City Clerk

BY   
\_\_\_\_\_  
Luisa Zavala, Deputy City Clerk

All properties requesting annexation or extraterritorial services are subject to the procedures established below unless otherwise stated. Compliance with City of Porterville procedures does not guarantee approval by LAFCo of annexations or extra-territorial service agreements. Upon request for an annexation or extraterritorial services request, staff will evaluate whether the applicant's property is within the City's Urban Development Boundary or Urban Area Boundary and explain the process.

## **ANNEXATION APPLICATION PROCEDURE**

1. A complete annexation application packet includes: fees, an Irrevocable Agreement to Annex, information as needed to define a deed restriction specific to land use and zoning, Application for Annexation, and other materials as required with those applications respectively.
2. On receipt of an application as outlined above, all materials will be considered by the Project Review Committee, who will coordinate in a pre-consultation process with LAFCO staff and the County Public Works Department for review and recommendation.
3. During review by the Project Review Committee of the necessary application and data, staff will prepare a report and findings on all aspects of the proposed action(s).
4. An environmental document will be prepared pursuant to the California Environmental Quality Act (CEQA), reviewing the potential environmental effect of the proposed activities. The Zoning Administrator will make an initial determination of the level of environmental review required.
5. After proper noticing, a public hearing will be held for the City Council to hear comments related to the project at a regularly scheduled meeting. The Council will authorize staff to initiate the application with LAFCo. Documents will be filed in accordance with the Cortese-Knox-Hertzberg Act of 2000, as amended, and submitted to the Local Agency Formation Commission for its review, recommendation and action.
6. On consummation by the City Council, the City Clerk shall submit the necessary materials to the State Board of Equalization with the appropriate acreage fees, which are paid by the Applicant.
7. In the event the annexation fails, either by dissenting votes of the City Council or at hearing at LAFCo, the City Council may approve an extraterritorial service agreement within the Urban Development Boundary, subject to conditions identified in the deed restriction.

## **ANNEXATION EXEMPTION PROCEDURE**

Where a certain property meets all of the following criteria, they may proceed with an Extraterritorial Service Agreement for water or storm-water drainage without first attempting annexation, subject to the conditions of Extraterritorial Service Agreements as defined below.

1. Previously developed single family residences on parcels 24,999 square feet or smaller, OR a school developed by a State funded school district.
2. The parcel requesting services must be immediately adjacent to a municipal main providing the requested service, or the property owner shall provide for the extension of the main line to City standards at their expense.

## **EXTRATERRITORIAL SERVICES APPLICATION PROCEDURE**

Extraterritorial Service connections may be made subject to the following conditions. Note specific parameters and the required findings for connections in the Urban Development Boundary and the Urban Area Boundary.

1. Application: A complete extraterritorial services application packet includes: fees, an Irrevocable Agreement to Annex, information as needed to define a deed restriction specific to land use and zoning, and other materials as required with those applications respectively.
2. General Plan Consistency:
  - a. Proposed Uses and Improvements: Service connections are to be withheld from proposed uses and improvements that would not be consistent with the adopted Land Use Element of the Porterville Area General Plan and the City of Porterville General Plan.
  - b. Existing Uses and Improvements: Service connections to existing uses and improvements which are not consistent with the adopted Land Use Element of the Porterville Area General Plan and the City of Porterville General Plan shall be considered at the discretion of the City Council, and may be subject to other restrictions.
3. Agreements and covenants:
  - a. A deed restriction specific to land use and zoning must be approved by the property owner and the City Council, and recorded with the County of Tulare upon the property, at the applicant's cost.
  - b. An irrevocable agreement to annex must be signed by the property owner and recorded with the County of Tulare upon the property, at the applicant's cost.
4. Time limitations: The City Manager or his designee, or the City Council may condition the approval of applications for service connections by establishing a time frame within which connections must be made to avoid re-application.
5. Improvement Plans: Applications for service connections, which necessitate the extension of one or more municipal facilities to property in order to make such connections, shall be conditioned by the City Manager or his designee, or the City Council to require that Construction Drawings of the intended public improvements be submitted to the City Engineer for plan check and approval. Costs incurred for the preparation of improvement plans, and certain off-site construction and/or installation costs related to extending facilities, shall be the responsibility of the applicant.
6. Fees: Prior to the issuance of a Connection Permit, payment must be made to the City of Porterville of all fees pertinent to the respective service connection, or connections, approved by the City Manager or his designee, or the City Council.

Within the Urban Development Boundary:

For connection of water or storm-water facilities, the requesting party must fully fund the extension of infrastructure if it does not already exist in order to connect. The City of Porterville Wastewater Facility is a regional facility and as such, an extraterritorial service request cannot be denied; however, the requesting party must fund a fair share of the extension of infrastructure if it does not already exist in order to connect. Contract services for police, fire, or building inspection services shall be approved by resolution of the City Council.

For connection of water or storm-water facilities, the following findings must be made in order for the Council approve an extraterritorial service connection:

- That the subject property is a previously developed single family residence on a parcel 24,999 square feet or smaller, OR a school developed by a State funded school district.
- That failure to connect to municipal services would result in a threat to public health or safety of affected residents.
- That connection of the subject property would not result in a negative impact to the City of Porterville water and/or storm-water system.
- That the subject property is not within an island as defined by Tulare LAFCo.
- That an attempt to annex the subject site is not realistic given current city limit boundaries. Specifically, the parcel is too far removed from the city limit, and/or the number and valuation of adjacent parcels would result in a failed annexation effort.

Within the Urban Area Boundary:

For connection of water or storm-water facilities, the requesting party must fully fund the extension of infrastructure if it does not already exist in order to connect. The City of Porterville Wastewater Facility is a regional facility and as such, an extraterritorial service request cannot be denied; however, the requesting party must fund a fair share of the extension of infrastructure if it does not already exist in order to connect. Contract services for police, fire, or building inspection services shall be approved by resolution of the City Council.

For connection of water or storm-water facilities, the following findings must be made in order for the Council approve an extraterritorial service connection:

- That the subject property is a previously developed single family residence on a parcel 24,999 square feet or smaller, OR a school developed by a State funded school district.
- That failure to connect to municipal services would result in a threat to public health or safety of affected residents.
- That connection of the subject property would not result in a negative impact to the City of Porterville water and/or storm-water system.

## **EXEMPTIONS AND EXCEPTIONS**

1. PVPUD: Connections to Porterville Regional Sewage Treatment Facilities serving uses and improvements to property within the boundaries and jurisdiction of the Porter Vista Public Utility District (PVPUD) are exempted from application to the City of Porterville. Interested parties should contact the PVPUD for information on connection requirements and fees pertaining

to sewer services. This exemption does not apply to requests for connection to Municipal Water and/or Master Storm Drain Facilities.

2. PRIOR APPROVALS: Porterville City Council approval of requests for connection to Regional Sewage Treatment, Municipal Water and/or Master Storm Drain Facilities as authorized prior to the adoption and effective date of the respective policies set forth herein shall remain valid and in force according to the terms and conditions initially specified at the time of approval, and re-application will not be required.

3. PROPERTIES WITHIN THE EAST PORTERVILLE FEASIBILITY STUDY PROJECT AREA: The California State Water Resources Control Board, in coordination with the Department of Water Resources Drought Task Force, is charged with preparing a feasibility study to define a long-term solution to the water related issues in East Porterville. Properties within that boundary would be permitted to apply for connection, whether in association with DWR, SWRCB, or at a later date, on their own. Such connections would be subject to the mandatory findings as outlined in this procedure, with the following exceptions:

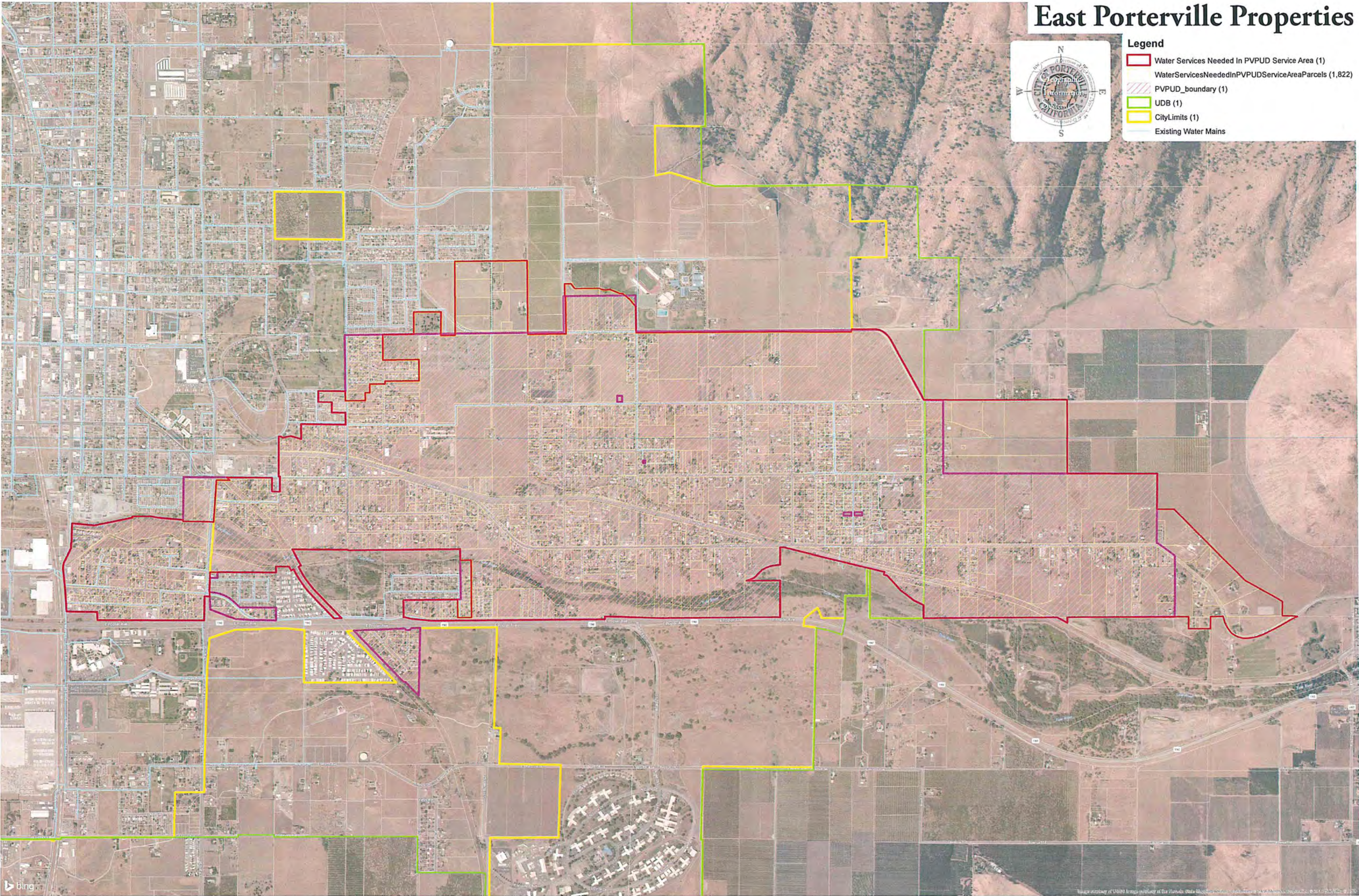
- Rather than require that the subject property be a developed single-family residence on a parcel 24,999 square feet or smaller, neither the land use nor the parcel size would be restricted neither the land use nor the parcel size would be restricted for legal and legal non-conforming structures and land uses existing as of April 29, 2016.
- Further, properties within certain islands in the EPFS Project Area would not be required to annex prior to connection. This exception does not limit the City of Porterville's authority to pursue annexation in the future, but rather waives the requirement that annexation must be approved prior to connection.



# East Porterville Properties



- Legend**
- Water Services Needed In PVPUD Service Area (1)
  - WaterServicesNeededInPVPUDServiceAreaParcels (1,822)
  - PVPUD\_boundary (1)
  - UDB (1)
  - CityLimits (1)
  - Existing Water Mains





STATE OF CALIFORNIA )  
CITY OF PORTERVILLE ) SS  
COUNTY OF TULARE )

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at regular meeting of the Porterville City Council duly called and held on the 19<sup>th</sup> day of April, 2016.

THAT said resolution was duly passed, approved, and adopted by the following vote:

| Council: | REYES | WARD | STOWE | HAMILTON | GURROLA |
|----------|-------|------|-------|----------|---------|
| AYES:    | X     | X    | X     | X        |         |
| NOES:    |       |      |       |          |         |
| ABSTAIN: |       |      |       |          |         |
| ABSENT:  |       |      |       |          | X       |

JOHN D. LOLLIS, City Clerk

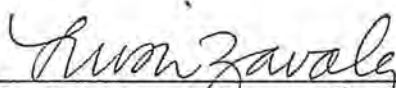
  
By: Luisa Zavala, Deputy City Clerk

EXHIBIT 'C'





EXHIBIT 'D'

### Scope of Work

| Task          | Description                                                 | Cost              |
|---------------|-------------------------------------------------------------|-------------------|
| 1.2           | Prepare Well Drilling Plans, Specifications, and Estimates  | \$468.00          |
| 3.2           | Prepare Well Equipping Plans, Specifications, and Estimates | \$1,526.00        |
| 5             | Ph. 1 Preconstruction Meeting                               | \$1,357.43        |
| <b>Total:</b> |                                                             | <b>\$3,351.43</b> |

Consulting Engineering work will be reimbursed directly to Dee Jaspar & Associates under Tulare County Agreement No. 1276, including the following Tasks:

|               |                                                             |                     |
|---------------|-------------------------------------------------------------|---------------------|
| Task 4.1      | Project Evaluations and Field Surveying                     | \$58,326.00         |
| Task 4.2      | Prepare Well Equipping Plans, Specifications, and Estimates | \$30,000.00         |
| Task 4.3      | Prepare and Assist with SCE Application & Telephone Service | \$5,000.00          |
| Task 4.4      | SCE Costs                                                   | \$15,000.00         |
| <b>Total:</b> |                                                             | <b>\$108,326.00</b> |

## **Discussion Draft**

### **Subject to Additional Review and Modification by the Parties**

Porterville MOU  
Draft 2  
June 15, 2016  
PortervilleEmergencyMOU061516



### **Memorandum of Understanding (MOU)**

Regarding the Provisions of Emergency Water Supplies to East Porterville

by the California Department of Water Resources (DWR), California Office of Emergency

Service (OES), the State Water Resources Control Board (SWRCB),

the County of Tulare (County), and City of Porterville (Porterville),

which are collectively known as the “Parties”

### **Recitals**

Whereas, some residents living in an unincorporated area of Tulare County, commonly known as “East Porterville,” have experienced loss of adequate water supply to their homes and properties as a result of severe drought conditions, which has caused significant hardship for the residents;

Whereas, Governor Edmund G. Brown Junior has directed all State agencies to assist these residents who are in need of water supplies with emergency and long-term assistance;

Whereas, Governor Edmund G. Brown Junior signed Assembly Bill 685 in 2012, adding Water Code section 106.3, which recognizes that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes, and which requires all relevant state agencies to consider this right when revising, adopting, or establishing pertinent policies, regulations, and grant criteria;

Whereas, the Parties have provided emergency water supplies to some residents of East Porterville that are without an adequate household water supply;

Whereas, the Parties to this MOU seek an emergency and long-term solution to the lack of adequate household water supply by developing and providing continuous water supplies to these residents;

Whereas, East Porterville is located east and adjacent to Porterville, which has an existing municipal water system that serves residents within the incorporated area of Porterville;

Whereas, some of the residents of East Porterville without an adequate household water supply could be connected to Porterville's municipal water system provided certain arrangements and projects are carried out by the Parties;

Whereas, Vandalia is a neighborhood located within Porterville, and some Vandalia residents lack adequate household water supply and these households could be connected to Porterville's municipal water system;

Whereas, the Parties have met and have discussed alternative plans and projects that would provide an emergency water supply from Porterville to some residents of East Porterville and Vandalia in an expeditious manner;

Whereas, to advance these projects, DWR has provided funding, as reflected in the agreement between DWR and Tulare attached as Exhibit 1, for a municipal well designated as "Well C1" located in Tulare County that ultimately could be used to supply water to these residents of East Porterville;

Whereas, the SWRCB has also provided funding for Well C1, as reflected in the agreement between the SWRCB and the County attached as Exhibit 2;

Whereas, the County and Porterville intend to execute an agreement, a draft of which is attached as Exhibit 3, that will connect Well C1 to Porterville's municipal water system and that will provide for an adequate household water supply for some residents of East Porterville; and

Whereas, the Parties have reached an understanding on how best to implement the project alternative that will provide an adequate household water supply to some residents of East Porterville and Vandalia, and alleviate the hardships in an expeditious, cost-effective manner.

## **Understanding**

### **A. Description of Emergency Project and Long-Term Plan**

1. The purpose of this MOU is to set forth in writing the intentions of the Parties of how best to move forward with plans to complete an emergency water supply project (Project) to some residents in the East Porterville and Vandalia areas, which are represented in Exhibit 4. (Map showing East Porterville and Porterville). The goal of the Project is to provide an adequate household water supply to some of the residents and properties in these areas that do not have one presently, and to end the need of the Parties to provide temporary water supplies to those residents through tanks and bottles.

2. The Parties intend to develop the Project in two phases. Phase 1 will make municipal water connections to the properties in East Porterville that have dry wells and are adjacent to Porterville's existing municipal water distribution system. It is estimated that this phase will serve 40 properties with dry wells that are currently receiving temporary household water supplies.

3. The Parties intend that Phase 2 of the Project will provide municipal water supply to approximately 500 properties in East Porterville and in Vandalia that have dry wells or otherwise lack an adequate source of water and have not been connected by Phase 1. In order to complete Phase 2, the residents of these properties will likewise need to connect to Porterville's municipal water system.

4. As soon as possible, Porterville and DWR will undertake Phase 1 of the Project and connect the properties in East Porterville that are adjacent to Porterville's existing municipal water distribution system. These connections will be accomplished as described in Water Installation Diagram attached as Exhibit 5 and based on the cost estimate, which is attached as Exhibit 6. In order to make these connections, a property owner desiring to receive public water supply will need to execute the Extraterritorial Service Agreement, a sample of which is attached as Exhibit 7, and the SWRCB's Water Connection Agreement, a sample of which is attached as Exhibit 8. Necessary signatures and agreements with property owners will be sought through SWRCB's outreach carried out with the assistance of all Parties to this MOU.

5. The Parties intend that Well C1 will be used to provide the emergency water supply in Phase 2 to about 500 properties without adequate household water supplies. The Parties presently understand that there are about 423 properties in East Porterville and approximately 80 properties in Vandalia where connections may be needed to provide emergency water supplies.

6. The Parties have created a Technical Workgroup consisting of engineers and planners, which work cooperatively on the technical issues described in this MOU. Based on recommendations of the Technical Workgroup, the Parties intend to provide the emergency water supply contemplated by this MOU.

7. The Parties intend to develop a Long-Term Water System Plan (Long-Term Plan) for the East Porterville area, which will serve other residents in the area besides those served by the Project. The Parties intend that the Project will be designed consistent with the Long-Term Plan to ensure that all water facilities constructed as part of the Project will be incorporated into the facilities ultimately developed through the Long-Term Plan. The first work product produced by the Technical Workgroup will be a Feasibility Study for the Long-Term Plan. The outline of the Feasibility Study is attached as Exhibit 9.

8. The Parties intend to use best efforts to complete both phases of the Project by December 31, 2016. The completion date of the Long-Term Plan is dependent on the completion of the Feasibility Study carried out by Technical Workgroup and on Porterville and/or the County applying for and securing sufficient funding from the SWRCB or from other sources. The Parties desire to complete the Long-Term Plan as expeditiously as possible.

## **B. Project Contributions of the Parties**

9. Working in cooperation with the other Parties and the Technical Workgroup, DWR will prepare all environmental compliance for the Project, and design and construct the Project, both Phases 1 and 2. DWR will provide funding for Phases 1 and 2 of the Project through Emergency Drought Funding. DWR intends to serve as California Environmental Quality Act (CEQA) lead agency for the Long-Term Plan and will prepare any necessary CEQA documentation and any other necessary environmental review documents, unless the Feasibility Study recommends another lead agency.

10. SWRCB will provide the community outreach to assist in obtaining necessary property owner acceptance before proceeding with Project. SWRCB will also work with Porterville and/or County to secure funding of the Long-Term Plan. SWRCB will provide certain reviews and approvals for the permitting of the Project and the Long-Term Plan.

11. OES will coordinate all of the State's efforts under the Governor's Drought Task Force in the Project area and will be provided at no cost by Porterville up to 3,000,000 gallons of emergency water per month as needed as a result of this MOU and the agreement that Porterville and the County are in the process of considering for execution, a draft of which is attached as Exhibit 3, with regard to the Well C1.

12. Porterville will provide the needed water service to the residents of East Porterville without an adequate household water supply after they are connected to Porterville's municipal water system as described in the Project. The water service will be accomplished per the Extraterritorial Service Agreement, which requires that property owners served pay the monthly water bill. DWR is funding the residents' connection to the Project, and as a result, some of the normal connection fees will be waived provided that connection is made during Phase 1 or Phase 2. Porterville will install the water meters for each connection, which will be paid for by DWR.

13. The County intends to execute an agreement with Porterville that is consistent with this MOU and Exhibit 3, which will allow Well C1 to serve as a water supply for the Project. The County will inspect the work of the Project and the property connections at no cost to the residents.

14. The Parties to the MOU will cause the removal of all temporary water tanks from the properties upon completion of the Project and the appurtenances necessary for the receipt of municipal water service. The work for removing the water tanks will be carried out by the County under an agreement between the County and OES.

## **C. General Provisions**

15. The Parties intend to use their best efforts to carry out this MOU. This MOU is not a binding agreement, and is not intended to create contractual rights and remedies among the Parties. However, the Parties have entered into and intend to enter into certain binding agreements in the future necessary to develop and complete the Project and the Long-Term Plan.

16. This MOU will become effective upon the signature of the all Parties. The MOU will terminate on December 31, 2016, unless extended by all of the Parties in writing.

[Signatures on following page]

This MOU has been executed by:

California Department of Water Resources

State Water Resources Control Board

---

---

---

---

California Office of Emergency Services

County of Tulare

---

---

---

---

City of Porterville

---

---



### List of Exhibits

1. DWR and Tulare County Executed Well C1 Agreement
2. SWRCB and County Executed Well C1 Agreement (Water Board Grant #D-15-11-902)
3. County and Porterville Draft Well Agreement
4. Map of East Porterville
5. Household Water Service Installation Diagram
6. Household Water Service Cost Estimate
7. Sample Extraterritorial Service Agreement
8. Sample SWRCB Water Connection Agreement
9. Draft Emergency Project Feasibility Study



Amendment No. 1

To the East Porterville Water Supply Project

Memorandum of Understanding (MOU)

Regarding the Provisions of Emergency Water Supplies to East Porterville  
by the California Department of Water Resources (DWR), California Office of  
Emergency Service (OES), the State Water Resources Control Board (SWRCB),  
the County of Tulare (County), and City of Porterville (Porterville),  
which are collectively known as the "Parties"

This Amendment No.1 to the MOU is made this 7<sup>th</sup> day of November, 2016. As described below, this Amendment No.1 recognizes the MOU is still in effect, modifies certain sections of this MOU, and adds new sections to the MOU.

**Recitals**

Whereas, some residents living in an unincorporated area of Tulare County, commonly known as "East Porterville," have experienced loss of adequate water supply to their homes and properties as a result of severe drought conditions, which has caused significant hardship for the residents;

Whereas, Governor Edmund G. Brown Junior has directed all State agencies to assist these residents who are in need of water supplies with emergency and long-term assistance;

Whereas, the Parties to this MOU seek an emergency and long-term solution to the lack of adequate household water supply by developing and providing continuous water supplies to these residents;

Whereas, to advance these projects, DWR and the SWRCB have provided funding, as reflected in Exhibits 1 and 2, for a municipal well designated as "Well C1" located in Tulare County that ultimately could be used to supply water to these residents of East Porterville;

Whereas, the Parties have reached an understanding on how best to implement the project alternative that will provide an adequate household water supply to some residents of East Porterville and Vandalia, and alleviate the hardships in an expeditious, cost-effective manner:

Whereas, the purpose of this amendment is to clarify some sections of the MOU and to add several new sections.

NOW THEREFORE, IT IS MUTUALLY AGREED that the following changes are hereby made to the MOU:

1. Section A (2) is amended to read as follows:

The Parties intend to develop the Project in two phases. Phase 1 will make municipal water connections to the properties in East Porterville and Vandalia that have dry wells and/or water tanks. It is estimated that this phase will serve approximately 300 properties.

2. Section A (3) is amended to read as follows:

The Parties intend that Phase 2 of the Project will provide municipal water supply to approximately 800 properties in East Porterville by connecting them to the City of Porterville's water system. The total number of homes eligible for this Project is approximately 1,100.

3. Section A (5) is amended to read as follows:

The Parties intend that Well C1 will be used to provide the initial water supply. The Parties acknowledge the delay in Well C1 completion. To mitigate the effects of this on the residents of East Porterville, the City of Porterville will allow connections of homes as they become prepared for connection. These early connections will be beyond the initial 70 connections (previously 40 connections) agreed to, given the availability of capacity during the winter months. However, these additional connections to the City's water system will cease on March 1, 2017, if Well C1's connection to the City's water system is not completed by then.

4. Sections A (7) b-f shall be added and made part of this MOU:

7 (a). The Parties intend to develop a Long-Term Water System Plan (Long-Term Plan) for the East Porterville area, which will serve other residents in the area besides those served by the Project. The Parties intend that the Project will be designed consistent with the Long-Term Plan to ensure that all water facilities constructed as part of the Project will be incorporated into the facilities ultimately developed through the Long-Term Plan. The first work product produced by the Technical Workgroup will be a Feasibility Study for the Long-Term Plan. The outline of the Feasibility Study is attached as Exhibit 9.

(b). The East Porterville Water Supply Project Hydraulic Analysis Report ("Hydraulic Analysis Report," which is attached as Exhibit 10) determined that the water supply capacity required to serve all eligible residents of East Porterville is 1,435 gallons per minute (gpm). This capacity shall be based on the sustainable yield of the wells which is defined as 75 percent of the initial design capacity. Since Well C1 has a sustainable yield of 600 gpm, the Parties agree that the State will fund the construction and equipping of additional wells to provide the 835 gpm shortfall.

(c). Based on the Hydraulic Analysis, a 700,000 gallon water storage tank is required to serve the residents of East Porterville. However, based on Porterville's master plan recommendations, a 1.2 million-gallon storage tank is required for the City's buildout. The Parties therefore intend to construct a 1.2 million-gallon storage tank with cost sharing between the State and the City. The State will fund the cost of a 700,000 gallon tank required for the Project and the City of Porterville will fund the cost of the additional 500,000 gallons of storage required for the City's future use as contained in its master plan. The cost-sharing shall be proportional to the tank capacity being funded.

(d). The Parties intend to upgrade the existing Henderson-Plano Booster Pump Station and the Granite Hills Intertie which would facilitate water supply to the East Pressure Zone which serves East Porterville. The State will fund the construction of one booster pump rated at 2,100

gpm along with a variable frequency drive and the Granite Hills Intertie. The City will fund the replacement of its two existing pumps along with associated variable frequency drives as part of Phase 2 of the Project. These two pumps are more than 30-years old and their replacement will enable the City's water system to operate more efficiently and in a cost-saving manner.

(e). The Parties further agree that a booster pump station of capacity 1,670 gpm is required to convey water from the West Pressure Zone, where the new wells will be located, to the Central Pressure Zone for onward conveyance to East Porterville. The State will fund the construction of this booster pump station.

(f). Given that Well C1 has an estimated sustainable yield of 600 gpm, as well as a unit demand of 0.833 gpm per home connection based on the Hydraulic Analysis , Well C1 could effectively serve up to 720 households . The Parties agree that home connections for Phase 2 of the Project can begin as soon as Well C1 is connected to the City's water system, and the Henderson-Plano Booster Pump Station upgrade and the Granite Hills Intertie are completed. These home connections shall cease when the capacity of Well C1 is exceeded. Thereafter, additional home connections will be made after the construction of additional wells or if City staff determines that the water system can support additional home connections.

5. Section (C) 16 is amended to read as follows:

16. This MOU will become effective upon the signature of the all Parties. The MOU will terminate on June 30, 2018, unless extended by all Parties in writing.

6. The list of the Exhibits at the end of MOU is amended to read as follows:

1. DWR and Tulare County Executed Well C1 Agreement
2. SWRCB and County Executed Well C1 Agreement (Water Board Grant #D-15-11-902)
3. County and Porterville Draft Well Agreement
4. Map of East Porterville
5. Household Water Service Installation Diagram
6. Household Water Service Cost Estimate
7. Sample Extraterritorial Service Agreement
8. Sample SWRCB Water Connection Agreement
9. Draft Feasibility Study for the Long-Term Plan
10. East Porterville Water Supply Project Hydraulic Analysis Report

This MOU has been executed by:

California Department of Water Resources

State Water Resources Control Board

---

California Office of Emergency Services

---

County of Tulare

---

City of Porterville

---



EDMUND G. BROWN JR.  
GOVERNOR



MATTHEW RODRIGUEZ  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

## State Water Resources Control Board

NOV 29 2017

The Honorable Milt Stowe  
Mayor of City of Porterville  
291 North Main Street  
Porterville, CA 93257

RECEIVED

DEC 04

CITY OF PORTERVILLE  
CITY MANAGER

Dear Mayor Stowe:

The Department of Water Resources and the State Water Resources Control Board are requesting an increase to the number of household connections from 720 to 800 to the City of Porterville (City) water system, prior to the completion of the East Porterville Emergency Water Supply Project – Phase 2 (Project). The construction of all facilities is estimated to be completed by June 2019.

According to Section A(7)(f) of Amendment No. 1 to the Project's Memorandum of Understanding (MOU), the estimated sustainable yield of Well C1 is 600 gallons per minute (gpm) and therefore will serve up to 720 households. Our current projections show that approximately 800 households will need to be connected by the end of 2017.

Our current plans are to drill two additional wells which would add more than 835 gpm of sustainable yield to the City's water supply, pending land acquisition by the City. Further, our calculations indicate that Well C1 is currently capable of producing 800 gpm in the interim, which can support a total of 960 households in the short term. It is our hope that the City will complete acquisition of the properties needed to drill the two additional wells in a timely manner to ensure that the City's water supply does not become stressed.

We look forward to hearing favorably from you and thank you for your continued support in providing safe drinking water to the residents of East Porterville.

Sincerely,



James Maughan, Assistant Deputy Director  
Division of Financial Assistance

cc: See next page

**DEPARTMENT OF WATER RESOURCES**

SOUTH CENTRAL REGION OFFICE  
3374 EAST SHIELDS AVENUE, ROOM 3  
FRESNO, CA 93726-6913



January 18, 2018

Mr. Michael K. Reed  
Public Works Director  
City of Porterville  
291 North Main Street  
Porterville, California 93257

RECEIVED

JAN 22 2018

City of Porterville  
Public Works Dept

Approval of Funding from Local Assistance Funds to the City of Porterville for the  
County Areas Water Supply Project

Dear Mr. Reed:

Your request for funds to accomplish the city of Porterville's scope of work to connect drought-impacted households in seven Tulare County areas bounded by the city has been approved. The approved funding is not to exceed the amount of \$2,812,946.00. The term of the funding is from January 18, 2018, to December 31, 2019.

The purpose of this funding is for the city of Porterville to effectuate the connection of the drought-impacted homes in seven county areas to the city's water distribution system. The project comprises water main extensions, home connections, and well destructions. These homes have been identified as having private residential wells, and the homeowners have voluntarily elected to join the project. As part of their election to participate in the project, the homeowners have consented to having their groundwater wells destroyed.

A grant agreement is being developed and will be sent to you for approval. You are allowed to start incurring costs from January 18, 2018. No reimbursement will be issued until the contract agreement is executed.

If you have any questions or need additional information regarding the agreement, please contact Steve Doe by email at [Steve.Doe@water.ca.gov](mailto:Steve.Doe@water.ca.gov) or by phone at (559) 230-3348.

Sincerely,

Kevin Faulkenberry, Chief  
South Central Region Office



## Executive Department

State of California

### EXECUTIVE ORDER B-40-17

**WHEREAS** California has endured a severe multi-year drought that has threatened the water supplies of communities and residents, devastated agricultural production in many areas, and harmed fish, animals and their environmental habitats; and

**WHEREAS** Californians responded to the drought by conserving water at unprecedented levels, reducing water use in communities by more than 22% between June 2015 and January 2017; and

**WHEREAS** the State Water Resources Control Board, the Department of Water Resources, the Department of Fish and Wildlife, the Office of Emergency Services, and many other state agencies worked cooperatively to manage and mitigate the effects of the drought on our communities, businesses, and the environment; and

**WHEREAS** the State provided 66,344,584 gallons of water to fill water tanks for communities suffering through drought-related water shortages, outages, or contamination, and provided emergency assistance to drill wells and connect communities to more robust water systems; and

**WHEREAS** the State took a number of important actions to preserve and protect fish and wildlife resources, including stream and species population monitoring, fish rescues and relocations, infrastructure improvements at trout and salmon hatcheries, and infrastructure to provide critical habitat for waterfowl and terrestrial animals; and

**WHEREAS** the State established a Statewide Water Efficiency and Enhancement Program for agricultural operations that provides financial assistance for the implementation of irrigation systems that save water; and

**WHEREAS** water content in California's mountain snowpack is 164 percent of the season average; and

**WHEREAS** Lake Oroville, the State Water Project's principal reservoir, is 101 percent of average, Lake Shasta, the federal Central Valley Project's largest reservoir, is at 110 percent of average, and the great majority of California's other major reservoirs are above normal storage levels; and

**WHEREAS** despite winter precipitation, the effects of the drought persist in areas of the Central Valley, including groundwater depletion and subsidence; and

**WHEREAS** our changing climate requires California to continue to adopt and adhere to permanent changes to use water more wisely and to prepare for more frequent and persistent periods of limited water supply; and





**WHEREAS** increasing long-term water conservation among Californians, improving water use efficiency within the State's communities and agricultural production, and strengthening local and regional drought planning are critical to California's resilience to drought and climate change.

**NOW, THEREFORE, I, EDMUND G. BROWN JR.,** Governor of the State of California, in accordance with the authority vested in me by the Constitution and statutes of the State of California, do hereby **TERMINATE THE JANUARY 17, 2014 DROUGHT STATE OF EMERGENCY** for all counties in California except the Counties of Fresno, Kings, Tulare, and Tuolumne.

**I FURTHER ORDER THAT:**

1. The orders and provisions contained in my April 25, 2014 Emergency Proclamation, as well as Executive Orders B-26-14, B-28-14, B-29-15, and B-36-15 are rescinded.
2. The orders and provisions contained in Executive Order B-37-16, **Making Water Conservation a California Way of Life**, remain in full force and effect except as modified by this Executive Order.
3. As required by the State Emergency Plan and Government Code section 8607(f), the Office of Emergency Services, in coordination with other state agencies, shall produce an after-action report detailing the State's response to the drought and any lessons learned in carrying out that response.

**MAINTAINING CONSERVATION AS A WAY OF LIFE**

4. The State Water Resources Control Board (Water Board) shall continue development of permanent prohibitions on wasteful water use and requirements for reporting water use by urban water agencies, and to provide a bridge to those permanent requirements, shall maintain the existing emergency regulations until they expire as provided by the Water Code. Permanent restrictions shall prohibit wasteful practices such as:
  - Hosing off sidewalks, driveways and other hardscapes;
  - Washing automobiles with hoses not equipped with a shut-off nozzle;
  - Using non-recirculated water in a fountain or other decorative water feature;
  - Watering lawns in a manner that causes runoff, or within 48 hours after measurable precipitation; and
  - Irrigating ornamental turf on public street medians.
5. The Water Board shall rescind those portions of its existing emergency regulations that require a water supply stress test or mandatory conservation standard for urban water agencies.



6. The Department of Water Resources (Department) shall continue work with the Water Board to develop standards that urban water suppliers will use to set new urban water use efficiency targets as directed by Executive Order B-37-16. Upon enactment of legislation, the Water Board shall adopt urban water use efficiency standards that include indoor use, outdoor use, and leaks as well as performance measures for commercial, industrial, and institutional water use. The Department shall provide technical assistance and urban landscape area data to urban water suppliers for determining efficient outdoor use.
7. The Water Board and the Department shall continue to direct actions to minimize water system leaks that waste large amounts of water. The Water Board, after funding projects to address health and safety, shall use loans from the Drinking Water State Revolving Fund to prioritize local projects that reduce leaks and other water system losses.
8. The Water Board and the Department shall continue to take actions to direct urban and agricultural water suppliers to accelerate their data collection, improve water system management, and prioritize capital projects to reduce water waste. The California Public Utilities Commission is requested to work with investor-owned water utilities to accelerate work to minimize leaks.
9. The Water Board is further directed to work with state agencies and water suppliers to identify mechanisms that would encourage and facilitate the adoption of rate structures and other pricing mechanisms that promote water conservation.
10. All state agencies shall continue response activities that may be needed to manage the lingering drought impacts to people and wildlife. State agencies shall increase efforts at building drought resiliency for the future, including evaluating lessons learned from this current drought, completing efforts to modernize our infrastructure for drought and water supply reliability, and shall take actions to improve monitoring of native fish and wildlife populations using innovative science and technology.

#### **CONTINUED DROUGHT RESPONSE IN FRESNO, KINGS, TULARE, AND TUOLUMNE COUNTIES**

11. The Water Board will continue to prioritize new and amended safe drinking water permits that enhance water supply and reliability for community water systems facing water shortages or that expand service connections to include existing residences facing water shortages.
12. The Department and the Water Board will accelerate funding for local water supply enhancement projects and will continue to explore if any existing unspent funds can be repurposed to enable near-term water conservation projects.
13. The Water Board will continue to work with local agencies to identify communities that may run out of drinking water, and will provide technical and financial assistance to help these communities address drinking water





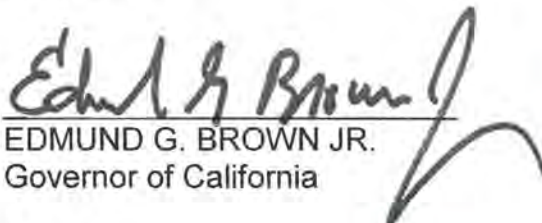
shortages. It will also identify emergency interconnections that exist among the State's public water systems that can help these threatened communities. The Department, the Water Board, the Office of Emergency Services, and the Office of Planning and Research will work with local agencies in implementing solutions to those water shortages.

14. For actions taken in the Counties of Fresno, Kings, Tulare, and Tuolumne pursuant to directives 11–13, the provisions of the Government Code and the Public Contract Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements, as well as Division 13 (commencing with section 21000) of the Public Resources Code and regulations adopted pursuant to that Division, are hereby suspended. These suspensions apply to any actions taken by state agencies, and for actions taken by local agencies where the state agency with primary responsibility for implementing the directive concurs that local action is required, as well as for any necessary permits or approvals required to complete these actions.
15. California Disaster Assistance Act Funding is authorized until June 30, 2017 to provide emergency water to individuals and households who are currently enrolled in the emergency water tank program.
16. State departments shall commence all drought remediation projects in Fresno, Kings, Tulare, and Tuolumne Counties within one year of the date of this Executive Order.

This Executive Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

**I FURTHER DIRECT** that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 7th day of April 2017.

  
EDMUND G. BROWN JR.  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State





## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Request for Proclamation - Harvey Milk Day - May 22, 2019

**SOURCE:** Administrative Services

**COMMENT:** At its meeting of October 1, 2013, the City Council amended the process by which Proclamations are approved, and affirmed the process at its meeting on February 21, 2017. The process requires that all Proclamations must be sponsored by one (1) Council Member, after which the request is then placed on the Council's agenda for consideration and approval by a majority of the Council.

The Tulare County Stonewall Democrats has requested that the Council consider a request to proclaim May 22, 2019, as "Harvey Milk Day." Council Member Peñaloza is sponsoring this Proclamation request. If approved, the applicant requests that the Proclamation be presented at the City Council meeting on May 21, 2019.

**RECOMMENDATION:** That the City Council consider approval of the request to proclaim May 22, 2019, as "Harvey Milk Day."

**ATTACHMENTS:** 1. Proclamation Request

Appropriated/Funded: N/A

**Review By:**

Department Director:

Patrice Hildreth, Administrative Services Dir

Final Approver: John Lollis, City Manager



City of Porterville  
**REQUEST FOR PROCLAMATION**

Date of Request: April 11, 2019

Name of Event/Individual: Harvey Milk Day  
i.e. "Porterville Tourism Week", "Mr. John Doe"

Name of Sponsoring Organization: Tulare County Stonewall Democrats

Name of Contact Person: Brock Neeley

Address: 1279 W. Henderson #124 - Porterville CA 93257

Phone: (559) 471-0320 FAX: \_\_\_\_\_

E-mail: tcstonewalldems@gmail.com

I would like the proclamation: ☒ presented at a Council Mtg. ☐ mailed ☐ call for pick-up

Date(s) of Event: May 22nd

Date of Council Meeting to be presented, if applicable: Tuesday May 20, 2019  
(Council meets 1<sup>st</sup> and 3<sup>rd</sup> Tuesdays of each month.)

Individual or representative attending Council Meeting to receive proclamation:

Brock Neeley, John Coffee

Please attach a sample of your proclamation, or the pertinent information needed to formulate your proclamation. If assistance is needed, or if you need a sample provided, or to return this form, contact:

Office of City Clerk  
291 North Main Street  
Porterville, CA 93257  
(559) 782-7464 / Fax (559) 782-7452

All requests require a sponsorship by a member of the Council prior to being placed on a City Council Agenda for consideration, and are subject to approval by a majority of the Council. Please see the attached language regarding the process and timelines for submittal.

**RECEIVED**

**APR 11 2019**

City Clerk's Section

Request Received by CITY CLERK OFFICE Sponsored by: Penalosa Date: 4/30/19

Approved by Council: yes ☐ no ☐ Date: \_\_\_\_\_

Notification to Contact person done (date): \_\_\_\_\_ in writing ☐ by phone ☐

Items (s) ☐ mailed \_\_\_\_\_ ☐ faxed \_\_\_\_\_ ☐ picked up \_\_\_\_\_

Comment: \_\_\_\_\_

## PROCLAMATION

Whereas the first openly gay politicians to hold office in California, San Francisco Supervisor Harvey Milk is remembered as a hero in the movement for acceptance of lesbian, gay, bisexual and transgender people. His courage in facing a hostile public and his insistence on being treated the same as anyone else contributed greatly to the advancement of this cause. Milk succeeded because he was not just a gay leader but a champion for his district, a brilliant coalition builder and a community organizer who brought the real concerns of ordinary people to city hall. His legacy lives on in the vibrant neighborhoods of San Francisco, which he helped restore to vitality at a time when American cities were in crisis and,

Whereas today, is the 89th anniversary of his birth, I urge all Porterville residents to remember Harvey Milk for his contributions to the more open, free and honest society that we live in today. We should also remember how he died, at the hands of a fellow supervisor, a killing that Milk himself had anticipated because of the virulent opposition he faced. On this day, let us rededicate ourselves not only to the cause of equal rights for all people, but also to the peaceful and democratic process envisioned by our nation's founders.

NOW THEREFORE I, Martha Flores, Mayor of the City of Porterville, on behalf of the City Council, do hereby proclaim May 22, 2019, as "Harvey Milk Day."



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Second Reading - Ordinance 1853 - Cannabis Business Regulations

**SOURCE:** Administrative Services

**COMMENT:** Ordinance No. 1853, An Ordinance of the City Council of the City of Porterville Amending Chapter 15, Article VII of the Porterville Municipal Code "Medical Marijuana Dispensaries," Renaming the Article "Cannabis Dispensaries," Allowing Cannabis Dispensary Businesses and Establishing Permitting Procedures and Regulations, was given first reading on April 16, 2019, and has been printed.

Consistent with approval of the Ordinance, staff anticipates having a Draft Development Agreement for the Council's consideration and review at its May 21st regular meeting, as well as a suggested Request for Proposals process.

**RECOMMENDATION:** That the Council give Second Reading to Ordinance No. 1853, waive further reading, and adopt said Ordinance.

**ATTACHMENTS:** 1. Ordinance No. 1853

**Appropriated/Funded:**

**Review By:**

Department Director:

Patrice Hildreth, Administrative Services Dir

Final Approver: John Lollis, City Manager



## ORDINANCE NO. 1853

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE AMENDING CHAPTER 15, ARTICLE VII OF THE PORTERVILLE MUNICIPAL CODE “MEDICAL MARIJUANA DISPENSARIES,” RENAMING THE ARTICLE “CANNABIS DISPENSARIES,” ALLOWING CANNABIS DISPENSARY BUSINESSES AND ESTABLISHING PERMITTING PROCEDURES AND REGULATIONS**

WHEREAS, California legislation provides that the City of Porterville has the power to regulate commercial cannabis activities, including the regulations of cannabis dispensaries; and

WHEREAS, the City Council of the City of Porterville finds that it is in the best interest of the community to allow the establishment a limited number of cannabis dispensaries, subject to the regulations set forth below and the location requirements proscribed in Chapter 21 of the Municipal Code (Porterville Development Code);

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PORTERVILLE HEREBY ORDAINS as follows:

SECTION 1. Purpose. The purpose of this ordinance is to permit and regulate legal cannabis businesses in the City of Porterville.

SECTION 2. Article VII of Chapter 15 is hereby renamed “Cannabis Dispensaries,” and Sections 15-85 through 15-105 of Article VII are added as follows:

#### CHAPTER 15

#### ARTICLE VII – CANNABIS DISPENSARIES

**15-85: Definitions.** The following definitions are applicable to the terms when used in Porterville Municipal Code Chapters 15, 18, or 21, concerning regulations pertaining to cannabis uses, activities and operations.

“Applicant” means a person who is required to file an application for a permit under this section.

"Business Owner" means the owner(s) of the Cannabis Business. For publicly traded companies, owner means the chief executive officer or any person or entity with an aggregate ownership interest of 5% or more. For all other businesses, other than publicly traded companies, an owner is an individual that has an aggregate ownership of interest other than a lien or encumbrance, of 20% or more in the commercial cannabis business.

"Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties; whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant;



and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from cannabis. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purposes of this Code, "cannabis" does not mean "industrial hemp" as defined by Section 11018.5 of the Health and Safety Code.

"Cannabis accessories" means any equipment, products, or materials of any kind which is intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, smoking, vaporizing, or containing cannabis, or for ingesting, inhaling, or otherwise introducing cannabis or cannabis products into the human body. "Cannabis accessories" also has the same meaning as in Section 11018.2 of the Health and Safety Code.

"Cannabis business" or "cannabis industry" means any business activity in the City relating to cannabis, including but not limited to cultivation (including nurseries), transportation, distribution, manufacture, compounding, conversion, processing, preparation, testing, storage, packaging, delivery and sales (wholesale and/or retail sales) of cannabis or cannabis products, whether or not carried on for gain or profit. A cannabis business does not include any business whose only relationship to cannabis or cannabis products is the production or sale of cannabis accessories.

"Cannabis Dispensary" or "Dispensary" means a facility where cannabis or cannabis products, are offered, either individually or in combination, for retail sale, including an establishment that engages in delivery of cannabis or cannabis products as part of a retail sale. In addition, and without limiting the foregoing, "dispensary" includes "dispensary" as defined in California Business and Professions Code Division 10 and any successor statute(s), as may be adopted or amended from time to time. For the purposes of obtaining a City permit and operating within the City, "Cannabis Dispensary" or "Dispensary" is limited to Storefront Cannabis Retailers.

"Cannabis product" means any product containing cannabis, including, but not limited to, flowers, buds, oils, tinctures, concentrates, extractions, edibles and those products described in Section 11018.1 of the Health and Safety Code.

"City" means the City of Porterville, either the entity or its territorial limits, as the context requires.

"City Council" or "Council" means the City Council of the City of Porterville.

"Collector" means the City's Financial Director or his or her designee.

"Commercial Cannabis Business," "Commercial Cannabis Activity," or "Cannabis Business" or "Cannabis Operation" means any commercial marijuana activity allowed under State Law and the implementing regulations, as State Law and the implementing regulations may be amended from time to time, and all uses permitted under any subsequently enacted State law

pertaining to the same or similar uses for recreational cannabis, including the cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, delivery or sale of cannabis and cannabis product for medical, non-medical, or any other purpose and includes the activities of any business licensed by the State or other government entity under Division 10 of the California Business and Professions Code, or any provision of State law regulating the licensing of cannabis businesses. It also includes cannabis dispensaries, cooperatives or collectives.

"Commercial Cannabis Regulatory Permit" or "Regulatory Permit" means the permit required under this section to have a Cannabis Business.

"Concentrated cannabis" means manufactured cannabis that has undergone a process to concentrate one or more active cannabinoids, thereby increasing the product's potency. Resin from granular trichomes from a cannabis plant is a concentrate.

"Delivery" means the commercial transfer of cannabis or cannabis products to a customer. "Delivery" also includes the use by a retailer of any technology platform owned and controlled by the retailer, or independently licensed under this division that enables customers to arrange for or facilitate the commercial transfer by a licensed retailer of marijuana or marijuana products.

"Delivery employee" means an individual employed by a licensed dispensary who delivers cannabis goods from the licensed dispensary premises to a physical address.

"Development Agreement" means an agreement entered into between the City and the Business Owner and any other Responsible Parties as required by the City, in accordance with Chapter 21, Series 600, Article 609 of the Porterville Municipal Code.

"Distributor" means a person engaged in procuring cannabis from a cultivator, and/or procuring cannabis products from a manufacturer, for sale to a licensed commercial cannabis business. In addition, and without limiting the foregoing, "distributor" includes "distributor" as defined in California Business and Professions Code Division 10 and any successor statute, as may be adopted or amended from time to time.

"Distribution" means the procurement, sale, and transport of cannabis or cannabis products between licensees.

"Employee" means each and every person engaged in the operation or conduct of any cannabis business, whether as owner, member of the owner's family, partner, associate, agent, manager or solicitor, and each and every other person employed or working in such cannabis business for a wage, salary, commission, barter or any other form of compensation.

"Gross Receipts," means the amount a Cannabis Operation received from all sources during its accounting period, without subtracting any costs or expenses.

"Manufacture" means to compound, blend, extract, infuse or otherwise make or prepare a cannabis product.

"MAUCRSA" means the Medicinal and Adult-Use Cannabis Regulation and Safety Act as codified in Division 10 of the California Business and Professions Code, as the same may be amended from time to time.

“Medical Cannabis Dispensary” means a storefront cannabis dispensary with a valid M-Type 10 retailer license in accordance with MAUCRSA.

"Operator" means the Business Owner and any other person designated by the Business Owner as responsible for the day to day Cannabis business operation.

“Premises” means the designated structure or structures and land specified in the application that is owned, leased, or otherwise held under the control of the applicant or licensee where the commercial cannabis activity will be or is conducted. The premises shall be a contiguous area and shall only be occupied by one licensee.

“Processing” means any method used to prepare cannabis or its byproducts for personal use or commercial retail and/or wholesale, including but not limited to: drying, cleaning, curing, packaging, and extraction of active ingredients to create cannabis related products and concentrates.

"Responsible Party" shall mean the Business Owner, Operator, manager(s), and any employee having significant control over the cannabis businesses operations.

"State" means the State of California.

“State Law” means all regulations and laws pertaining to Cannabis Business in the State of California.

"State license," means a State license issued pursuant to California Business & Professions Code Sections 26000, et seq. or other applicable State law.

“Transport” or “Transportation” means the transfer of cannabis or cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to this chapter.

#### **15-86: Cannabis Dispensaries Permitted Uses and Zoning.**

Business Owners meeting the requirements of this Article shall be allowed to conduct Storefront Cannabis Dispensary Operations in the zone districts and locations as specified in Chapter 21 of this Code, upon obtaining a Regulatory Permit from the City, obtaining a business license from the City, obtaining the applicable license from the State of California, and entering a Development Agreement with the City as specified further in this Article. Non-storefront cannabis retailers are not permitted within the City.

#### **15-87: Cannabis Dispensaries Requirements and Restrictions.**

A. Maximum Number of Permits. The number of regulatory permits for dispensaries is limited to no more than one permit plus an additional permit per every 25,000 residents. Said permits may be issued for medical (Type M) or adult use (Type A) businesses as allowed by the State. However, the City Council is authorized to reserve one of the allowed permits for exclusively a medical cannabis dispensary.

B. Regulatory Permit/Fees.

1. Regulatory Permit. No person or entity shall operate a Cannabis Dispensary within the City of Porterville without first obtaining a Cannabis Regulatory Permit from the City. The Regulatory Permit shall be site specific and shall specifically identify the commercial cannabis activity that will be allowed at that site. No commercial cannabis activity will be allowed unless specifically identified in the Regulatory Permit.
  2. Request for Proposals Processes. The City may conduct initial request for proposals processes for regulatory permit applications (commercial and/or medical), once it determines when dispensary regulatory permits shall become available, and thereafter as such permits become available. Nothing in this Chapter or Code shall be construed to create an obligation for the City to conduct a request for proposals process for, or to create an obligation to grant a permit to, any cannabis dispensary.
  3. Medical Cannabis Dispensaries.
    - a. If, after one full year from the City's first issuance of a Request for Proposals solely for a Medical Cannabis Dispensary, no responses are received within the prescribed time period for such responses, the City Council may opt to allow the permit reserved for a medical dispensary to be utilized for an adult-use dispensary, as otherwise permitted by this Chapter.
    - b. Any Medical Cannabis Dispensary established pursuant to this Chapter must be in operation for a full year before it will be eligible to apply for any transition to an adult-use dispensary (Type A), and any medical cannabis dispensary applying for a transition shall be subject to all the requirements of this Chapter, including applying for a new regulatory permit and entering into a new development agreement.
  4. Permit Availability at the Discretion of the City Council. The City shall maintain complete discretion over whether any permit approvals are made, and when permits shall be issued, where the uses may be located (subject to Chapter 21), and the manner of permit approvals.
  5. Fees. All related fees and charges associated with conducting a request for proposals process, regulatory fee application process, and the granting, administering, and enforcing of the regulatory permits, and any other City costs related to the operations of a dispensary shall be established by Resolution(s) of the City Council, which may be amended from time to time.
- C. Development Agreement. No approval required by this Article shall be given for any permit for a dispensary unless the City Council prior to or concurrently with approves a Development Agreement, setting forth the terms and conditions under which the commercial cannabis activity will operate in addition to the requirements of this Article, all other local ordinances and regulations, state law and such other terms and conditions that will protect and promote the public health, safety and welfare. No use or operation under any permit for a dispensary

shall be allowed to begin until the development agreement is effective.

- D. State Law and Other State Laws. The cannabis dispensary shall at all times be in compliance with State Law and the implementing regulations, as they may be amended from time to time, as well as all required State license(s) under State Law, and any other applicable State law. The Operator shall obtain required licenses under State Law prior to opening for business, or if the State is not ready to issue licenses under State Law prior to the time of opening, within twelve (12) months of the State being ready to issue the required license(s). Provided, however, that the Operator shall at all times be in compliance with all other requirements of State Law and implementing regulations, and any other applicable State law, regardless of the timing of the issuance of a license under State Law. The Operator shall meet or exceed the health and safety requirements of State Law in any operations relating to recreational cannabis.
- E. Register of Employees. The Operator shall maintain a current register of the names of persons required to have Employee Permits. The register shall be available to the Police Chief at all times immediately upon request. All agents, officers, or other persons acting for or employed by a licensee shall display a laminated identification badge issued by the licensee. The identification badge shall, at a minimum, include the licensee's "doing business as" name and license number, the employee's first and last name, and a color photograph of the employee that shows the full front of the employee's face and that is at least 2 inches by 2 inches in size.
- F. Labeling. All cannabis products offered to customers at a retail location must provide testing and labeling at a minimum as required by State law and in compliance with any additional City regulations and as they may be amended.
- G. Signage. All signage shall be subject to approval by the City of Porterville and consistent with the City's Signage Ordinances, and any other policies or guidelines adopted by the City.
- H. Alcoholic Beverages. Alcohol for personal consumption shall not be provided, stored, kept, located, sold, dispensed, or used on the Premises.
- I. Transportation. Transportation shall only be conducted according to activity permitted by State law.
- J. Distribution. There shall be no distributions to the Premises of cannabis or cannabis containing products except from properly licensed and permitted cannabis businesses. City -licensed and permitted cannabis retailers shall not distribute cannabis as a licensed distributor within the City.
- K. Minors. It shall be unlawful for any Operator to employ any person who is not at least twenty-one (21) years of age, or any older age if set by the State.
- L. Hours of Operation. Cannabis Dispensaries shall be allowed to operate per the requirements of the underlying zone district and subject to the City's noise and nuisance ordinances but in no case shall exceed the minimum State standards. Additionally, Cannabis Dispensaries shall not be open before 10 a.m. on weekdays, 9 a.m. on weekends, or remain open after 10 p.m.

on weeknights, or 11 p.m. on weekends, Pacific Standard Time.

- M. Compliance with Building and Related Codes. The Premises in which the Cannabis Dispensary operations occur shall comply with all applicable local, State and federal laws, rules, and regulations including, but not limited to, building codes and the Americans with Disabilities Act, as certified by the Building Official of the City. The Operator shall obtain all required building permits and comply with all applicable City standards.
- N. Secure Building. All Cannabis Dispensary operations shall occur entirely inside of a building that shall be secure, locked, and fully enclosed, with a ceiling, roof or top. The building shall include a burglar alarm monitored by an alarm company or private security company. The building, including all walls, doors, and the roof, shall be of solid construction meeting the minimum building code requirements for commercial structures and include material strong enough to prevent entry except through an open door.
- O. Premises Security. The following security conditions shall apply:
1. Alarm System (both perimeter, fire and panic). A licensee shall maintain an alarm system as defined in Business and Professions Code section 7590.1(n). A licensee shall ensure a licensed alarm company operator or one or more of its registered alarm agents installs, maintains, monitors, and responds to the alarm system.
  2. Remote monitoring of alarm systems.
  3. Exterior lighting systems for after-hours security.
  4. Exterior and interior camera systems approved by the Police Chief. The camera systems shall meet the minimum requirements of State Law, include interior monitoring of all access points of the site from the interior, and be of a minimum 5 mega pixels in resolution. Cameras shall record continuously 24 hours per day and at a minimum of 20 frames per second. Areas monitored are defined by State law.
  5. All security systems at the site are attached to an uninterruptable power supply that provide continuous power.
  6. The Porterville Police Department or Department designee shall have access to all security systems.
  7. Subject to the provisions below regarding the use and handling of Confidential Information, IP access for remote monitoring of security cameras by the Porterville Police Department or Department designee.
  8. Subject to the provisions below regarding the use and handling of Confidential Information, any and all video or audio tape recordings made for security or other purposes shall be marked with the date and time made and shall be kept, in an unaltered state, for a period of thirty (30) days and must be made available to the Porterville Police Department or

Department designee for duplication upon demand. In addition, upon request by the Porterville Police Department the Responsible Party shall duplicate the records for the Porterville Police Department or Department designee.

9. Hardened bullet resistant windows for exterior windows as part of any new or existing construction.
10. Accounting software systems need to be in place to provide audit trails of both product and cash, where applicable.
11. Electronic track and trace systems for cannabis products shall be utilized as approved by the City and as required by State law.
12. Premises may be inspected and records of the Business Owner audited by the City for compliance on a quarterly basis or at any reasonable time at the City's discretion.
13. State of the art network security protocols and equipment need to be in place to protect computer information.
14. The foregoing requirements shall be approved by the Police Chief prior to commencing operations. The Police Chief may supplement these security requirements once operations begin, subject to review by the City Council if requested by the Business Owner.
15. The City, Police Chief, Police Department employees, and any other law enforcement official acting under the direction of the Police Chief who access the Premises and video and/or audio feeds or recordings of the Premises ("Recipients") may receive or be provided with confidential information relating to the Cannabis dispensary, which may include the following: data, records, plans, and matters relating to customers, vendors, tenants, agreements, and business records (collectively "Confidential Information"). To the extent Confidential Information is acquired without a warrant for access to the Premises and video and/or audio feeds or recordings as authorized under this section, the Recipients shall, to the maximum extent possible, keep such Confidential Information confidential and not disclose the Confidential Information to any third parties. Provided, however, that the Recipients may disclose Confidential Information to the State or Federal courts in California in connection with any criminal law enforcement action against the Business Owner or Operator, (including its employees, contractors and agents conducting business within the Premises) arising from or related to the Cannabis dispensary, but only to the extent it is necessary and relevant to such criminal prosecution, and the Recipients shall file any such documents under seal to the extent they contain any Confidential Information. Notwithstanding the foregoing, the City may disclose Confidential Information:
  - a. As may be required by the California Public Records Act or pursuant to a civil subpoena, provided however, the City shall notify the Operator and provide the Operator with a reasonable opportunity to obtain a protective order before disclosing the Confidential Information.



- b. In connection with any City enforcement proceeding relating to compliance with City's Municipal Code and this section, but only to the extent the Confidential Information is relevant to the proceeding.

P. Delivery.

1. All deliveries of cannabis goods must be performed by a delivery employee of a licensed dispensary.
2. Each delivery employee of a licensed dispensary shall be at least 21 years of age.
3. A licensed dispensary shall not use the services of an independent contractor or courier service to deliver cannabis goods.
4. All deliveries of cannabis goods shall be made in person. A delivery of cannabis goods shall not be made through the use of an unmanned vehicle.
5. A delivery employee begins the process of delivering when the delivery employee leaves the dispensary premises with the cannabis goods for delivery. The process of delivering ends when the delivery employee returns to the licensed dispensary premises after delivering the cannabis goods to the cannabis patients or primary caregivers.
6. A delivery employee of a licensed dispensary shall, during deliveries, carry a copy of the dispensary's current license, the employee's government-issued identification, and an employer provided badge containing a picture and the name of the delivery employee.
7. A licensed dispensary shall maintain an accurate list of the dispensary's delivery employees.

Q. Deliveries of Supplies and Transportation of Product. The following rules apply to the deliveries and transportation:

1. Deliveries to the Premises of supplies shall only occur as provided for in the diagram and floor plan on file with the City as part of the application process. Delivery vehicles shall not have any markings indicating that deliveries are being made to a Cannabis Dispensary.
2. The transportation of cannabis samples and product to and from the Premises shall be in unmarked vehicles with no indication that the vehicles are transporting cannabis samples and products. The Responsible Party shall stagger transportation times, vary routes from the facility, and take other security measures as requested by the Police Chief.

R. Premises Maintenance. The Business Owner, Operator, and all Responsible Parties shall continually maintain the Premises and its infrastructure so that it is visually attractive and not dangerous to the health, safety and general welfare of employees, patrons, surrounding properties, and the general public, and in accordance with the conditions and site plan approved with the Development Agreement. The Premises of the Cannabis Dispensary shall not be maintained in a manner that causes a public or private nuisance.

S. In addition to any regulations, policies, or procedures authorized to be adopted by the City in accordance with this Article or this Code, the City Manager, or his or her designee, is authorized to establish any addition rules, regulations, policies and standards governing the: application review and approval process, the issuance, denial or renewal of cannabis dispensary regulatory permits, the ongoing operation of commercial cannabis dispensary businesses and the City's oversight of same; and/or concerning any other subject determined to be necessary to carry out the intent and purposes of this Article. Additional rules, regulations, policies and standards shall be published to the City's website and maintained and available to the public if the Office of the City Clerk.

T. Indemnification and Limitations on City's Liability.

1. To the fullest extent permitted by local, state, and/or federal law, the City shall not assume any liability whatsoever with respect to having issued a regulatory permit or executed a development agreement pursuant to this Article, or otherwise approving the operation of any commercial cannabis business.

2. As a condition to the approval of any regulatory permit and approval of a development agreement, the applicant shall be required to execute an agreement, in a form approved by the City Attorney, agreeing to indemnify, defend at the applicant's sole cost and expense, and hold harmless the City, and its officers, officials, employees, representatives, and agents from any against all claims, losses, damages, injuries, liabilities or losses which arise out of, or which are in any way related to the City's drafting, adoption and passage of regulations, related resolutions, policies, rules and guidelines, allowing cannabis dispensaries or in the future making any regulatory amendments; the City's issuance of the regulatory permit; the City's approval and execution of a development agreement; the City's decision to approve the operation of the dispensary; the process used by the City in making the decision to issue, approve or deny a permit or a development agreement; and/or the alleged violation of any federal, state or local laws by the dispensary or any of its officers, employees or agents.

3. The dispensary shall maintain insurance at coverage limits and with conditions thereon determined necessary and appropriate from time to time by the City.

4. The dispensary shall reimburse the City for all costs and expenses, including but not limited to attorney fees and court costs, which the City may be required to pay as a result of any legal challenge related to the City's approval of the applicant's regulatory permit, or related to the City's approval of the applicant's commercial cannabis activity, or the City's approval of a development agreement. The City may, at its sole discretion, participate at its own expense in the defense of such action, but such participation shall not relieve any of the obligations imposed hereunder.

5. The terms and provisions as enumerated in this section related to indemnification and limitation on the City's liability shall be an explicit term of a regulatory permit and a development agreement that an applicant and permittee shall agree to in order for same to be valid.

**15-88: Regulatory Permit Required.**

- A. At the time authorized by the City, applications for Regulatory Permits shall be filed by the proposed Business Owner(s) with the City and include the information set forth herein. The City may request such additional information as they deem necessary to determine who the applicant is, and may adopt additional requirements as authorized in Section 15-87.B.

The applicant shall certify under penalty of perjury that all the information contained in the application is true and correct. The application shall contain the following items for the Business Owner, Operator and all Responsible Parties known at the time (if different than the Business Owner), and any other party designated below, to the extent the same shall apply:

1. The full name, present address, and telephone number, including such information to the Premises Owner.
2. Date of birth.
3. Tax identification number.
4. The address to which notices relating to the application is to be mailed.
5. Previous addresses for the five (5) years immediately preceding the present.
6. The height, weight, color of eyes and hair.
7. Photographs for identification purposes (photographs shall be taken by the Police Department).
8. All business, occupation, or employment for the five (5) years immediately preceding the date of submittal of the application form.
9. The Cannabis Operation business history, including whether the Business Owner and Responsible Parties while previously operating in this or another city, county or state has had a cannabis related license revoked or suspended, the reason therefore, and the business or activity or occupation subsequent to such action of suspension or revocation.
10. Complete property ownership and lease details, where applicable. If the Business Owner is not the Premises Owner, the application form must be accompanied with a notarized acknowledgment from the Premises Owner that Cannabis sales will occur on its property.
11. A descriptive business plan for the Cannabis Operation, including a detailed list of all Cannabis Business activities proposed to occur on the Premises.
12. A diagram and floor plan of the entire Premises, denoting all the use of areas proposed for Cannabis production, including, but not necessarily limited to, cultivation,

processing, manufacturing, testing, transportation, deliveries, and storage. For Cannabis Dispensaries, the floor plan should show the layout and design of the building. The diagram and floor plan need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the Premises to an accuracy of plus or minus six (6) inches.

13. The name or names of the Operator. The Operator shall designate one or more Responsible Parties, one of which shall at all times be available as a point of contact for the City, 24 hours per day. The contact information and schedule of the Operator and Responsible Parties shall be provided to the Police Chief and updated within twenty-four(24) hours of any changes.
14. The proposed security arrangements for insuring the safety of persons and to protect the Premises from theft.
15. An accurate straight-line drawing prepared within thirty (30) days prior to the application depicting the building and the portion thereof to be occupied by the Cannabis Operation and the property line of any school or any other sensitive use as set forth in the Operational Requirements.
16. Authorization for the City, its agents and employees to seek verification of the information submitted.

B. Other Permits or Licenses. The fact that an applicant possesses other types of State or City permits or licenses does not exempt the applicant from the requirement of obtaining a Regulatory Permit.

**15-89: Employee Permit Required.**

- A. Every employee or independent contractor working at a Cannabis Operation or involved in transportation/delivery related services for a Cannabis Business shall obtain an Employee Permit. It shall be the duty of the Operator to ensure that Employee Permits are obtained from the Police Department prior to the employee or independent contractor commencing work. Persons who are listed as a Business Owner on a Regulatory Permit shall not be required to obtain an Employee Permit if such person also serves as an employee or contractor. All Responsible Parties, except the Business Owner, shall be required to obtain an Employee Permit.
- B. Each employee and independent contractor shall be required to provide the following information under penalty of perjury, so that the Police Department can perform a background check:
  1. Name, current resident address, and telephone number.
  2. Date of birth.

3. Tax identification number.
4. Height, weight, color of eyes, and hair.
5. Photographs for identification purposes (photographs shall be taken by the Police Department).
6. Be fingerprinted by the Police Department.
7. Such other identification and information as deemed necessary by the Police Chief and pertinent to the Employee Permit.
8. Authorization for the City, its agents and employees to seek verification of the information contained within the application.
9. The name of the Business Owner holding the Regulatory Permit and the Operator for which such person is proposed to work.

**15-90: Application Fees.**

Every new application for a Regulatory Permit, Employee Permit, or renewal shall be accompanied by a nonrefundable fee, as established by resolution of City Council. This fee shall be in addition to any other business license, tax, or permit fee imposed by this Code or other governmental agencies. The fee shall include an amount to cover the costs of fingerprinting, photographing, background checks as well as general ongoing monitoring for compliance and processing of the application.

**15-91: Investigation.**

- A. Upon the filing of a properly completed application and the payment of the fee, the Police Chief is authorized to conduct an investigation of the application, including a background check of the applicant and all employees and independent contractors. All applicants for a Regulatory Permit and Employee Permit shall be required to submit to a fingerprint-based criminal history records check conducted by the Porterville Police Department.
- B. For Employee Permits, after the background checks and investigation are complete, and in no case later than thirty (30) days after receipt of a properly completed application, the Police Chief shall either approve or deny an Employee Permit. At the discretion of the Police Chief, Employee Permits may be conditionally approved pending the background investigation.

**15-92: Term of Permits and Renewals.** Regulatory Permits issued under this Chapter shall expire on December 31<sup>st</sup> each year. Applications for renewal shall be made at least forty-five (45) days prior to the expiration date of the permit and shall be accompanied by the nonrefundable fee referenced in this section. When made less than forty-five (45) days before the expiration date, the expiration of the permit will not be stayed. Applications for renewal shall be acted on similar to applications for permits except that the Police Chief shall renew annual permits for additional one

year periods if the circumstances and information provided with the initial application have not materially changed. Regulatory fees may be pro-rated based on the term of the Regulatory Permit.

**15-93: Grounds for Denial of Regulatory Permit.**

Nothing in this Section shall be construed to require the City to grant a regulatory permit. Notwithstanding this, applications for a Regulatory Permit are required to be denied for one or more of the following:

- A. The business or conduct of the business at a particular location is prohibited by any local or State law, statute, rule or regulation.
- B. The Business Owner or Operator has been issued a local or State permit related to Cannabis operations at any other location in California, or another state, and that permit was suspended or revoked, or the Business Owner or Operator has had disciplinary action relating to the permit.
- C. The Business Owner or Operator has knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application.
- D. Consistent with State Law or other applicable State law, the Business Owner or Operator, or any Responsible Person, has been:
  - 1. Convicted of a serious or violent offense as listed under California Penal Code sections 667.5 and 1192.7(c); or
  - 2. Convicted of any of the offenses listed in Business and Professions Code section 19323; or
  - 3. Convicted of a misdemeanor involving moral turpitude as defined under State law (generally crimes relating to theft and dishonesty) within the five (5) years preceding the date of the application; or
  - 4. Convicted of a felony involving the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act, unless the individual has received a Certificate of Rehabilitation as defined in the Act; or
  - 5. Has engaged in misconduct related to the qualifications, functions or duties of a permittee, such as lying on an application, falsifying legal documents, or anything that would otherwise ban the permittee from obtaining a State license under State Law; or
  - 6. Consistent with State Law or other applicable State law, the Business Owner or Operator has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices; or
  - 7. The Business Owner or Operator is under twenty-one (21) years of age, or any older other

age set by the State; or

8. The Cannabis Operation does not comply with the zoning ordinance standards of the City, the development standards set forth in this Municipal Code, or the terms of the Development Agreement; or
9. The required annual business license fee, annual regulatory fee or fees specified in this Code or the Development Agreement have not been paid.

**15-94: Grounds for Denial of Employee Permit.**

The grounds for denial of an Employee Permit shall be one or more of the following:

- A. The applicant has been issued a local or State permit related to Cannabis production at any other location in California, or another state, and that permit was suspended or revoked, or the applicant has had disciplinary action relating to the permit.
- B. Consistent with State Law or other applicable State law, the applicant has been:
  1. Convicted of a serious or violent offense as listed under California Penal Code sections 667.5 and 1192.7(c); or
  2. Convicted of any of the offenses listed in Business and Professions Code section 19323; or.
  3. Convicted of a misdemeanor involving moral turpitude as defined under State law (generally crimes relating to theft and dishonesty) within the five (5) years preceding the date of the application; or
  4. Convicted of a felony involving the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act, unless the individual has received a Certificate of Rehabilitation as defined in State Law; or has engaged in misconduct related to the qualifications, functions or duties of a permittee; or
  5. Consistent with State Law or other applicable State law, the applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices; or
  6. The applicant has committed any act, which, if done by a permittee, would be grounds for suspension or revocation of a permit; or
  7. An applicant is under eighteen (21) years of age, or any older age set by the State.

**15-95: Notice of Decision and Final Action.**

A. Regulatory Permit. Action on a properly authorized and submitted application for a Regulatory Permit shall be as follows:

1. The Police Chief shall cause a written notice of his or her recommendation on the issuance or denial of a Regulatory Permit, and the date and time when the City Council will consider action on the Regulatory Permit, to be personally delivered or mailed to the applicant by certified U.S. mail, postage prepaid.
2. Following a public hearing before the City Council, the Council may grant the Regulatory Permit subject to the other requirements of this Article and subject to such conditions as it deems reasonable under the circumstances to protect the public health, safety, and welfare of the community, or it may deny the issuance of the Regulatory Permit for any of the grounds specified in this section. The decision of the Council shall be final, subject to judicial review below.

B. Employee Permit. Action on the Employee Permit shall be as follows: The Police Chief shall cause a written notice of his or her determination on the issuance or denial of an Employee Permit to be personally delivered or mailed to the applicant by certified U.S. mail, postage prepaid. The Police Chiefs decision on an Employee permit shall be final, subject to judicial review.

**15-96: Suspension and Revocation of Regulatory Permit or Employee Permit.**

A. Regulatory Permit. The City Council may suspend or revoke the Regulatory Permit of a Commercial Cannabis Operation when any of the following occur:

1. The Cannabis Operation is conducted in violation of any provision of this section, the terms of the Development Agreement, State Law, or any other applicable State law.
2. The Cannabis Operation is conducted in such a manner as to create a public or private nuisance.
3. A failure to pay the Regulatory Fee required by this Article or other required fees pursuant to this Code or the Development Agreement.
4. A failure to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the Premises, traffic control problems, or obstruction of the operation of another business.
5. A failure to comply with the terms and conditions of the Regulatory Permit issued in connection therewith or the terms of the Development Agreement.
6. Any act which would be considered grounds for denial of the Regulatory Permit in the first instance.



B. Employee Permit. The Police Chief may suspend or revoke an Employee Permit when the permittee or the employee has committed any one or more of the following acts:

1. Any act which would be considered a ground for denial of the permit in the first instance.
2. Violates any provision of this section, State Law, or any other applicable law relating to the Cannabis Operation.
3. Violates or fails to comply with the terms and conditions of the Employee Permit.

C. Procedures for Revoking Regulatory Permits. For Regulatory Permits, the procedures for revoking conditional use permits shall be utilized except that the matter shall be heard by the City Council in the first instance, and shall be subject to the same judicial process as applied to a Conditional Use Permit.

D. Procedures/or Revoking Employee Permits. Prior to suspension or revocation of an Employee Permit, the Police Chief shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least five (5) calendar days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery or by certified U.S. mail, postage prepaid. Any permittee aggrieved by the decision of the Police Chief in suspending or revoking an Employee Permit shall have no appeal rights and the Police Chiefs decision shall be final, subject to judicial review as set forth in this section.

E. Immediate Suspension. The Police Chief may immediately suspend or revoke a Regulatory Permit and an Employee Permit without notice or a hearing, subject to the appeal rights set forth herein, under either of the following circumstances:

1. The Business Owner or Operator is convicted of a public offense in any court for the violation of any law which relates to the Cannabis Operation, or in the case of an Employee Permit, the employee is convicted of a public offense in any court for the violation of any law which relates to the permit.
2. The Police Chief determines that immediate suspension is necessary to protect the public health, safety, and welfare of the community. The Police Chief shall articulate the grounds for the immediate suspension in writing and the suspension shall only be for as long as necessary to address the circumstances which led to the immediate suspension.

#### **15-97: Effect of Denial or Revocation.**

When the City Council shall have denied a Regulatory Permit or revoked a Regulatory Permit, or the Police Chief shall have denied or revoked an Employee Permit, no new application for a Regulatory Permit and no new application for an Employee Permit shall be accepted and no Regulatory Permit or Employee Permit shall be issued to such person or to any corporation in which

he or she shall have any beneficial interest for a period of one (1) year after denying or revoking the Regulatory Permit or Employee Permit.

**15-98: Abandonment.**

In addition to the suspension or revocation of a Regulatory Permit, a Regulatory Permit shall be deemed abandoned if the Cannabis operation ceases for a period of more than ninety (90) consecutive days. Before restarting operations, a new Regulatory Permit shall be secured. The 90 day period shall be tolled during periods of force majeure, which shall be defined as follows: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the "public enemy"; epidemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; or any other causes beyond the reasonable control of the permittee.

**15-99: Other Licenses, Permits, Taxes or Charges.**

Except as expressly provided in this Chapter, nothing contained in this Chapter shall be deemed to repeal, amend, be in lieu of, replace or in any way affect any requirements for any permit or license required by, under or by virtue of any provision of any other title or Chapter of this Code or any other ordinance or resolution of the City, nor be deemed to repeal, amend, be in lieu of, replace or in any way affect any tax, fee or other charge imposed, assessed or required by, under or by virtue of any other title or Chapter of this Code or any other ordinance or resolution of the City. Any references made or contained in any other title or Chapter of this Code to any permits, licenses, taxes, fees, or charges, or to any schedule of license fees, shall be deemed to refer to the permits, licenses, taxes, fees or charges, or schedule of license fees, provided for in other titles or Chapters of the Porterville City Code unless otherwise expressly provided.

**15-100: Violation Deemed Misdemeanor and other Remedies.**

Any person who violates any provision of this Chapter or who other than by a sworn statement, knowingly or intentionally misrepresents to any officer or employee of the City any material fact herein required to be provided is guilty of a misdemeanor punishable as provided in Section 1-9 of this Code. A person who on a sworn statement states as true a material fact that he or she knows to be false is guilty of perjury. Additionally, the City may avail itself of any remedies or enforcement provisions provided for in the Code.

**15-101: Actions to Collect.**

The amount of any tax, fee, penalty and/or interest imposed pursuant to this Chapter shall be deemed a debt owed to the City. An action may be commenced in the name of the City in any court of competent jurisdiction, for the amount of any delinquent tax, fees, penalties and interest thereon.

**15-102: Severability.**

If any provision of this Chapter, or its application to any person or circumstance, is determined by

a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Chapter or the application of this Chapter to any other person or circumstance and, to that end, the provisions hereof are severable.

**15-103: Remedies Cumulative.**

All remedies prescribed under this Chapter shall be cumulative and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

**15-104: Amendment or Repeal.**

This Article may be repealed or amended by ordinance of the Porterville City Council.

**15-105: Penalties.**

Any entity that fails to pay the taxes and/or fees required by this Code or the Development Agreement within fifteen (15) days after the due date shall pay in addition to those taxes and/or fees a penalty for nonpayment in the sum equal to twenty-five percent (25%) of the total amount due. Additional penalties will be assessed in the following manner: ten percent (10%) shall be added on the first day of each calendar month following the month of the imposition of the twenty-five percent (25%) penalty if the fee remains unpaid – up to a maximum of one hundred percent (100%) of the fee payable on the due date. Receipt of the fee payment by the City shall govern the determination of whether the fee is delinquent. Postmarks will not be accepted as adequate proof of a timely payment.

**SECTION 3. CEQA REVIEW.** The City Council hereby finds that this ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15061(b)(3) [there is no possibility the activity in question may have a significant affirmative effect on the environment]. In addition to the foregoing general exemption, the City Council further finds that the ordinance is categorically exempt from review under CEQA under the Class 8 categorical exemption [regulatory activity to assure the protection of the environment]. The City Manager is hereby directed to ensure that a *Notice of Exemption* is filed pursuant to CEQA Guidelines section 15062 [14 C.C.R. § 15062].

**SECTION 4. NO LIABILITY.** The provisions of this ordinance shall not in any way be construed as imposing any duty of care, liability or responsibility for damage to person or property upon the City of Porterville, or any official, employee or agent thereof.

**SECTION 5. PENDING ACTIONS.** Nothing in this ordinance or in the codes hereby adopted shall be construed to affect any suit or proceeding pending or impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance or code repealed by this ordinance, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

**SECTION 6. SEVERABILITY.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for

any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Porterville hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**SECTION 7. CONSTRUCTION.** The City Council intends this ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this ordinance shall be construed in light of that intent. To the extent the provisions of the Porterville Municipal Code as amended by this ordinance are substantially the same as provisions in the Porterville Municipal Code existing prior to the effectiveness of this ordinance, then those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

**SECTION 9. EFFECTIVE DATE.** The foregoing ordinance shall take effect thirty (30) days from the date of the passage hereof. Prior to the expiration of fifteen (15) days from the enactment hereof a certified copy of this ordinance shall be posted in the office of the City Clerk pursuant to Government Code section 36933(c)(1) and a summary shall be published once in the Porterville Recorder, a newspaper printed and published in the City of Porterville, State of California, together with the names of the Council members voting for and against the same.

PASSED, APPROVED AND ADOPTED this 7<sup>th</sup> day of May, 2019.

---

Martha A. Flores, Mayor

ATTEST:

John D. Lollis, City Clerk

By: \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Second Reading - Ordinance 1854 - Cannabis Land Uses and Commercial Cannabis Activities

**SOURCE:** Administrative Services

**COMMENT:** Ordinance No. 1854, An Ordinance of the City Council of the City of Porterville Amending Chapter 21 (Development Code) of the Porterville Municipal Code, Concerning Cannabis Land Uses and Commercial Cannabis Activities, was given first reading on April 16, 2019, and has been printed.

**RECOMMENDATION:** That the Council give Second Reading to Ordinance No. 1854, waive further reading, and adopt said Ordinance.

**ATTACHMENTS:** 1. Ordinance No. 1854

Appropriated/Funded:

Review By:

Department Director:

Patrice Hildreth, Administrative Services Dir

Final Approver: John Lollis, City Manager

## **ORDINANCE NO. 1854**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE AMENDING CHAPTER 21 (DEVELOPMENT CODE) OF THE PORTERVILLE MUNICIPAL CODE, CONCERNING CANNABIS LAND USES AND COMMERCIAL CANNABIS ACTIVITIES**

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 et seq. and entitled “The Compassionate Use Act of 1996” referred to herein as the “CUA”);

WHEREAS, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program (“MMP”), codified as Health and Safety Code Section 11362.7 et seq., which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the California Penal Code;

WHEREAS, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 et seq., the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need;

WHEREAS, on October 9, 2015, Governor Jerry Brown approved a series of bills commonly referred to as the Medical Cannabis Regulation and Safety Act (“MCRSA”), effective January 1, 2016, which established a comprehensive State licensing and regulatory framework for the cultivation, manufacture, transportation, storage, distribution and sale of medical cannabis, and which recognized the authority of local jurisdictions to either impose additional restrictions or prohibit certain activities related to the cultivation, manufacture, transportation, storage, distribution and sale of medical cannabis;

WHEREAS, on November 8, 2016, California voters approved the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”). The AUMA added Division 10 to the California Business and Professions Code, Sections 26000, et seq., which grants State agencies the authority to create, issue, renew, discipline, suspend, or revoke licenses for cannabis businesses. The AUMA provides that the State shall begin issuing licenses to cannabis businesses under Division 10 of the California Business and Professions Code by January 1, 2018. California Business and Professions section 26055(e) provides that a State licensing authority shall not approve an application for a State license for commercial non-medical cannabis activity if approval of the State license will violate the provisions of any local ordinance;

WHEREAS, on June 27, 2017, the Governor signed into law Senate Bill 94 which repealed the MCRSA, included certain provisions of the MCRSA in the licensing provisions of the AUMA, and created a single regulatory scheme for both medical and non-medical cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). The MAUCRSA retains the provisions in the MCRSA and AUMA that granted local jurisdictions control over whether commercial cannabis activity could occur in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that the MAUCRSA shall not

be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances that completely prohibit the establishment or operation of one or more businesses under the State, within that local jurisdiction. Furthermore, the MAUCRSA provides that a State licensing authority shall not approve an application for a State license for a business to engage in commercial cannabis activity if approval of the State license will violate the provisions of any local ordinance or regulation. The MAUCRSA requires that a State licensing authority begin issuing licenses to marijuana businesses beginning January 1, 2018;

WHEREAS, on April 2, 2019, the City Council of the City of Porterville held a public hearing on the proposed Ordinance, at which time all persons interested in the proposed Ordinance had the opportunity and did address the City Council on these matters. Following receipt of public testimony the City Council closed the public hearing; and

WHEREAS, it is in the interest of the City, its residents, and its lawfully permitted businesses that the City adopts this ordinance to amend its cannabis regulations to permit the limited development and establishment of commercial cannabis dispensaries, and remove the restrictions on personal cultivation and related activities and prohibitions smoking and use in public places or on private business properties (provided that those restrictions and prohibitions are relocated to Chapter 18 of the Municipal Code by an Ordinance adopted by the City Council concurrently herewith);

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PORTERVILLE DOES HEREBY ORDAIN as follows:

SECTION 1. Table 202.02 is hereby amended as follows:

| <b>TABLE 202.02: LAND USE REGULATIONS – DOWNTOWN DISTRICTS</b> |                               |             |             |             |              |              |             |             |             |                                             |
|----------------------------------------------------------------|-------------------------------|-------------|-------------|-------------|--------------|--------------|-------------|-------------|-------------|---------------------------------------------|
| <i>Use Classification</i>                                      | <i>DR-N</i>                   | <i>DR-S</i> | <i>DR-D</i> | <i>D-MX</i> | <i>DRM-2</i> | <i>DRM-3</i> | <i>D-PO</i> | <i>D-GC</i> | <i>D-PS</i> | <i>Additional Regulations</i>               |
| <b>Residential Use Classifications</b>                         |                               |             |             |             |              |              |             |             |             |                                             |
| Single Family Dwelling                                         | See sub-classifications below |             |             |             |              |              |             |             |             |                                             |
| <i>Attached</i>                                                | P(1)                          | -           | -           | -           | P            | P            | -           | -           | -           |                                             |
| Multi-family Residential                                       | P(1)                          | P(2)        | -           | P           | P            | P            | P(1)        | -           | -           |                                             |
| Family Day Care Home                                           | See sub-classifications below |             |             |             |              |              |             |             |             |                                             |
| <i>Small</i>                                                   | P                             | P           | -           | P           | P            | P            | P           | -           | -           |                                             |
| <i>Large</i>                                                   | -                             | -           | -           | P           | P            | P            | -           | -           | -           | Section 301.07 Family Day Care Home, Large  |
| Group Residential                                              | -                             | -           | -           | P(3)        | P            | P            | -           | -           | -           |                                             |
| Mixed Use Development                                          |                               |             |             | C           |              |              |             |             |             | Section 203.04 Supplemental Regulations     |
| Residential Care Facilities, Limited                           | P                             | P           | -           | P           | P            | P            | P           | -           | -           |                                             |
| Single Room Occupancy Hotels                                   | -                             | -           | -           | C(1)        | -            | -            | -           | -           | -           | Section 301.18 Single Room Occupancy Hotels |
| <b>Public and Semi-Public Use Classifications</b>              |                               |             |             |             |              |              |             |             |             |                                             |
| Clubs and Lodges                                               | C(4)                          | P           | P           | P           | -            | -            | P(5)        | P           | -           | Section 301.02 Alcoholic Beverage Sales     |
| Colleges and Trade Schools, Public or Private                  | C(5)                          | C           | C           | C           | -            | -            | C           | C           | P           |                                             |
| Community Center                                               | -                             | -           | -           | C           | -            | -            | -           | -           | P           |                                             |
| Cultural Institutions                                          | C(5)                          | C           | C           | C           | -            | -            | P           | C           | P           |                                             |



| <b>TABLE 202.02: LAND USE REGULATIONS – DOWNTOWN DISTRICTS</b> |                               |             |             |             |              |              |             |             |             |                                                     |
|----------------------------------------------------------------|-------------------------------|-------------|-------------|-------------|--------------|--------------|-------------|-------------|-------------|-----------------------------------------------------|
| <i>Use Classification</i>                                      | <i>DR-N</i>                   | <i>DR-S</i> | <i>DR-D</i> | <i>D-MX</i> | <i>DRM-2</i> | <i>DRM-3</i> | <i>D-PO</i> | <i>D-GC</i> | <i>D-PS</i> | <i>Additional Regulations</i>                       |
| Day Care Centers                                               | C                             | C           | C           | C           | C            | C            | P           | -           | C           |                                                     |
| Elderly and Long Term Care                                     | -                             | -           | -           | -           | P            | P            | P           | -           | -           |                                                     |
| Government Offices                                             | P                             | P           | P           | -           | -            | -            | P           | -           | P           |                                                     |
| Instructional Services                                         | P(5)                          | P           | P           | P           | -            | -            | P           | P           | P           |                                                     |
| Park and Recreation Facilities, Public                         | P                             | P           | P           | P           | P            | P            | P           | P           | P           |                                                     |
| Religious Facilities                                           | -                             | -           | -           | C           | C            | C            | -           | -           | -           |                                                     |
| Residential Care Facilities, General                           | -                             | -           | -           | -           | C            | C            | -           | -           | -           | Section 301.15 Residential Care Facilities, General |
| Schools, Public or Private                                     | P(4)                          | P           | P           | P           | -            | -            | -           | -           | P           |                                                     |
| Social Service Facilities                                      | -                             | -           | -           | C           | C            | C            | -           | -           | -           | Section 301.19 Social Service Facilities            |
| <b>Commercial Use Classifications</b>                          |                               |             |             |             |              |              |             |             |             |                                                     |
| Animal Care, Sales, and Services                               | See sub-classifications below |             |             |             |              |              |             |             |             |                                                     |
| <i>Kennels</i>                                                 | -                             | -           | C           | -           | -            | -            | -           | C           | -           |                                                     |
| <i>Pet Stores</i>                                              | M(6)                          | P(6)        | P(6)        | M(6)        | -            | -            | -           | P(6)        | -           |                                                     |
| <i>Veterinary Services, Small</i>                              | -                             | -           | C           | -           | -            | -            | -           | P           | -           |                                                     |
| Artists' Studios                                               | P                             | P           | P           | P           | -            | -            | -           | P           | -           |                                                     |
| Automobile/Vehicle Sales and Services                          | See sub-classifications below |             |             |             |              |              |             |             |             |                                                     |

| <b>TABLE 202.02: LAND USE REGULATIONS – DOWNTOWN DISTRICTS</b> |                               |                 |                     |                     |              |              |             |                     |             |                                                                          |
|----------------------------------------------------------------|-------------------------------|-----------------|---------------------|---------------------|--------------|--------------|-------------|---------------------|-------------|--------------------------------------------------------------------------|
| <i>Use Classification</i>                                      | <i>DR-N</i>                   | <i>DR-S</i>     | <i>DR-D</i>         | <i>D-MX</i>         | <i>DRM-2</i> | <i>DRM-3</i> | <i>D-PO</i> | <i>D-GC</i>         | <i>D-PS</i> | <i>Additional Regulations</i>                                            |
| <i>Automobile/Vehicle Rentals.</i>                             | -                             | -               | -                   | -                   | -            | -            | -           | P                   | -           |                                                                          |
| <i>Automobile/Vehicle Sales and Leasing.</i>                   | -                             | C               | C(7)                | -                   | -            | -            | -           | P                   | -           |                                                                          |
| <i>Automobile/Vehicle Service and Repair, Major.</i>           | -                             | -               | C                   | -                   | -            | -            | -           | C                   | -           | Section 301.04<br>Automobile/Vehicle Service and Repair, Major and Minor |
| <i>Automobile/Vehicle Service and Repair, Minor.</i>           | -                             | C(7)            | C(7)                | -                   | -            | -            | -           | P                   | -           | Section 301.04<br>Automobile/Vehicle Service and Repair, Major and Minor |
| <i>Automobile/Vehicle Service and Repair, Washing.</i>         | -                             | -               | -                   | -                   | -            | -            | -           | C                   | -           | Section 301.05 Auto Service Stations and Car Washing                     |
| <i>Service Station</i>                                         | -                             | -               | -                   | -                   | -            | -            | -           | C                   | -           | Section 301.05 Auto Service Stations and Car Washing                     |
| <b>Banks and Financial Institutions</b>                        | See sub-classifications below |                 |                     |                     |              |              |             |                     |             |                                                                          |
| <i>Banks and Credit Unions</i>                                 | P(8)                          | P(8)            | P                   | P(8)                | -            | -            | P(8)        | P                   | -           |                                                                          |
| <b>Building Materials and Services</b>                         | -                             | -               | -                   | -                   | -            | -            | -           | P(9)                | -           |                                                                          |
| <b>Business Services</b>                                       | P(10)                         | P(10)           | P(10)               | P(10)               | -            | -            | P           | P                   | -           |                                                                          |
| <b><i>Cannabis Dispensary</i></b>                              | <b><i>P</i></b>               | <b><i>P</i></b> | <b><i>P(16)</i></b> | <b><i>P(16)</i></b> | -            | -            | -           | <b><i>P(16)</i></b> | -           | <b><i>Municipal Code Chapter 15, Article VII</i></b>                     |

| <b>TABLE 202.02: LAND USE REGULATIONS – DOWNTOWN DISTRICTS</b> |                               |             |             |             |              |              |             |             |             |                                                                         |
|----------------------------------------------------------------|-------------------------------|-------------|-------------|-------------|--------------|--------------|-------------|-------------|-------------|-------------------------------------------------------------------------|
| <i>Use Classification</i>                                      | <i>DR-N</i>                   | <i>DR-S</i> | <i>DR-D</i> | <i>D-MX</i> | <i>DRM-2</i> | <i>DRM-3</i> | <i>D-PO</i> | <i>D-GC</i> | <i>D-PS</i> | <i>Additional Regulations</i>                                           |
| Commercial Entertainment and Recreation                        | See sub-classifications below |             |             |             |              |              |             |             |             |                                                                         |
| <i>Cinema/Theaters</i>                                         | C                             | C           | C           | C           | -            | -            | -           | C           | -           | Section 301.02 Alcoholic Beverage Sales                                 |
| <i>Downtown Entertainment</i>                                  | -                             | -           | C           | C           | -            | -            | -           | C           | C           | Section 301.02 Alcoholic Beverage Sales                                 |
| <i>Small-scale</i>                                             | C                             | C           | C           | C           | -            | -            | -           | C           | -           | Section 301.02 Alcoholic Beverage Sales                                 |
| Eating, Drinking, and Smoking Establishments                   | See sub-classifications below |             |             |             |              |              |             |             |             |                                                                         |
| <i>Bars/Night Clubs/Lounges</i>                                | C                             | C           | C           | C           | -            | -            | -           | C           | -           | Section 300.08 Outdoor Seating; Section 301.02 Alcoholic Beverage Sales |
| <i>Coffee Shops/Cafes</i>                                      | P(8)                          | P(8)        | P(8)        | P(8)        | -            | -            | P(8)        | P(8)        | P(8, 13)    | Section 300.08 Outdoor Seating                                          |
| <i>Restaurants</i>                                             | P(8)                          | P(8)        | P(8)        | P(8)        | -            | -            | P(8)        | P(8)        | P(8, 13)    | Section 300.08 Outdoor Seating; Section 301.02 Alcoholic Beverage Sales |
| <i>Tobacco Bars</i>                                            | C                             | C           | C           | C           | -            | -            | -           | C           | -           |                                                                         |
| Food and Beverage Retail Sales, less than 5,000 square feet    | P                             | P           | P           | P           | -            | -            | P(11)       | P           | P(11)       | Section 301.02 Alcoholic Beverage Sales                                 |

| <b>TABLE 202.02: LAND USE REGULATIONS – DOWNTOWN DISTRICTS</b>        |                               |             |             |             |              |              |             |             |             |                                         |
|-----------------------------------------------------------------------|-------------------------------|-------------|-------------|-------------|--------------|--------------|-------------|-------------|-------------|-----------------------------------------|
| <i>Use Classification</i>                                             | <i>DR-N</i>                   | <i>DR-S</i> | <i>DR-D</i> | <i>D-MX</i> | <i>DRM-2</i> | <i>DRM-3</i> | <i>D-PO</i> | <i>D-GC</i> | <i>D-PS</i> | <i>Additional Regulations</i>           |
| Food and Beverage Retail Sales, more than 5,000 to 50,000 square feet | P                             | P           | P           | P           | -            | -            | -           | -           | -           | Section 301.02 Alcoholic Beverage Sales |
| Hotels and Motels                                                     | C                             | C           | C           | C           | -            | -            | -           | C           | -           |                                         |
| Bed and Breakfasts                                                    | -                             | -           | -           | P(3)        | -            | P(3)         | P(3)        | -           | -           |                                         |
| Maintenance and Repair Services less than 1,500 square feet           | -                             | -           | -           | -           | -            | -            | -           | P(12)       | -           |                                         |
| Medical Facilities                                                    | See sub-classifications below |             |             |             |              |              |             |             |             |                                         |
| <i>Medical Clinic</i>                                                 | -                             | P           | P           | P           | -            | -            | P           | P           | P           |                                         |
| <i>Professional/Medical</i>                                           | P(13)                         | P           | P           | P           | -            | -            | P           | P           | P           |                                         |
| Mixed Use Development                                                 |                               |             |             | C           |              |              |             |             |             | Section 203.04 Supplemental Regulations |
| Nurseries and Garden Centers                                          | -                             | C           | C           | C           | -            | -            | -           | P           | -           |                                         |
| Offices                                                               | See sub-classifications below |             |             |             |              |              |             |             |             |                                         |
| <i>General Offices</i>                                                | P(13)                         | P           | P           | P           | -            | -            | P           | P           | P           |                                         |
| <i>Walk-In Clientele</i>                                              | P                             | P           | P           | P           | -            | -            | P           | P           | P           |                                         |
| Parking, Public or Private                                            | P                             | P           | P           | P           | P            | P            | P           | P           | P           |                                         |
| Personal Services                                                     | P                             | P           | P           | P           | -            | -            | P           | P           | -           |                                         |
| Retail Sales, less than 50,000 square feet                            | P                             | P           | P           | P           | -            | -            | P(11)       | P           | -           |                                         |

| <b>TABLE 202.02: LAND USE REGULATIONS – DOWNTOWN DISTRICTS</b>          |                               |             |             |             |              |              |             |             |             |                                             |
|-------------------------------------------------------------------------|-------------------------------|-------------|-------------|-------------|--------------|--------------|-------------|-------------|-------------|---------------------------------------------|
| <i>Use Classification</i>                                               | <i>DR-N</i>                   | <i>DR-S</i> | <i>DR-D</i> | <i>D-MX</i> | <i>DRM-2</i> | <i>DRM-3</i> | <i>D-PO</i> | <i>D-GC</i> | <i>D-PS</i> | <i>Additional Regulations</i>               |
| Retail Sales, more than 50,000 square feet                              | C                             | C           | C           | C           | -            | -            | -           | C           | -           |                                             |
| <b>Industrial Use Classifications</b>                                   |                               |             |             |             |              |              |             |             |             |                                             |
| Handicraft/Custom Manufacturing                                         | -                             | -           | -           | -           | -            | -            | -           | P           | -           |                                             |
| Industry, Limited                                                       | -                             | -           | -           | -           | -            | -            | -           | C           | -           |                                             |
| Recycling Facilities                                                    | See sub-classifications below |             |             |             |              |              |             |             |             |                                             |
| <i>Reverse Vending Machine</i>                                          | -                             | P           | P           | P           | -            | -            | -           | P           | P           | Section 301.14 Recycling Facilities         |
| <i>Recycling Collection Facility</i>                                    | -                             | C           | -           | -           | -            | -            | -           | C           | C           | Section 301.14 Recycling Facilities         |
| <b>Transportation, Communication, and Utilities Use Classifications</b> |                               |             |             |             |              |              |             |             |             |                                             |
| Communication Facilities                                                | See sub-classifications below |             |             |             |              |              |             |             |             |                                             |
| <i>Antenna and Transmission Towers, camouflage facilities</i>           | P                             | P           | P           | P           | -            | -            | P           | P           | P           | Section 301.20 Telecommunication Facilities |
| <i>Antenna and Transmission Towers, non-camouflage facilities</i>       | C(14)                         | C(14)       | C(14)       | C(14)       | -            | -            | C(14)       | C(14)       | C(14)       | Section 301.20 Telecommunication Facilities |
| <i>Broadcasting Facility</i>                                            | -                             | M           | M           | M           | -            | -            | -           | M           | -           | Section 301.20 Telecommunication Facilities |
| <i>Call Center</i>                                                      | -                             | -           | -           | -           | -            | -            | P(5)        | P(5)        | P           |                                             |

| <b>TABLE 202.02: LAND USE REGULATIONS – DOWNTOWN DISTRICTS</b> |                                                      |             |             |             |              |              |             |             |             |                                                 |
|----------------------------------------------------------------|------------------------------------------------------|-------------|-------------|-------------|--------------|--------------|-------------|-------------|-------------|-------------------------------------------------|
| <i>Use Classification</i>                                      | <i>DR-N</i>                                          | <i>DR-S</i> | <i>DR-D</i> | <i>D-MX</i> | <i>DRM-2</i> | <i>DRM-3</i> | <i>D-PO</i> | <i>D-GC</i> | <i>D-PS</i> | <i>Additional Regulations</i>                   |
| <i>Recording Studio</i>                                        | -                                                    | -           | P(6)        | P(6)        | -            | -            | -           | P(6)        | -           |                                                 |
| Transportation<br>Passenger Terminals                          | P(15)                                                | P(15)       | P(15)       | -           | -            | -            | -           | -           | -           |                                                 |
| Utilities, Minor                                               | P                                                    | P           | P           | P           | P            | P            | P           | P           | P           |                                                 |
| <b>Other Applicable Types</b>                                  |                                                      |             |             |             |              |              |             |             |             |                                                 |
| Accessory Uses and<br>Structures                               | P                                                    | P           | P           | P           | P            | P            | P           | P           | P           | Section 301.01 Accessory<br>Uses and Structures |
| Home Occupations                                               | P                                                    | P           | P           | P           | P            | P            | -           | -           | -           | Section 301.09 Home<br>Occupations              |
| Second Dwelling Unit                                           | -                                                    | -           | -           | -           | P            | P            | -           | -           | -           | Section 301.16 Second<br>Dwelling Unit          |
| Nonconforming Use                                              | Chapter 307 Nonconforming Uses, Structures, and Lots |             |             |             |              |              |             |             |             |                                                 |
| Temporary Use                                                  | Section 301.21 Temporary Uses                        |             |             |             |              |              |             |             |             |                                                 |

**TABLE 202.02: LAND USE REGULATIONS – DOWNTOWN DISTRICTS**

| <i>Use Classification</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | <i>DR-N</i> | <i>DR-S</i> | <i>DR-D</i> | <i>D-MX</i> | <i>DRM-<br/>2</i> | <i>DRM-<br/>3</i> | <i>D-PO</i> | <i>D-GC</i> | <i>D-PS</i> | <i>Additional Regulations</i> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-------------|-------------|-------------|-------------------|-------------------|-------------|-------------|-------------|-------------------------------|
| <p><b>Specific Limitations:</b></p> <ol style="list-style-type: none"> <li>1. Residential units allowed only on upper floors unless approved with a Conditional Use Permit. Common ancillary areas are allowed on the ground floor except on Main Street.</li> <li>2. On Main Street, residential units are allowed only on upper floors unless approved with a Conditional Use Permit.</li> <li>3. Limited to no more than two rooms in a dwelling rented to not more than a total of four persons and meals are not provided to more than four boarders.</li> <li>4. Allowed only on upper floors and limited to 5,000 square feet in size.</li> <li>5. Limited to 5,000 square feet in size.</li> <li>6. Provided that such use shall be completely enclosed in a building of soundproof construction.</li> <li>7. Limited to uses conducted wholly within a building enclosed on all sides including the display, storage, repair, and reconditioning of vehicles.</li> <li>8. Drive-through facilities are prohibited.</li> <li>9. Bulk storage of sand, gravel, or cement is not allowed.</li> <li>10. Wholesale services are not allowed.</li> <li>11. Permitted only as accessory to a primary use.</li> <li>12. No outdoor operations or outdoor storage are allowed.</li> <li>13. Limited to 25 percent of ground floor area unless additional floor area is approved with a Conditional Use Permit. No square footage limitation on upper floors.</li> <li>14. Shall not be located within 300 feet of any R district.</li> <li>15. Not allowed on Main Street. No repair or storage of vehicles is allowed.</li> <li><b>16. Shall not be located within 500 feet of a sensitive use.</b></li> </ol> |             |             |             |             |                   |                   |             |             |             |                               |

SECTION 2. Table 204.02 is hereby amended as follows:

| <b>TABLE 204.02: LAND USE REGULATIONS—EMPLOYMENT DISTRICTS</b> |                               |           |           |           |                                                            |
|----------------------------------------------------------------|-------------------------------|-----------|-----------|-----------|------------------------------------------------------------|
| <i>Use Classification</i>                                      | <i>PO</i>                     | <i>IP</i> | <i>IG</i> | <i>IA</i> | <i>Additional Regulations</i>                              |
| <b>Public and Semi-Public Uses</b>                             |                               |           |           |           |                                                            |
| Colleges and Trade Schools, Public or Private                  | C                             | P         | -         | -         |                                                            |
| Correctional Facility                                          | -                             | P         | P         | -         |                                                            |
| Cultural Institutions                                          | P                             | -         | -         | -         |                                                            |
| Day Care Centers                                               | P                             | P(1)      | -         | -         |                                                            |
| Elderly and Long-term Care                                     | P                             | -         | -         | -         |                                                            |
| Instructional Services                                         | P                             | P         | -         | P         |                                                            |
| Residential Care Facilities, General                           | C                             | -         | -         | -         | Section 301.15<br>Residential Care<br>Facilities, General  |
| Schools, Public or Private                                     | P                             | -         | -         | -         |                                                            |
| <b>Commercial Uses</b>                                         |                               |           |           |           |                                                            |
| Aircraft Sales, Services, and Storage                          | -                             | -         | -         | P         |                                                            |
| Animal Care, Sales and Services                                | See sub-classifications below |           |           |           |                                                            |
| <i>Kennels</i>                                                 | -                             | M         | M         | -         |                                                            |
| <i>Veterinary Services</i>                                     | -                             | P         | P         | -         |                                                            |
| Automobile/Vehicle Sales and Services                          | See sub-classifications below |           |           |           |                                                            |
| <i>Automobile/Vehicle Repair, Major.</i>                       | -                             | P         | P         | -         | Section 301.04<br>Automobile/Vehicle<br>Service and Repair |
| <i>Automobile/Vehicle Service and Repair, Minor.</i>           | -                             | P         | P         | -         | Section 301.04<br>Automobile/Vehicle<br>Service and Repair |
| <i>Automobile/Vehicle Washing.</i>                             | -                             | P         | P         | -         | Section 301.05 Auto<br>Service Stations and Car<br>Washing |
| <i>Large Vehicle and Equipment Sales, Service, and Rental</i>  | -                             | C         | P         | -         |                                                            |



| <b>TABLE 204.02: LAND USE REGULATIONS—EMPLOYMENT DISTRICTS</b> |                               |           |           |           |                                                                         |
|----------------------------------------------------------------|-------------------------------|-----------|-----------|-----------|-------------------------------------------------------------------------|
| <i>Use Classification</i>                                      | <i>PO</i>                     | <i>IP</i> | <i>IG</i> | <i>IA</i> | <i>Additional Regulations</i>                                           |
| <i>Service Station</i>                                         | -                             | C         | C         | -         | Section 301.05 Auto Service Stations and Car Washing                    |
| <i>Towing and Impound.</i>                                     | -                             | C         | P         | -         | Section 300.09 Outdoor Storage                                          |
| Banks and Financial Institutions                               | See sub-classifications below |           |           |           |                                                                         |
| <i>Banks and Credit Unions</i>                                 | P                             | P(1)      | P(1)      | P(1)      |                                                                         |
| <i>Check Cashing Businesses</i>                                | P                             | -         | -         | -         |                                                                         |
| Building Materials and Services                                | -                             | P         | P         | -         |                                                                         |
| Business Services                                              | P                             | P(1)      | P(1)      | -         |                                                                         |
| <b><i>Cannabis Dispensary</i></b>                              | -                             | -         | -         | <b>P</b>  | <b><i>Municipal Code Chapter 15, Article VII</i></b>                    |
| Commercial Entertainment & Recreation                          | See sub-classifications below |           |           |           |                                                                         |
| <i>Large-Scale</i>                                             | -                             | C         | C         | C         | Section 301.02 Alcoholic Beverage Sales                                 |
| <i>Small Scale</i>                                             | -                             | C         | -         | -         | Section 301.02 Alcoholic Beverage Sales                                 |
| Eating, Drinking, and Smoking Establishments                   | See sub-classifications below |           |           |           |                                                                         |
| <i>Coffee Shops/Cafes</i>                                      | P(2)                          | P(1)      | P(1)      | P         | Section 300.08 Outdoor Seating                                          |
| <i>Restaurants</i>                                             | P(2)                          | P(1)      | P(1)      | P         | Section 300.08 Outdoor Seating; Section 301.02 Alcoholic Beverage Sales |
| Food and Beverage Retail Sales                                 | P(2)                          | P(1)      | P(1)      | -         | Section 301.02 Alcoholic Beverage Sales                                 |
| Funeral Parlors and Mortuaries                                 | -                             | P         | P         | -         |                                                                         |
| Hotels and Motels                                              | -                             | C         | C         | -         |                                                                         |
| Bed and Breakfasts                                             | P(10)                         | -         | -         | -         |                                                                         |
| Light Fleet Based Services                                     | -                             | P         | P         | -         |                                                                         |

| <b>TABLE 204.02: LAND USE REGULATIONS—EMPLOYMENT DISTRICTS</b>                                                                                        |                               |           |           |           |                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|-----------|-----------|-----------|---------------------------------------------|
| <i>Use Classification</i>                                                                                                                             | <i>PO</i>                     | <i>IP</i> | <i>IG</i> | <i>IA</i> | <i>Additional Regulations</i>               |
| Maintenance and Repair Services                                                                                                                       | -                             | P         | P         | -         |                                             |
| Medical Facilities                                                                                                                                    | See sub-classifications below |           |           |           |                                             |
| <i>Hospital</i>                                                                                                                                       | P                             | -         | -         | -         |                                             |
| <i>Medical Clinic</i>                                                                                                                                 | P                             | -         | -         | -         |                                             |
| <i>Professional/Medical</i>                                                                                                                           | P                             | -         | -         | -         |                                             |
| Offices                                                                                                                                               | See sub-classifications below |           |           |           |                                             |
| <i>General Offices</i>                                                                                                                                | P                             | P         | P         | P         |                                             |
| <i>Walk-In Clientele</i>                                                                                                                              | P                             | -         | -         | -         |                                             |
| Parking, Public or Private                                                                                                                            | P(3)                          | P         | P         | -         |                                             |
| Personal Services                                                                                                                                     | P(2)                          | P(1)      | -         | -         |                                             |
| Retail Sales                                                                                                                                          | P(2)                          | P(2)      | P(2)      | -         |                                             |
| Salvage and Wrecking                                                                                                                                  | -                             | C         | C         | C         | Section 300.09 Outdoor Storage              |
| <i>Salvage and Wrecking conducted wholly within a building</i>                                                                                        | -                             | P         | P         | P         | Section 300.09 Outdoor Storage              |
| Sexually Oriented Business                                                                                                                            | -                             | P         | P         | -         | Section 301.17 Sexually Oriented Businesses |
| Wholesaling and Distribution                                                                                                                          | -                             | P         | P         | P         |                                             |
| <b>Industrial Uses</b>                                                                                                                                |                               |           |           |           |                                             |
| Construction and Material Yards                                                                                                                       | -                             | P         | P         | -         | Section 300.09 Outdoor Storage              |
| Handicraft/Custom Manufacturing                                                                                                                       | -                             | P         | P         | P         |                                             |
| Industry, General                                                                                                                                     | -                             | P         | P         | P         |                                             |
| <i>Alcohol Manufacture</i>                                                                                                                            | -                             | C(4)      | C         | -         |                                             |
| <i>Hazardous Waste Management Facilities</i>                                                                                                          | -                             | C(6)      | C         | -         |                                             |
| <i>Manufacture, processing, or treatment of materials which may be obnoxious, offensive or hazardous to health and safety of persons and property</i> | -                             | -         | C         | -         |                                             |

| <b>TABLE 204.02: LAND USE REGULATIONS—EMPLOYMENT DISTRICTS</b>    |                               |           |           |           |                                             |
|-------------------------------------------------------------------|-------------------------------|-----------|-----------|-----------|---------------------------------------------|
| <i>Use Classification</i>                                         | <i>PO</i>                     | <i>IP</i> | <i>IG</i> | <i>IA</i> | <i>Additional Regulations</i>               |
| Industry, Limited                                                 | -                             | P         | P         | P         |                                             |
| Recycling Facilities                                              | See sub-classifications below |           |           |           |                                             |
| <i>Recycling Collection Facility</i>                              | -                             | -         | P         | -         | Section 301.14 Recycling Facilities         |
| <i>Recycling Processing Facility</i>                              | -                             | -         | P         | -         | Section 301.14 Recycling Facilities         |
| Warehousing and Storage                                           | See sub-classifications below |           |           |           |                                             |
| <i>Chemical, Mineral, and Explosives Storage</i>                  | -                             | C         | C         | C         |                                             |
| <i>Indoor Warehousing and Storage</i>                             | -                             | P         | P         | P         |                                             |
| <i>Personal Storage</i>                                           | -                             | P         | P         | P         | Section 301.13 Personal Storage             |
| <b>Transportation, Communication, and Utilities Uses</b>          |                               |           |           |           |                                             |
| Communication Facilities                                          | See sub-classifications below |           |           |           |                                             |
| <i>Antenna and Transmission Towers, camouflage facilities</i>     | P                             | P         | P         | P         | Section 301.20 Telecommunication Facilities |
| <i>Antenna and Transmission Towers, non-camouflage facilities</i> | M(7)                          | M(7)      | M(7)      | M(7)      | Section 301.20 Telecommunication Facilities |
| <i>Broadcasting Facility</i>                                      | -                             | P         | P         | P         | Section 301.20 Telecommunication Facility   |
| <i>Call Center</i>                                                | P(2)                          | P         | P         | -         |                                             |
| Freight/Truck Terminals and Warehouses                            | -                             | P         | P         | P         |                                             |
| Heliports                                                         | -                             | C         | C         | C         |                                             |
| Transportation Passenger Terminals                                | -                             | P         | P         | P         |                                             |
| Utilities, Major                                                  | -                             | P         | P         | P         |                                             |
| <i>Renewable Energy Facility</i>                                  |                               | C         | C         | C         |                                             |
| <i>Solid Waste Collection, Treatment, and Disposal</i>            | -                             | -         | P         | C         |                                             |
| Utilities, Minor                                                  | P                             | P         | P         | P         |                                             |

| TABLE 204.02: LAND USE REGULATIONS—EMPLOYMENT DISTRICTS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                      |      |      |      |                                              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------|------|------|------|----------------------------------------------|
| Use Classification                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | PO                                                   | IP   | IG   | IA   | Additional Regulations                       |
| Agriculture and Extractive Uses                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                      |      |      |      |                                              |
| Crop Cultivation, Commercial                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | M                                                    | P    | P    | M    | Section 301.06 Crop Cultivation              |
| Crop Cultivation, Non-commercial                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | -                                                    | P    | P    | -    |                                              |
| Mining & Quarrying                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | -                                                    | -    | C(6) | -    |                                              |
| Other Applicable Types                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                      |      |      |      |                                              |
| Accessory Uses and Structures                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | P                                                    | P    | P    | P    | Section 301.01 Accessory Uses and Structures |
| Additional Uses                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | -                                                    | -    | -    | P(9) |                                              |
| Caretaker Unit                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | -                                                    | P(8) | P(8) | -    |                                              |
| Nonconforming Use                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Chapter 307 Nonconforming Uses, Structures, and Lots |      |      |      |                                              |
| Temporary Use                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Section 301.21 Temporary Uses                        |      |      |      |                                              |
| Specific Limitations:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                      |      |      |      |                                              |
| <div><div>1.</div><div>Permitted only as an accessory use that supports industrial uses, business and office parks, and corporate offices.</div></div> <div><div>2.</div><div>Permitted only as an accessory to a primary office and limited to establishments with a gross floor area less than 5,000 square feet in size.</div></div> <div><div>3.</div><div>Limited to parking areas for exclusive use of occupants, employees and patrons of the uses, buildings, stores, and businesses located in that zone.</div></div> <div><div>4.</div><div>Alcohol manufacture must be located more than 500 feet from the nearest residential, or commercial zoning designation as shown on the Official Zoning Map.</div></div> <div><div>5.</div><div>On-site hazardous waste management facilities must be accessory and incidental to a primary use.</div></div> <div><div>6.</div><div>In areas designated as Mineral Resource Zones in the General Plan</div></div> <div><div>7.</div><div>Prohibited within 300 feet of any R district.</div></div> <div><div>8.</div><div>For agricultural employees, when located on farms or ranches containing more than 10 acres.</div></div> <div><div>9.</div><div>Additional uses may be allowed with City Council approval of a Conditional Use Permit.</div></div> <div><div>10.</div><div>Limited to no more than two rooms in a dwelling rented to not more than four persons. Meals may not be provided to more than four boarders.</div></div> |                                                      |      |      |      |                                              |

SECTION 3. Section 301.23 is hereby amended as follows:

301.23 Cannabis Cultivation, Use, and Commercial Activities

A. Purpose and Intent

1. The City Council, based on evidence presented to it in the proceedings leading to the adoption of this chapter, hereby finds that the cultivation, preparation, and distribution of cannabis in the city has caused and is causing ongoing impacts to the community. These impacts include increases in various types of crime due to outdoor grows, damage to buildings containing indoor grows, including improper and dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies and related crimes. Many of these impacts have fallen disproportionately on residential neighborhoods, but nonetheless also negatively impact properties in the commercial districts. These impacts have also created an increase in response costs, including code enforcement, building, land use, fire, and police staff time and expenses.
2. The City Council finds that the restrictions and/or prohibitions on non-commercial cultivation, commercial marijuana cultivation, marijuana processing, marijuana delivery, and marijuana dispensaries are necessary for the preservation and protection of the public health, safety, and welfare for the City and its community. The City Council's prohibition of such activities is within the authority conferred upon the City Council in its Charter and state law.
3. The purpose of this article is to restrict non-commercial cultivation, and to restrict and/or prohibit the establishment of commercial cannabis uses in the City.

B. Interpretation and Applicability

1. Nothing in this section is intended to, nor shall it be construed to, preclude a landlord from limiting or prohibiting cannabis cultivation, smoking or other related activities by tenants.
2. Nothing in this section is intended to, nor shall it be construed to, burden any defense to criminal prosecution otherwise afforded by California law.
3. Nothing in this section is intended to, nor shall it be construed to, exempt any cannabis related activity from any and all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements.
4. Nothing in this section is intended to, nor shall it be construed to, make legal any cultivation, transportation, sale or other use of cannabis that is otherwise prohibited under California law.

5. All cultivation activities within city limits shall be subject to the provisions of this section and other applicable provisions of this Code, regardless of whether the cultivation activities existed or occurred prior to adoption of this section.
- C. Definitions: For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning:
1. **Accessory Structure.** A residential accessory structure shall include any uses that are customarily related to a residence, including garages, greenhouses, storage sheds, studios, and workshops. Any accessory structure must be compliant with Section 301.01 and any other applicable provisions of the Municipal Code.
  2. **“Cannabis”** (and/or **“Marijuana”**) means any or all parts of the plant *Cannabis sativa* linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, or any other strain or varietal of the genus of *Cannabis* that may exist or hereafter be discovered or developed that has psychoactive or medicinal properties, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. “Cannabis” also means the separated resin, whether crude or purified, obtained from cannabis. “Cannabis” does not include the mature stalks of the plant, fiber produced from the stalks, oil, or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purposes of this Code, “cannabis” does not mean “industrial hemp” as defined by Section 11018.5 of the California Health and Safety Code.
  3. **“Cannabis accessories”** is defined in Chapter 15, Article VII of this Code.
  4. **“Cannabis (or Marijuana) Collective”** or “cooperative or collective” includes any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes that is organized in the manner set forth in the August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, as may be amended from time to time, that was issued by the office of the Attorney General for the state of California, or for the purposes set forth in California Health and Safety Code Section 11362.5 (Compassionate Use Act) of California Health and Safety Code Sections 11362.7 to 11362.83 (Medical Marijuana Program Act).
  5. **“Cannabis Dispensary”** is defined in Chapter 15, Article VII of this Code.
  6. **“Cannabis product”** is defined in Chapter 15, Article VII of this Code.
  7. **“Commercial cannabis activity”** is defined in Chapter 15, Article VII of this Code.
  8. **“Concentrated cannabis”** is defined in Chapter 15, Article VII of this Code.
  9. **“Personal (Non-commercial) Cultivation”** means any activity involving the growing, planting, harvesting, drying, curing, grading, or trimming, and includes processing of cannabis when done for individual (noncommercial) purposes.

10. ***“Delivery”*** is defined in Chapter 15, Article VII of this Code.
  11. ***“Distribution”*** is defined in Chapter 15, Article VII of this Code.
  12. ***“Manufacture”*** is defined in Chapter 15, Article VII of this Code.
  13. ***“MAUCRSA”*** means the Medicinal and Adult-Use Cannabis Regulation and Safety Act as codified in Division 10 of the California Business and Professions Code, as the same may be amended from time to time.
  14. ***“Medical cannabis dispensary”*** is defined in Chapter 15, Article VII of this Code.
  15. ***“Processing”*** is defined in Chapter 15, Article VII of this Code.
  16. ***“Sensitive use”*** means any cemetery, religious institution, school, public building regularly frequented by children, public park, or boys’ club, girls’ club or similar organization.
- D. Severability: If any part of Section 301.23 is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this section.
- E. Personal (Non-commercial) Cultivation and Other Activities: Personal, non-commercial cultivation and other activities including drying, harvesting, processing, smoking, and use are restricted pursuant to this Section and/or Chapter 18, Article XI of this Code. Nothing shall in this Section shall prohibit a person twenty-one (21) years of age or older from engaging in the cultivation of six (6) or fewer live cannabis plants within a single private residence, or inside an accessory structure located upon the grounds of a private residence. Alternatively, the six or fewer plants may be grown outdoors within a locked space that is not visible by normal, unaided vision from a public place or from the surrounding properties. Additionally, the following requirements apply:
1. There shall be no exterior evidence of cannabis cultivation occurring at any property, from the public right of way.
  2. Cannabis cultivation lighting shall not exceed one thousand two hundred (1,200) watts.
  3. If grown in an accessory structure, the structure(s) shall at all times meet the requirements of the latest adopted version of the California Building, Fire, Mechanical, Electrical and Plumbing Codes (collectively California Codes). All required electrical permits must be obtained pursuant to the California Codes and applicable regulations, and proper permits must be obtained from the Building Division prior to performing any work on electrical wiring or rewiring.
  4. If required by the California Codes, the wall(s) adjacent to the cultivation area shall be constructed with five-eighths inch (5/8”) type X moisture-resistant drywall;
  5. Cannabis cultivation areas shall be secured by a functioning audible alarm at all

times during growing seasons;

6. The growing of cannabis outdoors shall comply with setback requirements for the primary residence on the property subject to the zoning classification of the property.

7. Cannabis plants grown outdoors shall be grown in an area enclosed with a solid view obscuring the fence, secured with self-closing and locking gates; and

8. Areas for cultivation of cannabis shall be secured, locked, and fully enclosed, and rendered inaccessible to minors.

9. All restrictions set forth in Chapter 18, Article XI, applicable to cultivation, shall be complied with.

F. Prohibited Uses and Activities

1. With the exception of Cannabis Dispensaries as set forth further in this Section, and as regulated in Chapter 15, Article VII, Commercial cannabis activity, whether or not for profit, is expressly prohibited in all zones, specific plans areas, and overlay zones of the city. No person shall establish, operate, maintain, conduct, allow or engage in commercial cannabis activity anywhere within the city, unless expressly permitted by this Section or elsewhere in the Porterville Municipal Code.

2. A property owner shall not rent, lease or otherwise permit any person or business that engages in commercial cannabis activity to occupy real property in the city, unless the commercial activity is expressly permitted by this Code, and the activity at that location has been expressly authorized by the City in accordance with applicable City regulations and State laws. A property owner shall not allow any person or business to establish, operate, maintain, conduct, or engage in unauthorized commercial cannabis activity on any real property owned or controlled by that property owner that is located in the city.

3. Unless expressly authorized by this Code, Subsection 1 above shall prohibit all activities for which a State license is required pursuant to MAUCRSA, as the same may be amended from time to time. Accordingly, the city shall not issue any permit, license, or other entitlement for any activity for which a State license is required under the MAUCRSA, as the same may be amended from time to time, except for activities expressly authorized and permitted by the City. The city shall also not issue any local license to a nonprofit entity pursuant to California Business and Professions Code section 26070.5, except as expressly authorized and permitted by the City.

G. Permitted Use

1. Commercial Cannabis Dispensary uses shall be allowed to be established and operated by Business Owners (as defined in Section 15-85 of this Code), that meet all of the requirements specified in this Section and Chapter 15, Article VII of this Code, in the



DR-N, DR-S and Airport Industrial zone districts of the City, subject to having a valid State license for the operations, having a Regulatory Permit from the City, obtaining a City Business License, and having entered into a Development Agreement between the Business Owners and the City. Any cannabis dispensary permitted to be established shall at all times be in compliance with this section and Article VII of Chapter 15 of this Code, as it may be amended from time to time or repealed and replaced by another section governing Cannabis Dispensary operation, but subject to the terms and conditions within the applicable Development Agreement.

2. The number of regulatory permits for cannabis dispensaries is limited to no more than one permit, plus an additional permit for every 25,000 residents. The City Council may reserve one of the allowed permits exclusively for a medical cannabis dispensary use, in conformity with the applicable regulations set forth in Chapter 15, Article VII of this Code.

3. Distance separation from schools. All Cannabis dispensaries shall comply with the distance separation requirements from schools as required by State law. In addition, a Cannabis Dispensary shall not be located within 600 feet from any existing school or proposed school site as identified in the General Plan. Measurements shall be from property boundary to property boundary. For purposes of this section, school means any public or private school providing instruction in kindergarten or grades 1-12, inclusive, but does not include any private school in which education is primarily conducted in private homes. The distance specified in this section shall be measured in the same manner as provided in subdivision (c) of Section 11362.768 of the Health and Safety Code unless otherwise provided by law.

4. All building property requirements set forth in Article VII, Chapter 15 shall also apply and are hereby incorporated by reference as if set forth fully herein.

5. Cannabis Dispensary uses are additionally subject to all setback, signage, and other requirements applicable to the zone classifications they are located in, in addition to any applicable requirements set forth in Chapter 21 and this Code, as well as the Downtown Design Guidelines, in applicable zone districts.

H. Enforcement. Any violation of this chapter is subject to any and all penalties as prescribed in the Porterville Municipal Code, in addition to being subject to other remedies provided by law, including but not limited to, injunctive relief, nuisance abatement action, summary abatement of immediately hazardous conditions, and all other applicable fines, penalties and remedies. This chapter is adopted to address public health and safety issues, and as such, carries with it an express legislative intent to be interpreted strictly, enforced with an emphasis on public and community safety, and enforced rigorously in a manner such as to deter further violations. In any civil action brought pursuant to this article, a court of competent jurisdiction may award reasonable attorneys' fees and costs to the prevailing party. Notwithstanding the penalties set forth in the Porterville Municipal Code, no provision of Section 301.23 or this Code authorizes a criminal prosecution, arrest or penalty

inconsistent with or prohibited by Health and Safety Code Section 11362.71 et seq. or Section 11362.1 et seq., as the same may be amended from time to time. In the event of any conflict between the penalties enumerated under this Code and any penalties set forth in State law, the maximum penalties allowable under State law shall govern.

SECTION 4: The Porterville Municipal Code, Section 701.02 is hereby amended as follows:

#### **701.02: LAND USE CLASSIFICATIONS:**

**Aircraft Sales, Services, and Storage.** Uses related to the rental, sales and leasing, storage, repair, and washing of aircraft.

**Airports.** Facilities for the takeoff and landing of airplanes, including runways, aircraft storage buildings, public terminal buildings and parking, and support activities such as airport operations, crew quarters, and air traffic control.

#### **Animal Care, Sales and Services**

***Kennels.*** Facilities for keeping, boarding, training, breeding or maintaining for commercial purposes, four (4) or more dogs, cats, or other household pets not owned by the kennel owner or operator. This classification excludes pet shops and animal hospitals that provide twenty-four (24) hour accommodation of animals receiving medical or grooming services.

***Pet Stores.*** Retail sales of animals and/or services, including grooming, for animals on a commercial basis. This classification excludes dog walking and similar pet care services not carried out at a fixed location, and excludes pet supply stores that do not sell animals or provide on-site animal services.

***Veterinary Services, Small.*** Medical care for small animals on a commercial basis. This classification allows twenty-four (24) hour accommodation of animals receiving medical or grooming services but does not include kennels.

***Veterinary Services, Large.*** Medical care for large animals which generally includes agricultural animals, on a commercial basis. This classification allows twenty-four (24) hour accommodation of animals receiving medical or grooming services.

**Animal Raising.** The raising, grazing, or feeding of animals for animal products, animal increase, or value increase, and dairying as an accessory use on farms with dairy cattle.

**Artists' Studios.** Work space for artists and artisans, including individuals practicing one (1) of the fine arts or performing arts, or skilled in an applied art or craft. Incidental retail sales of items produced on the premises is required.

#### **Automobile/Vehicle Sales and Services**

***Automobile/Vehicle Rentals.*** Rental of automobiles, including storage and incidental

maintenance.

***Automobile/Vehicle Sales and Leasing.*** Sales or leasing of automobiles, boats, motorcycles, trucks, and motor homes, including storage and incidental maintenance.

***Automobile/Vehicle Repair, Major.*** Repair of automobiles, trucks, motorcycles, motor homes, boats and recreational vehicles, including the sale, installation, and servicing of related equipment and parts, generally on an overnight basis. This classification includes auto repair shops, body and fender shops, and transmission shops, but excludes vehicle dismantling or salvaging and tire retreading or recapping.

***Automobile/Vehicle Service and Repair, Minor.*** The service and repair of automobiles, light-duty trucks, boats, and motorcycles, including the sale, installation, and servicing of related equipment and parts. This classification includes quick-service oil, tune-up, wheel and brake shops, auto glass services, tire sales and installation, muffler shops and upholstery shops where repairs are made or service provided in enclosed bays and no vehicles are stored overnight. This classification excludes establishments providing engine repair, body and fender work, vehicle painting, or towing. It also excludes repair of heavy trucks or construction vehicles.

***Automobile/Vehicle Washing.*** Washing, waxing, or cleaning of automobiles or similar light vehicles, including self-serve washing facilities.

***Emergency Ambulance Services.*** The location of emergency ambulance service vehicles.

***Large Vehicle and Equipment Sales, Service and Rental.*** Sales, servicing, rental, fueling, and washing of large trucks, trailers, tractors, and other equipment used for construction, agricultural, or landscape gardening activities. Includes large vehicle operation training facilities. Sales of new or used automobiles or trucks are excluded from this classification.

***Service Station.*** Establishments primarily engaged in retailing automotive fuels or retailing these fuels in combination with activities, such as providing repair services; selling automotive oils, replacement parts, and accessories; and/or providing food services.

***Towing and Impound.*** Establishments primarily engaged in towing light or heavy motor vehicles, both local and long distance. These establishments may provide incidental services, such as vehicle storage and emergency road repair services. (For automobile/dismantling, see Salvage Yards)

## **Banks and Financial Institutions**

***Banks and Credit Unions.*** Financial institutions providing retail banking services. This classification includes only those institutions engaged in the on-site circulation of money, including credit unions, but excluding check-cashing businesses.

***Check Cashing Businesses.*** Establishments that, for compensation, engage in the business of cashing checks, warrants, drafts, money orders, or other commercial paper serving the same purpose. This classification also includes the business of deferred deposits, whereby the check casher refrains from depositing a personal check written by a customer until a

specific date pursuant to a written agreement as provided in Civil Code 1789.33. Check Cashing Businesses do not include state or federally chartered banks, savings associations, credit unions, or industrial loan companies. They also do not include retail sellers engaged primarily in the business of selling consumer goods, such as consumables to retail buyers that cash checks or issue money order incidental to their main purpose or business.

**Bed and Breakfast.** A small lodging establishment that offers overnight accommodation and inclusive breakfast, where the host lives at the establishment.

**Building Materials and Services.** Retailing, wholesaling, or rental of building supplies or equipment. This classification includes lumber yards, tool and equipment sales or rental establishments, and includes establishments devoted principally to taxable retail sales to individuals for their own use. This definition does not include Contractors' Yards and hardware stores less than ten thousand (10,000) square feet in floor area (see Retail Sales).

**Business Services.** Establishments that primarily provide goods and services to other businesses on a fee or contract basis, including printing and copying, blueprint services, advertising and mailing, equipment rental and leasing, office security, custodial services, photo finishing, and model building, but excluding vehicle rentals, bulk items, or print shops.

**Cannabis Dispensary.** See Section 301.23, and the definition for "Dispensary" and "Medical cannabis dispensary" located in Section 15-85 of the Porterville Municipal Code.

**Cemetery.** Establishments primarily engaged in operating sites or structures reserved for the interment of human or animal remains, including mausoleums, burial places, and memorial gardens.

**Clubs and Lodges.** Meeting, recreational, or social facilities of a private or nonprofit organization primarily for use by members or guests. This classification includes union halls and social clubs.

**Colleges and Trade Schools, Public or Private.** Institutions of higher education providing curricula of a general, religious or professional nature, typically granting recognized degrees, including conference centers and academic retreats associated with such institutions. This classification includes business and computer schools, management training, technical and trade schools, but excludes personal instructional services such as music lessons.

**Construction and Material Yards.** Storage of construction materials or equipment on a site other than a construction site.

**Commercial Entertainment and Recreation.** Provision of participant or spectator entertainment to the general public.

**Cinema/Theaters.** Facilities for indoor display of films, motion pictures, or dramatic, musical, or live performances. This classification may include incidental food and beverage services to patrons.

***Downtown Entertainment.*** This classification includes facilities such as amusement and theme parks, amphitheaters, facilities with more than ten thousand (10,000) square feet in building area, including fitness centers, gymnasiums, handball, racquetball, ice or roller skating rinks, swimming or wave pools, miniature golf courses, bowling alleys, or archery or indoor shooting ranges. This classification may include restaurants, snack bars, and other incidental food and beverage services to patrons.

***Large-scale.*** This classification includes large outdoor facilities such as amusement and theme parks, casinos, sports stadiums and arenas, racetracks, amphitheaters, drive-in theaters, driving ranges, golf courses, and facilities with fifty thousand (50,000) square feet or more in building area, including fitness centers, gymnasiums, handball, racquetball, or large tennis club facilities; ice or roller skating rinks; swimming or wave pools; miniature golf courses; bowling alleys; archery or indoor shooting ranges; riding stables; campgrounds; stables, etc. This classification may include restaurants, snack bars, and other incidental food and beverage services to patrons.

***Small-scale.*** This classification includes indoor facilities that occupy less than fifty thousand (50,000) square feet of building area, such as billiard parlors, card rooms, health clubs, fitness centers, gymnasiums, handball, racquetball; ice or roller skating rinks; swimming or wave pools; miniature golf courses, bowling alleys, dance halls, small tennis club facilities, poolrooms, indoor shooting ranges, and amusement arcades. This classification may include restaurants, snack bars, and other incidental food and beverage services to patrons.

**Community Center.** Any noncommercial facility established primarily for the benefit and service of the population of the community in which it is located. Examples include youth centers and senior centers.

### **Communication Facilities**

***Antenna and Transmission Towers.*** Broadcasting and other communication services accomplished through electronic or telephonic mechanisms, as well as structures designed to support one (1) or more reception/transmission systems. Examples of transmission towers include, but shall not be limited to, radio towers, television towers, telephone exchange/microwave relay towers, and cellular telephone transmission/personal communications systems towers.

***Broadcasting Facility.*** Includes radio or television stations. Transmission towers must comply with Series 301.20 Telecommunication Facilities.

***Call Centers.*** Includes customer support, direct sales, order processing, customer service, surveys, research, credit management, help desk, reservations, billing and accounting, sales and telemarketing. These services are either provided internally by the company for its own use or provided externally by an outsourcing agency which provide these services for several companies.

**Recording Studio.** Facility for sound recording which can consist of a studio or live room and control room, where sound is recorded and manipulated.

**Correctional Facility.** A building such as a jail or prison used for the confinement of persons held while awaiting trial or for the confinement of persons convicted of offenses.

**Crop Cultivation.** The cultivation of tree, vine, field, forage, and other plant crops intended to provide food or fibers. The classification excludes wholesale or retail nurseries. (see Nurseries and Garden Centers)

**Crop Cultivation, Commercial.** Results in quantities of crops greater than what could be reasonably consumed in personal use and/or crops that are produced with the intent to sell commercially.

**Crop Cultivation, Non-commercial.** Includes orchards and flower and vegetable gardens for personal use.

**Cottage Food Operations.** A private home food operation where low-risk food products are prepared or packaged for sale to consumers which complies with California Government Code Section 51035.

**Cultural Institutions.** Public or non-profit institutions engaged primarily in the display or preservation of objects of interest in the arts or sciences that are open to the public on a regular basis. This classification includes performing arts centers for theater, dance, and events; buildings of an educational, charitable or philanthropic nature; libraries; museums; historical sites; aquariums; art galleries; and zoos and botanical gardens.

**Day Care Centers.** Establishments providing non-medical care for persons on a less than 24-hour basis other than Family Day Care Home. This classification includes nursery schools, preschools, and day care facilities for children or adults, and any other day care facility licensed by the State of California.

**Eating, Drinking, and Smoking Establishments.** Businesses primarily engaged in serving prepared food, beverages, and/or tobacco for consumption on or off the premises.

**Bars/Night Clubs/Lounges.** Businesses serving beverages for consumption on the premises as a primary use and including on-sale service of alcohol including beer, wine, and mixed drinks. This classification includes establishments that provide dancing or entertainment.

**Coffee Shops/Cafes.** Establishments that serve nonalcoholic beverages, such as coffee, juices or sodas for consumption on or near the premises, or a specialty snack, such as ice cream, frozen yogurt, cookies or popcorn.

**Restaurants.** Establishments where meals are served to customers. This classification includes full-service restaurants with table service as well as establishments providing limited table service, such as fast-food restaurants, carryout sandwich shops, limited

service pizza parlors and delivery shops, and delicatessen restaurants. This classification excludes establishments that provide dancing or entertainment (see Bars/Night Clubs/Lounges).

**Tobacco Bars.** Any business establishment which in whole or in part is dedicated to or includes as part of the business, the smoking of tobacco or other substances. This classification includes cigar lounges, hookah bars/cafes, tobacco cafes/bars, and smoking parlors.

**Elderly and Long-term Care.** Establishment that provide twenty-four (24) hour medical, convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves, and is licensed as a skilled nursing facility by the, including but not limited to, rest homes and convalescent hospitals, but not Residential Care, Hospitals, or Clinics.

**Family Day Care Home.** A home that regularly provides care, protection, and supervision for fourteen (14) or fewer children, in the provider's own home, for periods of less than twenty-four (24) hours per day, while the parents or guardians are away, and is either a large family day care home or a small family day care home as follows.

**Large.** A home that provides family day care for seven (7) to fourteen (14) children, including children under the age of 10 years who reside at the home (Health and Safety Code Section 1596.78(b)). A large family day care home may provide care for more than 12 children and up to and including fourteen (14) children, if all of the following conditions are met (Health and Safety Code Section 1597.465):

1. At least one (1) child is enrolled in and attending kindergarten or elementary school and a second child is at least six (6) years of age.
2. No more than three (3) infants are cared for during any time when more than twelve (12) children are being cared for.
3. The licensee notifies a parent that the facility is caring for two (2) additional school-age children and that there may be up to thirteen (13) or fourteen (14) children in the home at one (1) time.
4. The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented.

**Small.** A home that provides family day care for eight (8) or fewer children, including children under the age of ten (10) years who reside at the home (Health and Safety Code Section 1596.78(c)). A small family day care home may provide care for more than six (6) and up to eight (8) children, without an additional adult attendant, if all of the following conditions are met (Health and Safety Code Section 1597.44):

1. At least one (1) child is enrolled in and attending kindergarten or elementary school and a second child is at least six (6) years of age.

2. No more than two (2) infants are cared for during any time when more than six (6) children are cared for.
3. The licensee notifies each parent that the facility is caring for two (2) additional school-age children and that there may be up to seven (7) or eight (8) children in the home at one (1) time.
4. The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented.

**Food and Beverage Retail Sales.** Retail sales of food and beverages for off-site preparation and consumption. Typical uses include food markets, convenient markets, groceries, liquor stores, and retail bakeries.

**Freight/Truck Terminals and Warehouses.** Facilities for local or worldwide freight, courier, local messenger, and postal services by truck or rail.

**Funeral Parlors and Mortuaries.** An establishment primarily engaged in the provision of services involving the care, preparation, or disposition of the human dead and conducting memorial services. Typical uses include a crematory, columbarium, mausoleum, or mortuary.

**Government Offices.** Administrative, clerical, or public contact offices of a government agency, including postal facilities, together with incidental storage and maintenance of vehicles. This classification excludes corporation yards, equipment service centers, and similar facilities that primarily provide maintenance and repair services and storage facilities for vehicles and equipment (See Utilities, Major).

**Group Residential.** Shared living quarters without separate kitchen or bathroom facilities for each room or unit, offered for rent for permanent or semi-transient residents on a weekly or longer basis. This classification includes rooming and boarding houses, dormitories, private residential clubs, and residential hotels intended for long-term occupancy (thirty (30) days or more) but excludes Hotels and Motels, Residential Care, Limited or General.

**Handicraft/Custom Manufacturing.** Manufacture of crafts, art, sculpture, stained glass, jewelry, apparel, and similar items using hand tools and small mechanical devices.

**Heliports.** Facilities for the takeoff and landing of helicopters, as a primary use. Heliports typically contain one (1) or more helipads and may have limited facilities such as fuel, lighting, a windsock, or even hangars.

**Hotels and Motels.** Establishments offering lodging to transient patrons. These establishments may provide additional services, such as conference and meeting rooms, restaurants, bars, or recreation facilities available to guests or to the general public. This classification includes motor lodges, motels, hostels, extended-stay hotels, and tourist courts, but does not include rooming houses, boarding houses, or private residential clubs.

**Industry, General.** Manufacturing of products from extracted or raw materials or recycled or secondary materials, or bulk storage and handling of such products and materials. This



classification includes operations such as biomass energy conversion; food and beverage processing; textile mills; production apparel manufacturing; photographic processing plants; leather and allied product manufacturing; wood product manufacturing; paper manufacturing; chemical manufacturing; plastics and rubber products manufacturing; nonmetallic mineral product manufacturing; primary metal manufacturing; fabricated metal product manufacturing; and automotive, ship, aircraft, and heavy equipment manufacturing.

**Industry, Limited.** Establishments engaged in light industrial activities taking place primarily within enclosed buildings and producing minimal impacts on nearby properties. This classification includes operations such as manufacturing finished parts or products primarily from previously prepared materials; commercial laundries and dry cleaning plants; mobile home manufacturing; monument works; printing, engraving and publishing; computer and electronic product manufacturing; furniture and related product manufacturing; and industrial services.

**Instructional Services.** Establishments that offer specialized programs in personal growth and development such as music, vocal, fitness and dancing instruction.

**Light Fleet-Based Services.** Passenger transportation services, local delivery services, medical transport, and other businesses that rely on fleets of three (3) or more vehicles with rated capacities less than ten thousand (10,000) lbs. This classification includes parking, dispatching, and offices for taxicab and limousine operations, non-emergency medical transport, local messenger and document delivery services, home cleaning services, and similar businesses. This classification does not include towing operations (See Automobile/Vehicle Sales and Service, Towing and Impound) or taxi or delivery services with two (2) or fewer fleet vehicles on-site (See Business Services).

**Maintenance and Repair Services.** The on-site maintenance or repair of office machines, household appliances, furniture, and similar items. This classification excludes maintenance and repair of vehicles or boats (see Automotive Sales and Services) and personal apparel (See Personal Services).

**Massage Establishments.** Healing arts

**Medical Facilities.** These classifications exclude veterinary and animal hospitals (see Animal Care, Sales, and Services).

**Hospitals.** State-licensed facilities providing medical, surgical, psychiatric, or emergency medical services to sick or injured persons.

**Medical Clinic.** This classification includes facilities for multiple physicians, medical groups, inpatient or outpatient treatment, including substance-abuse programs as well as training, research, and administrative services for patients and employees.

**Professional/Medical.** This classification is for the single practitioner; to include offices where medical and dental services are provided by physicians, dentists,

chiropractors, optometrists, and similar medical professionals, including, where affiliated with a medical practitioner, massage therapy.

**Mining and Quarrying.** The extraction of nonmetallic minerals, including dredging and sand and gravel pit operations. This classification includes surface mining operations.

**Mobile Home Parks.** Mobile housing in a planned development with common area amenities. Spaces for mobile homes may be rented, leased or owned through a subdivision, cooperative, condominium or other form of resident ownership.

**Multi-Family Residential.** Two (2) or more dwelling units on a lot. Types of multiple family dwellings include duplexes, garden apartments, senior housing developments, and multi-story apartment buildings.

**Nurseries and Garden Centers.** Establishments primarily engaged in retailing nursery and garden products—such as trees, shrubs, plants, seeds, bulbs, and sod— that are predominantly grown elsewhere. These establishments may sell a limited amount of a product they grow themselves. Fertilizer and soil products are stored and sold in package form only. This classification includes wholesale and retail nurseries offering plants for sale.

## **Offices**

**General Offices.** Offices of firms or organizations providing professional, executive, management, administrative or design services, such as accounting, architectural, computer software design, engineering, graphic design, interior design, investment, and legal offices, excluding banks, and savings and loan associations (see Banks and Financial Institutions).

**Walk-In Clientele.** Offices of firms or organizations providing services to the public that rely on heavy pedestrian activity and constant visits by clients, including real estate offices, landlord-tenant services, credit counseling, and financial tax services.

**Park and Recreation Facilities, Public.** Parks, playgrounds, fairgrounds, recreation facilities, trails, wildlife preserves, and related open spaces, all of which are noncommercial. This classification also includes playing fields, courts, gymnasiums, swimming pools, picnic facilities, tennis courts, and golf courses, botanical gardens, as well as related food concessions or community centers within the facilities.

**Parking, Public or Private.** Surface lots and structures for use of occupants, employees, or patrons on the subject site or offering parking to the public for a fee when such use is not incidental to another activity.

**Personal Services.** Provision of recurrently needed services of a personal nature. This classification includes barber and beauty shops, massage therapy, tattoo parlors, seamstresses, tailors, dry cleaning agents (excluding large-scale bulk cleaning plants), shoe repair shops, self-service laundries, photocopying and photo finishing services, and travel agencies.

**Public Safety Facilities.** Facilities providing public-safety and emergency services, including police and fire protection and emergency medical services, with incidental storage, and maintenance facilities.

**Recycling Facility.** A facility for receiving, temporarily storing, transferring and/or processing materials for recycling, reuse, or final disposal. A certified recycling facility or certified processor means a recycling facility certified by the California Beverage Container Recycling and Litter Reduction Act. A recycling facility does not include storage containers or processing activity located on the premises of a residential, commercial or manufacturing use and used solely for the recycling of material generated by that residential property, business or manufacturer. This use type does not include waste transfer facilities that operate as materials recovery, recycling, and solid waste transfer operations and are classified as utilities.

**Reverse Vending Machine.** An automated mechanical device that accepts, sorts and processes recyclable materials and issues a cash refund or a redeemable credit slip.

**Recycling Collection Facility.** A use that serves as a neighborhood drop off point for the temporary storage of recyclable materials but where the processing and sorting of such items is not conducted on-site.

**Recycling Processing Facility.** Facilities that receive, sort, store and/or process recyclable materials.

**Religious Facilities.** A facility for religious worship and incidental religious education and offices, including churches, temples, and other facilities used primarily for religious services or activities. This classification excludes private schools for primary or secondary education, as defined in this section, which also may be available for temporary use by the general public or civic, cultural, or educational organizations.

**Residential Care Facilities, General.** Facilities that require a State license or are State licensed and provide twenty-four (24) hour primarily non-medical care and supervision, or skilled nursing services, for more than six (6) persons in need of personal services, supervision, protection, or assistance for sustaining the activities of daily living. Living accommodations are shared living quarters with or without separate kitchen or bathroom facilities for each room or unit. This classification includes facilities that are operated for profit as well as those operated by public or not-for-profit institutions, including hospices, nursing homes, skilled nursing facilities, and convalescent facilities. This category excludes transitional housing, foster family homes, community service facilities, and any facilities supervised by or under contract with the State Department of Corrections.

**Residential Care Facilities, Limited.** Facilities that require a State license or are State licensed and provide twenty-four (24) hour non-medical care and supervision for six (6) or fewer persons in need of personal services, supervision, protection, or assistance for sustaining the activities of daily living, excluding the licensee or members of the licensee's family or persons employed as facility staff. Living accommodations are shared living

quarters with or without separate kitchen or bathroom facilities for each room or unit. This classification includes facilities that are operated for profit as well as those operated by public or not-for-profit institutions, including hospices.

**Retail Sales.** The retail sale or rental of merchandise not specifically listed under another use classification. This classification includes department stores, clothing stores, furniture stores, pet supply stores, small hardware stores (with ten thousand (10,000) square feet or less of floor area), and businesses retailing the following goods: toys, hobby materials, handcrafted items, jewelry, cameras, photographic supplies and services (including portraiture and retail photo processing), medical supplies and equipment, pharmacies, electronic equipment, records, sporting goods, kitchen utensils, hardware, appliances, antiques, art galleries, art supplies and services, paint and wallpaper, carpeting and floor covering, office supplies, bicycles, video rental, and new automotive parts and accessories (excluding vehicle service and installation). Retail sales may be combined with other services such as office machine, computer, electronics, and similar small-item repairs. This classification includes secondhand and wholesale stores.

**Swap Meet.** Any indoor or outdoor place, in an approved location, or for an approved activity where new or used goods or secondhand personal property is offered for sale or exchange to the general public by a multitude of individual licensed vendors, usually in compartmentalized spaces. The term swap meet is interchangeable with and applicable to: flea markets, auctions, open air markets, farmers markets, or other similarly named or labeled activities; but the term does not include the usual supermarket or department store retail operations.

**Salvage and Wrecking.** Storage and dismantling of vehicles and equipment for sale of parts, as well as their collection, storage, exchange or sale of goods including, but not limited to, any used building materials, used containers or steel drums, used tires, and similar or related articles or property.

**Schools, Public or Private.** Facilities for primary or secondary education, including public schools, charter schools, and private institutions having curricula comparable to that required in the public schools of the State of California.

**Sexually Oriented Business.** An establishment or concern that, as a regular and substantial course of conduct, offers, sells or distributes adult-oriented merchandise, or that offers to its patrons materials, products, merchandise, services, entertainment or performances that have sexual arousal, sexual gratification, and/or sexual stimulation as their dominant theme, or are characterized by an emphasis on specified sexual activities or specified anatomical areas and are not customarily open to the general public because they exclude minors by virtue of their age. This classification does not include any establishment offering professional services conducted, operated, or supervised by medical practitioners, physical therapists, nurses, chiropractors, psychologist, social workers, marriage and family counselors, osteopaths, and persons holding licenses or certificates under applicable State law or accreditation from recognized programs when performing functions pursuant to the

respective license or certificate. Includes Sexually Oriented Businesses defined in Section 301.17(b), Definitions.

**Single Family Dwelling.** A dwelling unit designed for occupancy by one (1) household, and located on a separate lot from any other unit (except accessory living quarters, where permitted). This classification includes individual manufactured housing units installed on a foundation system pursuant to Section 18551 of the California Health and Safety Code.

***Detached.*** A single-family dwelling unit that is not attached to any other dwelling unit.

***Attached.*** A single-family dwelling unit, located singly on a lot, but attached through common vertical walls to one (1) or more dwellings on abutting lots. An attached single-family dwelling unit is sometimes referred to as a “townhome.”

**Single Room Occupancy.** A residential facility where individual secure rooms, which may or may not include cooking facilities, are rented to one (1) or two (2) person households for a weekly or monthly period of time. This use type is distinct from a Hotel or Motel, which is a commercial use.

**Social Service Facilities.** Any noncommercial facility, such as homeless shelters, and emergency shelters, that may also provide meals, showers, and/or laundry facilities. Specialized programs and services related to the needs of the residents may also be provided. This classification excludes transitional housing facilities that provide living accommodations for a longer term.

**Transitional and Supportive Housing.** As defined in Section 50675.2 and 50675.14, respectively, of the Health and Safety Code

**Transportation Passenger Terminals.** Facilities for passenger transportation operations. This classification includes rail stations, bus terminals, and scenic and sightseeing facilities, but does not include airports or heliports.

**Utilities, Major.** Generating plants, electric substations, solid waste collection, including transfer stations and materials recovery (recycling processing) facilities, solid waste treatment and disposal, water or wastewater treatment plants, and similar facilities of public agencies or public utilities.

**Utilities, Minor.** Facilities accessory to an established use involving only minor structures, such as electrical distribution lines, solar panels and underground water and sewer lines.

**Utilities, Renewable Energy Facility.** Facilities including solar, wind or other facility utilizing renewable energy.

**Warehousing and Storage.** Storage and distribution facilities without sales to the public on-site or direct public access.

***Chemical, Mineral, and Explosives Storage.*** Storage of hazardous materials including but

not limited to: bottled gas, chemicals, minerals and ores, petroleum or petroleum-based fuels, fireworks, and explosives.

***Indoor Warehousing and Storage.*** The storage of general merchandise or refrigerated goods within enclosed buildings. Establishments in this classification provide facilities to store commercial goods, but do not sell the goods they handle. They may provide a range of services related to the distribution of goods, including labeling, breaking bulk, inventory control and management, order entry and fulfillment, price marking and ticketing, and transportation arrangement. However, they always provide warehousing or storage in addition to any logistics services.

***Personal Storage.*** Facilities offering storage for individual use, including mini-warehouses and mini-storage.

**Wholesaling and Distribution.** Indoor storage and sale of goods to other firms for resale; storage of goods for transfer to retail outlets of the same firm; or storage and sale of materials and supplies used in production or operation, including janitorial and restaurant supplies. Wholesalers are primarily engaged in business-to-business sales, but may sell to individual consumers through mail or internet orders. They normally operate from a warehouse or office having little or no display of merchandise, and are not designed to solicit walk-in traffic.

SECTION 5: The City Council finds the approval of this ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to CEQA Guidelines Sections 15060(c)(2) – the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment, and 15060(c)(3) – the activity is not a project as defined in Section 15378 of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Alternatively, the City Council finds the approval of this ordinance is not a project under CEQA Regulation Section 15061(b)(3) because it has not potential for causing a significant effect on the environment.

SECTION 6: This ordinance shall be in full force and effect not sooner than thirty (30) days from and after the ordinance’s publication and passage.

PASSED, APPROVED AND ADOPTED this 7<sup>th</sup> day of May, 2019.

\_\_\_\_\_  
Martha A. Flores, Mayor

ATTEST:  
John D. Lollis, City Clerk

By: \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Second Reading - Ordinance 1855 - Personal Cannabis Activities

**SOURCE:** Administrative Services

**COMMENT:** Ordinance No. 1855, An Ordinance of the City Council of the City of Porterville Adding Article XI to Chapter 18 of the Porterville Municipal Code, Concerning Personal (Non-Commercial) Cannabis Activities Including Drying, Harvesting, Processing, Smoking and Use, was given first reading on April 16, 2019, and has been printed.

**RECOMMENDATION:** That the Council give Second Reading to Ordinance No. 1855, waive further reading, and adopt said Ordinance.

**ATTACHMENTS:** 1. Ordinance No. 1855

Appropriated/Funded:

Review By:

Department Director:

Patrice Hildreth, Administrative Services Dir

Final Approver: John Lollis, City Manager



## **ORDINANCE NO. 1855**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE ADDING ARTICLE XI TO CHAPTER 18 OF THE PORTERVILLE MUNICIPAL CODE, CONCERNING PERSONAL (NON-COMMERCIAL) CANNABIS ACTIVITIES INCLUDING DRYING, HARVESTING, PROCESSING, SMOKING, AND USE**

WHEREAS, California legislation provides that the City of Porterville has the power to regulate certain cannabis activities, personal use and the drying, harvesting, processing and smoking of cannabis and cannabis products;

WHEREAS, Ordinance No. 1843 was adopted on November 7, 2017, providing for certain restrictions concerning such use, said regulations were set forth in Chapter 21 (Development Code) of the Porterville Municipal Code, and the City Attorney has recommended that personal cultivation regulations remain within Chapter 21, and the regulations concerning other activities not related to Development be moved to Chapter 18 of the Municipal Code;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PORTERVILLE HEREBY ORDAINS as follows:

SECTION 1. Article XI, Sections 18-120 through 18-125 are hereby added to Chapter 18 of the Porterville Municipal Code, as follows:

#### **CHAPTER 18**

##### **ARTICLE XI – CANNABIS ACTIVITIES AND USE (NON-COMMERCIAL)**

###### **18-120: Purpose and Intent.**

1. The City Council finds that restrictions on personal cannabis activities including drying, harvesting, processing, smoking and use are necessary for the preservation and protection of the public health, safety, and welfare for the City and its community. The City Council's prohibition of such activities is within the authority conferred upon the Council in its Charter and State law.

2. The purpose of this section is to restrict personal cannabis activities including drying, harvesting, processing, smoking, and use, consistent with permitted local regulation under State law.

3. To the extent not covered in this Article, personal, non-commercial cultivation of cannabis is regulated, consistent with applicable State law, pursuant to Section 301.23 of this Code.

###### **18-121: Definitions.**

For the purposes of this Article, "cannabis" and/or "marijuana," "cannabis product," "cannabis accessories," "cultivation," "distribution," "manufacture," "processing," and "transporting" have the same meanings as defined in Section 301.23 and/or Section 15-85 of this

Code.

**18-122: Interpretation and Applicability.**

1. Nothing in this Article is intended to, nor shall it be construed to, preclude a landlord from limiting or prohibiting cannabis cultivation, smoking or other related activities by tenants.

2. Nothing in this Article is intended to, nor shall it be construed to, burden any defense to criminal prosecution otherwise afforded by California law.

3. Nothing in this section is intended to, nor shall it be construed to, exempt any cannabis related activity from any and all applicable local and State construction, electrical, plumbing, land use or any other building or land use standards or permitting requirements.

4. Nothing in this section is intended to, nor shall it be construed to, make legal any cultivation, transportation, sale or other use of cannabis that is otherwise prohibited under California law.

5. All personal (non-commercial) cultivation activities are also subject to the provisions of Section 301.23 of this Code.

6. Commercial cannabis activities are restricted and regulated under Chapter 15, Article VII, of this Code.

**18-123: Severability.**

If any part of this Article is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections of this Article.

**18-124: Personal Activities/Use Restrictions and Prohibitions.**

1. To the extent that the following activities are permitted by State law, nothing in this section shall prohibit a person twenty one (21) years of age or older from:

a. Possessing, processing, purchasing, transporting, obtaining or giving away to persons twenty one (21) years of age or older, without compensation whatsoever, not more than 28.5 grams of cannabis not in the form of concentrated cannabis;

b. Possessing, processing, purchasing, transporting, obtaining or giving away to person twenty one (21) years of age or older, without compensation whatsoever, up to eight grams (8 g) of cannabis in the form of concentrated cannabis;

c. Smoking or ingesting cannabis or cannabis products except as prohibited by California Health and Safety Code section 11362.3 or other State laws (and as restricted by this section);

d. Possessing, transporting, purchasing, obtaining, using, manufacturing, or giving away cannabis accessories to persons twenty one (21) years of age or older without compensation whatsoever; or

e. Engaging in the cultivation of six or fewer live cannabis plants, as set forth in Section 301.23 of this Code.

2. The use of gas products or other volatile solvent (e.g. CO<sub>2</sub>, butane, etc.) for cannabis cultivation, processing or manufacture is prohibited.

3. No distribution of cannabis cultivated or processed for personal use shall be allowed other than as authorized by this Code, or required to be allowed by law.

4. A property owner shall not rent, lease or otherwise permit any person or business that engages in commercial cannabis activity to occupy real property in the City, unless the commercial activity is expressly permitted by this Code, and the activity at the location has been expressly authorized by the City in accordance with applicable City regulations and applicable State laws.

5. The smoking, ingesting, or use of cannabis or cannabis products is prohibited in all public places, in all locations where smoking tobacco is prohibited, and on all business properties or within business facilities within the jurisdictional limits of the City, unless otherwise expressly authorized by City regulation, or required to allowed by State law.

#### **18-125: Enforcement.**

Any violation of this Article is subject to any and all penalties as prescribed in the Porterville Municipal Code, in addition to being subject to other remedies provided by law, including but not limited to, injunctive relief, nuisance abatement action, summary abatement of immediately hazardous conditions, and all other applicable fines, penalties and remedies. This section is adopted to address public health and safety issues, and as such, carries with it an express legislative intent to be interpreted strictly, enforced with an emphasis on public and community safety, and enforced rigorously in a manner such as to deter further violations. In any civil action brought pursuant to this Article, a court of competent jurisdiction may award reasonable attorneys' fees and costs to the prevailing party. Notwithstanding the penalties set forth in the Porterville Municipal Code, no provision of this Article authorizes a criminal prosecution, arrest, or penalty inconsistent with or prohibited by Health and Safety Code section 11362.71 et seq., or section 11362.1 et seq., as the same may be amended from time to time. In the event of any conflict between the penalties enumerated under this Code and any penalties set forth in State law, the maximum penalties allowable under State law shall govern.

**SECTION 2. CEQA REVIEW.** The City Council hereby finds that this ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3) [there is no possibility the activity in question may have a significant affirmative effect on the environment]. In addition to the foregoing general exemption, the City Council further finds that the ordinance is categorically exempt from review under CEQA under the Class 8 categorical exemption [regulatory activity to assure the protection of the environment]. The City Manager is hereby directed to ensure that a *Notice of Exemption* is filed pursuant to CEQA Guidelines section 15062 [14 C.C.R. § 15062].

**SECTION 3. NO LIABILITY.** The provisions of this ordinance shall not in any way be construed as imposing any duty of care, liability or responsibility for damage to person or property upon the City of Porterville, or any official, employee or agent thereof.

**SECTION 4. SEVERABILITY.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Porterville hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

**SECTION 5. CONSTRUCTION.** The City Council intends this ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this ordinance shall be construed in light of that intent. To the extent the provisions of the Porterville Municipal Code as amended by this ordinance are substantially the same as provisions in the Porterville Municipal Code existing prior to the effectiveness of this ordinance, then those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

**SECTION 6. EFFECTIVE DATE.** The foregoing ordinance shall take effect thirty (30) days from the date of the passage hereof. Prior to the expiration of fifteen (15) days from the enactment hereof a certified copy of this ordinance shall be posted in the office of the City Clerk pursuant to Government Code section 36933(c)(1) and a summary shall be published once in the Porterville Recorder, a newspaper printed and published in the City of Porterville, State of California, together with the names of the Council members voting for and against the same.

PASSED, APPROVED AND ADOPTED this 16<sup>th</sup> day of April, 2019.

---

Martha A. Flores, Mayor

ATTEST:  
John D. Lollis, City Clerk

By: \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Consideration of Subordination and Amendment to Loan Agreement with Cornerstone Main Partners, L.P.

**SOURCE:** Community Development

**COMMENT:** On November 20, 2018, City Council approved a loan agreement secured by a Promissory Note and Deed of Trust with Cornerstone Main Partners, L.P., for \$2,720,000 to assist with the costs, fees and services related to the purchase of the property and financing of the development located at 14 N. Main Street. Cornerstone Main Partners, L.P., has made good progress with the project, including leasing the second and third floors to the Office of the Tulare County District Attorney and the Tulare County Public Defender, and have been actively marketing the first floor to retailers. They have also submitted for building permits as well as obtained a grading permit to begin grading work on the site.

On April 10, 2019, in accordance with Section C of the Loan Agreement, Cornerstone Main Partners, L.P., has requested that the City of Porterville enter into a Subordination and Intercreditor Agreement with Cornerstone Main Partners, L.P., and the primary lender Wells Fargo Trust Company, N.A. The terms of the primary loan submitted by Mr. Jim Sanders in an executed written commitment by a placement agent for the primary lender are in compliance with Section C of the Loan Agreement.

In addition to the Subordination and Intercreditor Agreement, Cornerstone Main Partners, L.P., has requested an amendment to the Loan Agreement, Promissory Note and the Deed of Trust. The amendment documents provide for two (2) changes to the agreements. The first change is a minor correction to an exhibit and an update to the payment schedule to reflect the actual date the loan was funded. The second change is the legal description, which reflects a Parcel Merger and Lot Line Adjustment that was recently processed. The Parcel Merger and Lot Line Adjustment adds the adjacent parcel to the north to the legal description.

The executed Loan Agreement, proposed Subordination and Intercreditor Agreement, Amendment to Loan Agreement, Amendment to the Promissory Note, as well as the Amended and Restated Deed of Trust, Security Agreement, and Fixture Filing with Assignment of Rents are attached for Council's review.

**RECOMMENDATION:** That the City Council:

1. Approve the proposed Amendment to Loan Agreement Between the City of Porterville and Cornerstone Main Partners, L.P., Amendment to the Promissory Note Secured By Deed of Trust, and the Amended and Restated Deed of Trust, Security Agreement, and Fixture Filing with Assignment of Rents; and
2. Approve the Subordination and Intercreditor Agreement with Cornerstone Main Partners, L.P., and the primary lender Wells Fargo Trust Company, N.A.

ATTACHMENTS:

1. Draft Amendment to Loan Agreement
2. Draft Amendment to Deed of Trust
3. Draft Amendment to Promissory Note
4. Subordination and Intercreditor Agreement
5. Executed Deed of Trust
6. Executed Loan Agreement
7. Executed Promissory Note

Appropriated/Funded:

Review By:

Department Director:

Jenni Byers, Community Development Director

Final Approver: John Lollis, City Manager

**CITY OF PORTERVILLE**

**AMENDMENT TO LOAN AGREEMENT BETWEEN THE  
CITY OF PORTERVILLE  
AND CORNERSTONE MAIN PARTNERS, L.P.**

THIS AMENDMENT TO THE LOAN AGREEMENT between the City of Porterville and Cornerstone Main Partners, L. P dated November 30, 2018 (hereinafter "Amendment") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 2019 by and between the CITY OF PORTERVILLE, a municipal corporation (the "City"), and CORNERSTONE MAIN PARTNERS, L.P., a California Limited Partnership ("Borrower").

- A. This Amendment to the Loan Agreement amends and restates the legal description attached hereto as Exhibit "A".
- B. This Amendment to the Loan Agreement amends and restates the Schedule of payments attached hereto as Exhibit "B".
- C. This Amendment to the Loan Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement.
- D. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.
- E. Except as expressly amended, modified or supplemented hereby, the Loan Agreement and each provision contained therein is ratified and confirmed.

CORNERSTONE MAIN PARTNERS, L.P.

By: \_\_\_\_\_  
David H. Paynter, General Partner

CITY OF PORTERVILLE

By: \_\_\_\_\_  
Milt Stowe, Mayor

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Julia Lew, City Attorney

## EXHIBIT "A"

THAT PORTION OF BLOCK 54 OF THE TOWN OF PORTERVILLE, IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 3, PAGE 18 OF MAPS, TULARE COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 22 OF SAID BLOCK 54:

THENCE SOUTH  $0^{\circ}01'18''$  WEST, ALONG THE WEST LINE OF SAID BLOCK 54, A DISTANCE OF 59.17 FEET, TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG THE WEST LINE SOUTH LINE OF SAID LINE BLOCK 54, SOUTH  $0^{\circ}01'18''$  WEST, 149.64 FEET, TO THE SOUTHWEST CORNER OF SAID BLOCK 54;

THENCE SOUTH  $89^{\circ}58'11''$  EAST, ALONG THE SOUTH LINE OF SAID OF BLOCK 54, A DISTANCE OF 110.04 FEET;

THENCE NORTH  $0^{\circ}00'26''$  EAST, A DISTANCE OF 149.64 FEET;

THENCE NORTH  $89^{\circ}58'11''$  WEST, PARALLEL WITH THE SOUTH LINE OF SAID BLOCK 54, A DISTANCE OF 110.00 FEET MORE OR LESS TO THE POINT OF BEGINNING.



## EXHIBIT "B"

### LOAN AGREEMENT CORNERSTONE MAIN PARTNERS, L.P.

|                                      |                 |
|--------------------------------------|-----------------|
| Principal                            | \$ 2,720,000.00 |
| Interest rate                        | 2.40%           |
| Term                                 | 240 months      |
| Funding Date                         | 12/12/2018      |
| First Payment Due                    | 12/1/2019       |
| Full Payment of Principal + Interest | 11/30/2038      |

| <u>Date</u> | <u>Days</u> | <u>Month</u> | <u>Principal<br/>Payment</u> | <u>Interest<br/>Payment</u> | <u>Accrued<br/>Interest</u> | <u>Balance</u> |
|-------------|-------------|--------------|------------------------------|-----------------------------|-----------------------------|----------------|
| 12/12/2018  |             |              |                              |                             |                             | 2,720,000.00   |
| 1/1/2019    | 20          | 1            |                              | -                           | 3,576.99                    | 2,723,576.99   |
| 2/1/2019    | 31          | 2            |                              | -                           | 5,551.62                    | 2,729,128.61   |
| 3/1/2019    | 28          | 3            |                              | -                           | 5,024.59                    | 2,734,153.20   |
| 4/1/2019    | 31          | 4            |                              | -                           | 5,573.18                    | 2,739,726.38   |
| 5/1/2019    | 30          | 5            |                              | -                           | 5,404.39                    | 2,745,130.77   |
| 6/1/2019    | 31          | 6            |                              | -                           | 5,595.55                    | 2,750,726.32   |
| 7/1/2019    | 30          | 7            |                              | -                           | 5,426.09                    | 2,756,152.41   |
| 8/1/2019    | 31          | 8            |                              | -                           | 5,618.02                    | 2,761,770.43   |
| 9/1/2019    | 31          | 9            |                              | -                           | 5,629.47                    | 2,767,399.90   |
| 10/1/2019   | 30          | 10           |                              | -                           | 5,458.98                    | 2,772,858.88   |
| 11/1/2019   | 31          | 11           |                              | -                           | 5,652.07                    | 2,778,510.95   |
| 12/1/2019   | 30          | 12           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2020    | 31          | 13           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2020    | 31          | 14           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2020    | 29          | 15           |                              | 5,298.20                    |                             | 2,778,510.95   |
| 4/1/2020    | 31          | 16           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2020    | 30          | 17           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2020    | 31          | 18           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2020    | 30          | 19           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2020    | 31          | 20           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2020    | 31          | 21           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2020   | 30          | 22           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2020   | 31          | 23           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2020   | 30          | 24           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2021    | 31          | 25           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2021    | 31          | 26           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2021    | 28          | 27           |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2021    | 31          | 28           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2021    | 30          | 29           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2021    | 31          | 30           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2021    | 30          | 31           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2021    | 31          | 32           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2021    | 31          | 33           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2021   | 30          | 34           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2021   | 31          | 35           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2021   | 30          | 36           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2022    | 31          | 37           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2022    | 31          | 38           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2022    | 28          | 39           |                              | 5,115.51                    |                             | 2,778,510.95   |

| <u>Date</u> | <u>Days</u> | <u>Month</u> | <u>Principal<br/>Payment</u> | <u>Interest<br/>Payment</u> | <u>Accrued<br/>Interest</u> | <u>Balance</u> |
|-------------|-------------|--------------|------------------------------|-----------------------------|-----------------------------|----------------|
| 4/1/2022    | 31          | 40           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2022    | 30          | 41           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2022    | 31          | 42           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2022    | 30          | 43           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2022    | 31          | 44           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2022    | 31          | 45           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2022   | 30          | 46           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2022   | 31          | 47           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2022   | 30          | 48           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2023    | 31          | 49           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2023    | 31          | 50           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2023    | 28          | 51           |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2023    | 31          | 52           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2023    | 30          | 53           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2023    | 31          | 54           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2023    | 30          | 55           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2023    | 31          | 56           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2023    | 31          | 57           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2023   | 30          | 58           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2023   | 31          | 59           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2023   | 30          | 60           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2024    | 31          | 61           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2024    | 31          | 62           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2024    | 29          | 63           |                              | 5,298.20                    |                             | 2,778,510.95   |
| 4/1/2024    | 31          | 64           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2024    | 30          | 65           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2024    | 31          | 66           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2024    | 30          | 67           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2024    | 31          | 68           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2024    | 31          | 69           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2024   | 30          | 70           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2024   | 31          | 71           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2024   | 30          | 72           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2025    | 31          | 73           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2025    | 31          | 74           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2025    | 28          | 75           |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2025    | 31          | 76           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2025    | 30          | 77           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2025    | 31          | 78           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2025    | 30          | 79           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2025    | 31          | 80           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2025    | 31          | 81           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2025   | 30          | 82           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2025   | 31          | 83           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2025   | 30          | 84           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2026    | 31          | 85           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2026    | 31          | 86           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2026    | 28          | 87           |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2026    | 31          | 88           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2026    | 30          | 89           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2026    | 31          | 90           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2026    | 30          | 91           |                              | 5,480.90                    |                             | 2,778,510.95   |

| <u>Date</u> | <u>Days</u> | <u>Month</u> | <u>Principal<br/>Payment</u> | <u>Interest<br/>Payment</u> | <u>Accrued<br/>Interest</u> | <u>Balance</u> |
|-------------|-------------|--------------|------------------------------|-----------------------------|-----------------------------|----------------|
| 8/1/2026    | 31          | 92           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2026    | 31          | 93           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2026   | 30          | 94           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2026   | 31          | 95           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2026   | 30          | 96           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2027    | 31          | 97           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2027    | 31          | 98           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2027    | 28          | 99           |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2027    | 31          | 100          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2027    | 30          | 101          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2027    | 31          | 102          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2027    | 30          | 103          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2027    | 31          | 104          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2027    | 31          | 105          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2027   | 30          | 106          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2027   | 31          | 107          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2027   | 30          | 108          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2028    | 31          | 109          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2028    | 31          | 110          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2028    | 29          | 111          |                              | 5,298.20                    |                             | 2,778,510.95   |
| 4/1/2028    | 31          | 112          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2028    | 30          | 113          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2028    | 31          | 114          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2028    | 30          | 115          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2028    | 31          | 116          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2028    | 31          | 117          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2028   | 30          | 118          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2028   | 31          | 119          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2028   | 30          | 120          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2029    | 31          | 121          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2029    | 31          | 122          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2029    | 28          | 123          |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2029    | 31          | 124          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2029    | 30          | 125          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2029    | 31          | 126          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2029    | 30          | 127          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2029    | 31          | 128          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2029    | 31          | 129          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2029   | 30          | 130          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2029   | 31          | 131          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2029   | 30          | 132          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2030    | 31          | 133          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2030    | 31          | 134          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2030    | 28          | 135          |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2030    | 31          | 136          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2030    | 30          | 137          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2030    | 31          | 138          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2030    | 30          | 139          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2030    | 31          | 140          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2030    | 31          | 141          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2030   | 30          | 142          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2030   | 31          | 143          |                              | 5,663.59                    |                             | 2,778,510.95   |

| <u>Date</u> | <u>Days</u> | <u>Month</u> | <u>Principal<br/>Payment</u> | <u>Interest<br/>Payment</u> | <u>Accrued<br/>Interest</u> | <u>Balance</u> |
|-------------|-------------|--------------|------------------------------|-----------------------------|-----------------------------|----------------|
| 12/1/2030   | 30          | 144          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2031    | 31          | 145          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2031    | 31          | 146          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2031    | 28          | 147          |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2031    | 31          | 148          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2031    | 30          | 149          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2031    | 31          | 150          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2031    | 30          | 151          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2031    | 31          | 152          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2031    | 31          | 153          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2031   | 30          | 154          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2031   | 31          | 155          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2031   | 30          | 156          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2032    | 31          | 157          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2032    | 31          | 158          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2032    | 29          | 159          |                              | 5,298.20                    |                             | 2,778,510.95   |
| 4/1/2032    | 31          | 160          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2032    | 30          | 161          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2032    | 31          | 162          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2032    | 30          | 163          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2032    | 31          | 164          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2032    | 31          | 165          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2032   | 30          | 166          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2032   | 31          | 167          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2032   | 30          | 168          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2033    | 31          | 169          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2033    | 31          | 170          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2033    | 28          | 171          |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2033    | 31          | 172          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2033    | 30          | 173          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2033    | 31          | 174          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2033    | 30          | 175          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2033    | 31          | 176          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2033    | 31          | 177          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2033   | 30          | 178          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2033   | 31          | 179          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2033   | 30          | 180          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2034    | 31          | 181          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2034    | 31          | 182          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2034    | 28          | 183          |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2034    | 31          | 184          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2034    | 30          | 185          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2034    | 31          | 186          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2034    | 30          | 187          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2034    | 31          | 188          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2034    | 31          | 189          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2034   | 30          | 190          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2034   | 31          | 191          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2034   | 30          | 192          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2035    | 31          | 193          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2035    | 31          | 194          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2035    | 28          | 195          |                              | 5,115.51                    |                             | 2,778,510.95   |

| <u>Date</u> | <u>Days</u> | <u>Month</u> | <u>Principal<br/>Payment</u> | <u>Interest<br/>Payment</u> | <u>Accrued<br/>Interest</u> | <u>Balance</u> |
|-------------|-------------|--------------|------------------------------|-----------------------------|-----------------------------|----------------|
| 4/1/2035    | 31          | 196          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2035    | 30          | 197          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2035    | 31          | 198          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2035    | 30          | 199          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2035    | 31          | 200          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2035    | 31          | 201          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2035   | 30          | 202          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2035   | 31          | 203          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2035   | 30          | 204          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2036    | 31          | 205          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2036    | 31          | 206          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2036    | 29          | 207          |                              | 5,298.20                    |                             | 2,778,510.95   |
| 4/1/2036    | 31          | 208          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2036    | 30          | 209          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2036    | 31          | 210          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2036    | 30          | 211          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2036    | 31          | 212          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2036    | 31          | 213          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2036   | 30          | 214          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2036   | 31          | 215          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2036   | 30          | 216          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2037    | 31          | 217          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2037    | 31          | 218          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2037    | 28          | 219          |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2037    | 31          | 220          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2037    | 30          | 221          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2037    | 31          | 222          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2037    | 30          | 223          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2037    | 31          | 224          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2037    | 31          | 225          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2037   | 30          | 226          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2037   | 31          | 227          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2037   | 30          | 228          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2038    | 31          | 229          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2038    | 31          | 230          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2038    | 28          | 231          |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2038    | 31          | 232          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2038    | 30          | 233          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2038    | 31          | 234          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2038    | 30          | 235          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2038    | 31          | 236          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2038    | 31          | 237          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2038   | 30          | 238          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2038   | 31          | 239          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 11/30/2038  | 29          | 240          | 2,778,510.95                 | 5,298.20                    |                             | -              |

**WHEN RECORDED, RETURN TO:**

**City of Porterville**  
**291 N. Main St.**  
**Porterville, CA 93257**

**TO BE RECORDED IN THE  
OFFICIAL RECORDS OF  
TULARE COUNTY, CALIFORNIA**

NO FEE PURSUANT TO GOVERNMENT SECTION 27383

---

**AMENDED AND RESTATED DEED OF TRUST, SECURITY AGREEMENT, AND FIXTURE  
FILING WITH ASSIGNMENT OF RENTS**

THIS AMENDED AND RESTATED DEED OF TRUST, SECURITY AGREEMENT, AND FIXTURE FILING WITH ASSIGNMENT OF RENTS (this "Deed of Trust") is made as of April \_\_\_\_\_, 2019, by CORNERSTONE MAIN PARTNERS, L.P., A California Limited Partnership ("Trustor"), having an address at 17671 Irvine Boulevard, Suite 204, Tustin, CA 92680, in favor of FIRST AMERICAN TTITLE COMPANY, as Trustee ("Trustee"), whose address is 484 N. Prospect St, Ste. C, Porterville, CA 93257, for the benefit of CITY OF PORTERVILLE, a municipal corporation ("Beneficiary"), whose address is 291 N. Main Street, Porterville, CA 93257.

This Amended and Restated Deed of Trust amends and restates the legal description of the real property set forth in Exhibit "A" to that certain Deed of Trust, Security Agreement, and Fixture Filing dated December 3, 2018 and recorded in the Official Records of Tulare County, California, as document 2018-0070116, by substituting therefor the legal description of the real property set forth in Exhibit "A" attached hereto.

Except as expressly amended, modified or supplemented hereby, the Deed of Trust, Security Agreement and Fixture Filing with Assignment of Rents and each provision contained therein is ratified and confirmed.

IN WITNESS WHEREOF, Trustor, intending to be legally bound hereby, has duly executed this Deed of Trust on \_\_\_\_\_, 20\_\_ to be effective as of \_\_\_\_\_, 20\_\_.

CORNERSTONE MAIN PARTNERS, L.P.,  
a California Limited Partnership

\_\_\_\_\_  
David H. Paynter, General Partner

## EXHIBIT "A"

THAT PORTION OF BLOCK 54 OF THE TOWN OF PORTERVILLE, IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 3, PAGE 18 OF MAPS, TULARE COUNTY RECORDS, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF LOT 22 OF SAID BLOCK 54:

THENCE SOUTH  $0^{\circ}01'18''$  WEST, ALONG THE WEST LINE OF SAID BLOCK 54, A DISTANCE OF 59.17 FEET, TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG THE WEST LINE SOUTH LINE OF SAID LINE BLOCK 54, SOUTH  $0^{\circ}01'18''$  WEST, 149.64 FEET, TO THE SOUTHWEST CORNER OF SAID BLOCK 54;

THENCE SOUTH  $89^{\circ}58'11''$  EAST, ALONG THE SOUTH LINE OF SAID OF BLOCK 54, A DISTANCE OF 110.04 FEET;

THENCE NORTH  $0^{\circ}00'26''$  EAST, A DISTANCE OF 149.64 FEET;

THENCE NORTH  $89^{\circ}58'11''$  WEST, PARALLEL WITH THE SOUTH LINE OF SAID BLOCK 54, A DISTANCE OF 110.00 FEET MORE OR LESS TO THE POINT OF BEGINNING.

AMENDMENT TO THE PROMISSORY NOTE  
SECURED BY DEED OF TRUST

This Amendment to the Promissory Note (this "Note") is made as of \_\_\_\_\_, 2019 by CORNERSTONE MAIN PARTNERS, L.P., a California limited partnership ("Borrower"), having an address at 17671 Irvine Boulevard, Suite 204, Tustin, CA 92680, to and in favor of CITY OF PORTERVILLE, a municipal corporation, its successors and assigns ("Lender"), having an address at 291 North Main Street, Porterville, CA 93257.

1. This Amendment to the Promissory Note restates in its entirety Exhibit "A" of the Promissory Note dated December 3, 2018.
2. Miscellaneous. This Amendment to the Note shall be interpreted, construed and enforced according to the laws of the State of California and the applicable laws of the United States of America. The terms and provisions hereof shall be binding upon and inure to the benefit of Borrower and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title and assigns, whether by voluntary action of the parties or by operation of law. As used herein, the terms "Borrower" and "Lender" shall be deemed to include their respective successors, successors-in-title and assigns, whether by voluntary action of the parties or by operation of law. All personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Titles of articles and sections are for convenience only and in no way define, limit, amplify or describe the scope or intent of any provisions hereof. Capitalized terms used in this Amendment to the Note and not otherwise defined herein shall have the meaning ascribed to them in the Security Instrument or in the other Loan Documents. Time is of the essence with respect to all provisions of this Note, the Security Instrument and the other Loan Documents. This Amendment to the Note and the other Loan Documents contain the entire agreements between the parties hereto relating to the subject matter hereof and thereof and all prior agreements with respect to Exhibit "A" of the Promissory Note dated December 3, 2018 and thereto which are not contained herein or therein are terminated.
3. Except as expressly amended, modified or supplemented hereby, the Promissory Note and each provision contained therein is ratified and confirmed.

IN WITNESS WHEREOF, Borrower, intending to be legally bound hereby, has duly executed this Amendment to the Note as of the day and year first written above.

CORNERSTONE MAIN PARTNERS, L.P.  
A California Limited Partnership

By: \_\_\_\_\_  
David H. Paynter, General Partner



## EXHIBIT "A"

### LOAN AGREEMENT CORNERSTONE MAIN PARTNERS, L.P.

|                                      |                 |
|--------------------------------------|-----------------|
| Principal                            | \$ 2,720,000.00 |
| Interest rate                        | 2.40%           |
| Term                                 | 240 months      |
| Funding Date                         | 12/12/2018      |
| First Payment Due                    | 12/1/2019       |
| Full Payment of Principal + Interest | 11/30/2038      |

| <u>Date</u> | <u>Days</u> | <u>Month</u> | <u>Principal<br/>Payment</u> | <u>Interest<br/>Payment</u> | <u>Accrued<br/>Interest</u> | <u>Balance</u> |
|-------------|-------------|--------------|------------------------------|-----------------------------|-----------------------------|----------------|
| 12/12/2018  |             |              |                              |                             |                             | 2,720,000.00   |
| 1/1/2019    | 20          | 1            |                              | -                           | 3,576.99                    | 2,723,576.99   |
| 2/1/2019    | 31          | 2            |                              | -                           | 5,551.62                    | 2,729,128.61   |
| 3/1/2019    | 28          | 3            |                              | -                           | 5,024.59                    | 2,734,153.20   |
| 4/1/2019    | 31          | 4            |                              | -                           | 5,573.18                    | 2,739,726.38   |
| 5/1/2019    | 30          | 5            |                              | -                           | 5,404.39                    | 2,745,130.77   |
| 6/1/2019    | 31          | 6            |                              | -                           | 5,595.55                    | 2,750,726.32   |
| 7/1/2019    | 30          | 7            |                              | -                           | 5,426.09                    | 2,756,152.41   |
| 8/1/2019    | 31          | 8            |                              | -                           | 5,618.02                    | 2,761,770.43   |
| 9/1/2019    | 31          | 9            |                              | -                           | 5,629.47                    | 2,767,399.90   |
| 10/1/2019   | 30          | 10           |                              | -                           | 5,458.98                    | 2,772,858.88   |
| 11/1/2019   | 31          | 11           |                              | -                           | 5,652.07                    | 2,778,510.95   |
| 12/1/2019   | 30          | 12           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2020    | 31          | 13           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2020    | 31          | 14           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2020    | 29          | 15           |                              | 5,298.20                    |                             | 2,778,510.95   |
| 4/1/2020    | 31          | 16           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2020    | 30          | 17           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2020    | 31          | 18           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2020    | 30          | 19           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2020    | 31          | 20           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2020    | 31          | 21           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2020   | 30          | 22           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2020   | 31          | 23           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2020   | 30          | 24           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2021    | 31          | 25           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2021    | 31          | 26           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2021    | 28          | 27           |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2021    | 31          | 28           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2021    | 30          | 29           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2021    | 31          | 30           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2021    | 30          | 31           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2021    | 31          | 32           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2021    | 31          | 33           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2021   | 30          | 34           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2021   | 31          | 35           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2021   | 30          | 36           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2022    | 31          | 37           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2022    | 31          | 38           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2022    | 28          | 39           |                              | 5,115.51                    |                             | 2,778,510.95   |

| <u>Date</u> | <u>Days</u> | <u>Month</u> | <u>Principal<br/>Payment</u> | <u>Interest<br/>Payment</u> | <u>Accrued<br/>Interest</u> | <u>Balance</u> |
|-------------|-------------|--------------|------------------------------|-----------------------------|-----------------------------|----------------|
| 4/1/2022    | 31          | 40           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2022    | 30          | 41           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2022    | 31          | 42           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2022    | 30          | 43           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2022    | 31          | 44           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2022    | 31          | 45           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2022   | 30          | 46           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2022   | 31          | 47           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2022   | 30          | 48           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2023    | 31          | 49           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2023    | 31          | 50           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2023    | 28          | 51           |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2023    | 31          | 52           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2023    | 30          | 53           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2023    | 31          | 54           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2023    | 30          | 55           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2023    | 31          | 56           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2023    | 31          | 57           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2023   | 30          | 58           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2023   | 31          | 59           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2023   | 30          | 60           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2024    | 31          | 61           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2024    | 31          | 62           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2024    | 29          | 63           |                              | 5,298.20                    |                             | 2,778,510.95   |
| 4/1/2024    | 31          | 64           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2024    | 30          | 65           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2024    | 31          | 66           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2024    | 30          | 67           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2024    | 31          | 68           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2024    | 31          | 69           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2024   | 30          | 70           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2024   | 31          | 71           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2024   | 30          | 72           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2025    | 31          | 73           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2025    | 31          | 74           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2025    | 28          | 75           |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2025    | 31          | 76           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2025    | 30          | 77           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2025    | 31          | 78           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2025    | 30          | 79           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2025    | 31          | 80           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2025    | 31          | 81           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2025   | 30          | 82           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2025   | 31          | 83           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2025   | 30          | 84           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2026    | 31          | 85           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2026    | 31          | 86           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2026    | 28          | 87           |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2026    | 31          | 88           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2026    | 30          | 89           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2026    | 31          | 90           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2026    | 30          | 91           |                              | 5,480.90                    |                             | 2,778,510.95   |

| <u>Date</u> | <u>Days</u> | <u>Month</u> | <u>Principal<br/>Payment</u> | <u>Interest<br/>Payment</u> | <u>Accrued<br/>Interest</u> | <u>Balance</u> |
|-------------|-------------|--------------|------------------------------|-----------------------------|-----------------------------|----------------|
| 8/1/2026    | 31          | 92           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2026    | 31          | 93           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2026   | 30          | 94           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2026   | 31          | 95           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2026   | 30          | 96           |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2027    | 31          | 97           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2027    | 31          | 98           |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2027    | 28          | 99           |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2027    | 31          | 100          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2027    | 30          | 101          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2027    | 31          | 102          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2027    | 30          | 103          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2027    | 31          | 104          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2027    | 31          | 105          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2027   | 30          | 106          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2027   | 31          | 107          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2027   | 30          | 108          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2028    | 31          | 109          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2028    | 31          | 110          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2028    | 29          | 111          |                              | 5,298.20                    |                             | 2,778,510.95   |
| 4/1/2028    | 31          | 112          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2028    | 30          | 113          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2028    | 31          | 114          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2028    | 30          | 115          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2028    | 31          | 116          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2028    | 31          | 117          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2028   | 30          | 118          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2028   | 31          | 119          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2028   | 30          | 120          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2029    | 31          | 121          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2029    | 31          | 122          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2029    | 28          | 123          |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2029    | 31          | 124          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2029    | 30          | 125          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2029    | 31          | 126          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2029    | 30          | 127          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2029    | 31          | 128          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2029    | 31          | 129          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2029   | 30          | 130          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2029   | 31          | 131          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2029   | 30          | 132          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2030    | 31          | 133          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2030    | 31          | 134          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2030    | 28          | 135          |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2030    | 31          | 136          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2030    | 30          | 137          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2030    | 31          | 138          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2030    | 30          | 139          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2030    | 31          | 140          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2030    | 31          | 141          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2030   | 30          | 142          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2030   | 31          | 143          |                              | 5,663.59                    |                             | 2,778,510.95   |

| <u>Date</u> | <u>Days</u> | <u>Month</u> | <u>Principal<br/>Payment</u> | <u>Interest<br/>Payment</u> | <u>Accrued<br/>Interest</u> | <u>Balance</u> |
|-------------|-------------|--------------|------------------------------|-----------------------------|-----------------------------|----------------|
| 12/1/2030   | 30          | 144          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2031    | 31          | 145          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2031    | 31          | 146          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2031    | 28          | 147          |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2031    | 31          | 148          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2031    | 30          | 149          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2031    | 31          | 150          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2031    | 30          | 151          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2031    | 31          | 152          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2031    | 31          | 153          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2031   | 30          | 154          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2031   | 31          | 155          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2031   | 30          | 156          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2032    | 31          | 157          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2032    | 31          | 158          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2032    | 29          | 159          |                              | 5,298.20                    |                             | 2,778,510.95   |
| 4/1/2032    | 31          | 160          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2032    | 30          | 161          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2032    | 31          | 162          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2032    | 30          | 163          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2032    | 31          | 164          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2032    | 31          | 165          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2032   | 30          | 166          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2032   | 31          | 167          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2032   | 30          | 168          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2033    | 31          | 169          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2033    | 31          | 170          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2033    | 28          | 171          |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2033    | 31          | 172          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2033    | 30          | 173          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2033    | 31          | 174          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2033    | 30          | 175          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2033    | 31          | 176          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2033    | 31          | 177          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2033   | 30          | 178          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2033   | 31          | 179          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2033   | 30          | 180          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2034    | 31          | 181          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2034    | 31          | 182          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2034    | 28          | 183          |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2034    | 31          | 184          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2034    | 30          | 185          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2034    | 31          | 186          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2034    | 30          | 187          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2034    | 31          | 188          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2034    | 31          | 189          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2034   | 30          | 190          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2034   | 31          | 191          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2034   | 30          | 192          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2035    | 31          | 193          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2035    | 31          | 194          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2035    | 28          | 195          |                              | 5,115.51                    |                             | 2,778,510.95   |

| <u>Date</u> | <u>Days</u> | <u>Month</u> | <u>Principal<br/>Payment</u> | <u>Interest<br/>Payment</u> | <u>Accrued<br/>Interest</u> | <u>Balance</u> |
|-------------|-------------|--------------|------------------------------|-----------------------------|-----------------------------|----------------|
| 4/1/2035    | 31          | 196          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2035    | 30          | 197          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2035    | 31          | 198          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2035    | 30          | 199          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2035    | 31          | 200          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2035    | 31          | 201          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2035   | 30          | 202          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2035   | 31          | 203          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2035   | 30          | 204          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2036    | 31          | 205          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2036    | 31          | 206          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2036    | 29          | 207          |                              | 5,298.20                    |                             | 2,778,510.95   |
| 4/1/2036    | 31          | 208          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2036    | 30          | 209          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2036    | 31          | 210          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2036    | 30          | 211          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2036    | 31          | 212          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2036    | 31          | 213          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2036   | 30          | 214          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2036   | 31          | 215          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2036   | 30          | 216          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2037    | 31          | 217          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2037    | 31          | 218          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2037    | 28          | 219          |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2037    | 31          | 220          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2037    | 30          | 221          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2037    | 31          | 222          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2037    | 30          | 223          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2037    | 31          | 224          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2037    | 31          | 225          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2037   | 30          | 226          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2037   | 31          | 227          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 12/1/2037   | 30          | 228          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 1/1/2038    | 31          | 229          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 2/1/2038    | 31          | 230          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 3/1/2038    | 28          | 231          |                              | 5,115.51                    |                             | 2,778,510.95   |
| 4/1/2038    | 31          | 232          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 5/1/2038    | 30          | 233          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 6/1/2038    | 31          | 234          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 7/1/2038    | 30          | 235          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 8/1/2038    | 31          | 236          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 9/1/2038    | 31          | 237          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 10/1/2038   | 30          | 238          |                              | 5,480.90                    |                             | 2,778,510.95   |
| 11/1/2038   | 31          | 239          |                              | 5,663.59                    |                             | 2,778,510.95   |
| 11/30/2038  | 29          | 240          | 2,778,510.95                 | 5,298.20                    |                             | -              |

## SUBORDINATION AND INTERCREDITOR AGREEMENT

This Subordination and Intercreditor Agreement (this “*Agreement*” or this “*Subordination and Intercreditor Agreement*”), dated as of June [ ], 2019, is by and among Cornerstone Main Partners, L.P., a California limited partnership (the “*Company*”); Wells Fargo Trust Company, National Association as Trustee of the 2019 Tulare County Lease-Backed Trust, a national banking association organized under the laws of the United States of America (collectively with any successor holder or holders of the Senior Secured Liabilities (as defined below), the “*Senior Lender*”); and the City of Porterville, a municipal corporation (collectively with any successor holder or holders of the Subordinated Secured Liabilities (as defined below), the “*Subordinated Lender*”).

### RECITALS

A. The Company and the Senior Lender have entered into that certain Note Purchase Agreement dated as of the date hereof (as may be amended, supplemented, or modified from time to time, the “*Senior Note Purchase Agreement*”), pursuant to which, among other things, the Senior Lender has purchased from the Company its [4.48]% Senior Note, due [June 25, 2040], in the principal amount set forth therein (collectively with any Notes issued in replacement thereof and as may be amended, modified or supplemented, the “*Senior Note*”).

B. The Senior Note and all other Senior Secured Liabilities are secured by, among other things, the Senior Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statements dated as of the date hereof from the Company for the benefit of the Senior Lender (the “*Senior Deed of Trust*”). Terms used but not defined herein shall have the meanings given thereto in the Senior Deed of Trust as in effect on the date of this Agreement and as amended to the extent permitted under Section 8.1 of this Agreement.

C. The Company and the Subordinated Lender have entered into that certain Loan Agreement dated as of November 30, 2018 (as such agreement may be amended, supplemented, or modified from time to time, the “*Subordinated Loan Agreement*”) pursuant to which the Company issued its Promissory Note due November 30, 2038 in the original aggregate principal amount set forth therein (collectively with any Notes issued in replacement thereof and as amended, modified or supplemented, the “*Subordinated Note*”).

D. The Company has leased certain portions of property to the County of Tulare, as tenant (the “*Tenant*”), under and pursuant to the terms of that certain Agreement for Design, Alteration, and Lease of Premises Located at the Northeast Corner of Main St. and Olive Ave, Porterville dated December 4, 2018 (as amended, supplemented or modified and any replacement thereof is herein referred to as the “*Lease*”).

D. The Subordinated Note and all other Subordinated Secured Liabilities are secured by, among other things, the Deed of Trust, Security Agreement, and Fixture Filing with Assignment of Rents dated as of December 3, 2018 (to be effective as of December 12, 2018) from the Company for the benefit of the Subordinated Lender (the “*Subordinated Deed of Trust*”).

E. As one of the conditions precedent to the Senior Lender purchasing the Senior Note and entering into the Senior Loan Documents (defined below), the Senior Lender has required the execution and delivery of this Agreement by the Subordinated Lender and the Company.

NOW, THEREFORE, in order to induce the Senior Lender to consent to the closing contemplated by the Senior Loan Documents and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto hereby agree as follows:

## **AGREEMENT**

### **SECTION 1. CERTAIN DEFINITIONS.**

In addition to capitalized terms defined elsewhere in this Agreement, the following capitalized terms shall have the following respective meanings when used in this Agreement:

*“Affiliate”* of any specified Person, shall mean any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person, and any immediate family member of such specified Person and their Affiliates. For the purposes of this definition, *“control”* when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms *“controlling”* and *“controlled”* have meanings correlative to the foregoing.

*“Collection Action”* means any action (a) to take from or for the account of the Company or any guarantor of any or all of the Subordinated Secured Liabilities or any other Person with respect to the Subordinated Secured Liabilities, by set-off or in any other manner, the whole or any part of any moneys which may now or hereafter be owing by the Company (other than receipt of payments of Subordinated Secured Liabilities to the extent permitted by this Agreement) or any other Person with respect to the Subordinated Secured Liabilities, (b) to sue for payment of, or to initiate or participate with others in any suit, action or proceeding (including any Insolvency or Liquidation Proceeding) against the Company, the Tenant or any other Person to (i) enforce payment of or to collect the whole or any part of the Subordinated Secured Liabilities or (ii) commence judicial enforcement of any of the rights and remedies under the Subordinated Deed of Trust or any other Subordinated Loan Document or applicable law to enforce payment of or to collect any of the Subordinated Secured Liabilities, (c) to accelerate the Subordinated Secured Liabilities, (d) to exercise any put, repurchase or similar option or to cause the Company, any guarantor or any other Person to honor any redemption or mandatory prepayment obligation under any Subordinated Loan Document if the Company would pay or be obligated to pay cash or cash equivalents, (e) to terminate any or all of the Subordinated Loan Documents, (f) to take any action under the provisions of any state or federal law, or under any contract or agreement, to enforce, foreclose upon, realize upon, participate in any self-help activities or deed-in-lieu of foreclosure actions or similar actions under the laws of the State of California with respect to, take possession of or sell, any Company Property or any property or assets of any guarantor or any other Person,

or (g) take any remedial activities under the Subordinated Deed of Trust or any of the Subordinated Loan Documents or otherwise.

*“Company Property”* means the Granted Property (as defined in the Senior Deed of Trust) and the Property (as defined in the Subordinated Deed of Trust) and all other assets, property and property rights, of any kind or nature, tangible or intangible, real or personal, now or hereafter existing, in which the Company owns, asserts or maintains an interest.

*“Default Restructuring Limits”* means an amendment, modification or supplement of or to the Senior Loan Documents (i) which is made after an Event of Default has occurred under the Lease and such is continuing (subject to Subordinated Lender’s right to cure in accordance with Section 15 hereof), and (ii) pursuant to which the revised principal amount, amortization schedule, maturity and interest rate of the Senior Secured Liabilities are not increased or extended beyond what is determined to be commercially acceptable by the Senior Lender in the context of the then current market standards for defaulted loans which have characteristics reasonably similar to the characteristics of the Senior Secured Liabilities.

*“Finally Paid,” “Finally Pay” or “Final Payment”* means (i) with respect to the Senior Secured Liabilities, the full and indefeasible payment in cash of all of the Senior Secured Liabilities and the irrevocable termination of all commitments, if any, to fund Senior Secured Liabilities of the Senior Lender under all of the Senior Loan Documents and (ii) with respect to the Subordinated Secured Liabilities, the full and indefeasible payment in cash of all of the Subordinated Secured Liabilities and the irrevocable termination of all commitments, if any, to fund Subordinated Secured Liabilities of the Subordinated Lender under all of the Subordinated Loan Documents.

*“Insolvency or Liquidation Proceeding”* means with respect any Person (a) any insolvency or bankruptcy case or proceeding (including any case under any applicable statute or law), or any receivership, liquidation, reorganization or other similar case or proceeding, relative to such Person, or to its assets, (b) any liquidation, dissolution, reorganization or winding up of such Person, whether voluntary or involuntary and whether or not involving solvency or bankruptcy, (c) any assignment for the benefit of creditors or any other marshalling of assets and liabilities of such Person, or (d) any sale, transfer or other disposition of all or substantially all of the assets of such Person in connection with any of the foregoing.

*“Lease”* is defined in the Recitals hereto.

*“Lease Amendment Delay Period”* shall mean the period commencing on the date of commencement of an Insolvency or Liquidation Proceeding of the Tenant or the date the Senior Lender or the Escrow Agent sends a written notice of default (*“Tenant Default Notice”*) to the Tenant with a copy of the Tenant Default Notice to the Subordinated Lender and ending on the date that is 20 days after the date of the Tenant Default Notice, except that, if the Senior Lender provides written notice to the Subordinated Lender that it intends to consent to an amendment, modification or supplement to the Lease (*“Pending Amendment Notice”*) during such 20-day period, the Lease Amendment Delay Period shall terminate on the date that is 10 days after the date such Pending Amendment Notice is provided.



*“Liabilities”* means all obligations of the Company, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent or now or hereafter existing, or due or to become due.

*“Person”* means an individual, a partnership, a limited liability company, a corporation, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental entity or any department, agency or political subdivision thereof.

*“Protective Advances”* means all sums advanced for the payment of real estate taxes (including special assessments or payments in lieu of real estate taxes), maintenance costs, insurance premiums, ground rents, utilities or other items (including capital expenses and leasing costs such as (without limitation) leasing commissions and tenant improvement allowances) reasonably necessary to protect the Company Property, respectively, or any portion thereof (including, but not limited to, all reasonable attorneys’ fees, costs relating to the entry upon the Company Property or any portion thereof to make repairs and the payment, purchase, contest or compromise of any encumbrance, charge or lien which in the judgment of Senior Lender or the Subordinated Lender appears to be prior or superior to the Senior Loan Documents or the applicable Subordinated Loan Documents), from forfeiture, casualty, loss or waste, including, with respect to the Senior Secured Liabilities or the Subordinated Secured Liabilities, amounts advanced or otherwise paid by Subordinated Lender pursuant to Section 15 of this Agreement.

*“Senior Default”* shall mean a Default or an Event of Default as defined in the Senior Deed of Trust.

*“Senior Deed of Trust”* is defined in the Recitals hereto.

*“Senior Loan Documents”* means the Senior Note Purchase Agreement, the Senior Deed of Trust and all other Senior Operative Agreements (as defined in the Senior Deed of Trust), and all documents and instruments related thereto, including, without limitation, the Senior Note.

*“Senior Secured Liabilities”* means all obligations, liabilities and indebtedness of every nature of the Company from time to time owed to the Senior Lender under the Senior Loan Documents, including the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and default interest, all Indebtedness Hereby Secured (as defined in the Senior Deed of Trust) and all premium including, without limitation, the Make-Whole Amount (as defined in the Senior Deed of Trust) pertaining to the Indebtedness Hereby Secured (as defined in the Senior Deed of Trust), fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable under the Senior Loan Documents, whether before or after the filing of an Insolvency or Liquidation Proceeding against the Company and/or the Tenant, together with (a) any indebtedness which refinances such principal, interest or other obligations and any amendments, modifications, renewals, restatements, refinancings or extensions thereof and (b) any interest accruing thereon after the commencement of an Insolvency or Liquidation Proceeding of the Company and/or the Tenant, without regard to whether or not such interest is allowed in an Insolvency or Liquidation Proceeding. Senior Secured Liabilities shall be deemed to be outstanding until they are Finally Paid.

“*Senior Note*” is defined in the Recitals hereto.

“*Subordinated Loan Documents*” means the Subordinated Loan Agreement, the Subordinated Deed of Trust and all other Loan Documents (as defined in the Subordinated Deed of Trust), and all documents and instruments related thereto, including, without limitation, the Subordinated Notes.

“*Subordinated Secured Liabilities*” means all obligations, liabilities and indebtedness of every nature of the Company from time to time owed to the Subordinated Lender under the Subordinated Loan Documents, including the termination fee and the principal amount of all debts, claims and indebtedness, accrued, accreted and unpaid interest, and all premium, fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable under the Subordinated Loan Documents, whether before or after the filing of an Insolvency or Liquidation Proceeding (including any amounts payable by the Company in connection with put, redemption, repurchase or repurchase rights under any warrants or any other securities of the Company held by the Subordinated Lender), together with (a) any indebtedness which refinances such principal, interest and other obligations and any amendments, modifications, renewals, restatements, refinancings or extensions thereof and (b) any interest accruing thereon after the commencement of an Insolvency or Liquidation Proceeding, without regard to whether or not such interest is allowed in any Insolvency or Liquidation Proceeding. Subordinated Secured Liabilities shall be deemed to be outstanding until they are Finally Paid.

## SECTION 2. SUBORDINATION.

To the extent and in the manner hereinafter set forth in this Agreement, the Subordinated Secured Liabilities are hereby expressly made junior, subordinate and subject in right of payment to all of the Senior Secured Liabilities. The Company and the Subordinated Lender agree that each instrument or document evidencing the Subordinated Secured Liabilities consummated after the date hereof will at all times bear the following legend:

“The rights of the holder of this instrument or agreement to receive payment are junior, subordinate and subject to the payment of all obligations of the obligor hereunder (the “*Obligor*”) to Wells Fargo Trust Company, National Association, as Trustee of the 2019 Tulare County Lease-Backed Trust (the “*Senior Secured Creditor*”) and any other holder or holders of the Note (collectively, the “*Senior Note*”) issued under that certain Note Purchase Agreement dated as of June [ ], 2019, as amended, between the Obligor and Senior Secured Creditor, to the extent of any obligations under the Senior Note, and all other obligations owed by the Obligor to Senior Secured Creditor under any of the Operative Agreements (as defined in said Note Purchase Agreement).”

### SECTION 3.           INSOLVENCY PROCEEDING.

In the event of any Insolvency or Liquidation Proceeding of the Company and/or the Tenant, as between the Senior Lender, on the one hand, and the Subordinated Lender, on the other hand, the following shall apply:

*Section 3.1.*   Upon any payment or distribution of assets or securities of any kind or character, whether in cash, securities or other property, of the Company or the estate created by the commencement of any such Insolvency or Liquidation Proceeding, the Senior Secured Liabilities shall be Finally Paid before the Subordinated Lender shall be entitled to receive any payment or distribution of any cash, securities or other property on account of the Subordinated Secured Liabilities.

*Section 3.2.*   The Senior Lender shall be entitled to receive from the Company and any other Person making any distribution in accordance with Section 3.1 any payment or distribution of any kind or character, whether in cash, securities or other property that may be payable or deliverable in respect of the Subordinated Secured Liabilities in any such Insolvency or Liquidation Proceeding for application to the payment of the Senior Secured Liabilities (to the extent necessary to Finally Pay the Senior Secured Liabilities after giving effect to any concurrent payment to the holders of the Senior Secured Liabilities). Each of the Company and the Subordinated Lender irrevocably authorizes, empowers and directs any debtor, debtor-in-possession, receiver, trustee or agent or other Person having authority, to pay or otherwise deliver all such payments or distributions to the Senior Lender.

*Section 3.3.*   In the event that, notwithstanding the foregoing provisions of Section 3.2, the Subordinated Lender receives any payment from or distribution of assets or securities of the Company or the estate created by the commencement of any such Insolvency or Liquidation Proceeding, of any kind or character in respect of the Subordinated Secured Liabilities, whether in cash, securities or other property before the Senior Secured Liabilities are Finally Paid, then, and in such event, such payment or distribution shall be received and held in trust by the Subordinated Lender for the benefit of the Senior Lender and shall be immediately paid over or delivered by such Subordinated Lender to the Senior Lender to the extent necessary to Finally Pay the Senior Secured Liabilities after giving effect to any concurrent payment to the holders of the Senior Secured Liabilities. Any such payments or distributions so paid over to the Senior Lender by any Subordinated Lender in accordance with the foregoing sentence shall not constitute payments with respect to the Subordinated Secured Liabilities and as such will not reduce the outstanding amount of the Subordinated Secured Liabilities. To the extent there are any excess amounts paid over to the Senior Lender after the Senior Secured Liabilities have been Finally Paid, such excess amounts shall be remitted to the holders of the Subordinated Secured Liabilities by such Senior Lender to the extent necessary to pay all the Subordinated Secured Liabilities then due in full, which amounts shall constitute payments in respect of the Subordinated Secured Liabilities and will so reduce the outstanding amount of the Subordinated Secured Liabilities.

*Section 3.4.*   This Agreement shall continue in full force and effect, notwithstanding the commencement of any Insolvency or Liquidation Proceeding by or against the Company or any direct or indirect owner of the equity interests in the Company. Without limiting the generality of

the foregoing, the provisions of this Agreement are intended to be and shall be enforceable as a “subordination agreement” under Section 510(a) of the Bankruptcy Code. All references to the Company shall include the Company as debtor and debtor-in-possession and any receiver, examiner, trustee or other agent for such person in any Insolvency or Liquidation Proceeding.

#### SECTION 4. PAYMENTS OF SUBORDINATED SECURED LIABILITIES.

*Section 4.1.* Except as otherwise permitted by Section 4.2, no payment or distribution shall be made by the Company or received by the Subordinated Lender with respect to the Subordinated Secured Liabilities in any form and from any source whatsoever prior to Final Payment of all of the Senior Secured Liabilities.

*Section 4.2.* Notwithstanding the provisions of Section 4.1, except after the occurrence and during the continuance of a Senior Default that is an Event of Default (as defined in the Senior Deed of Trust) or a Senior Default that is a monetary default, the Company may pay and the Subordinated Lender may retain cash payments permitted to be paid by the Company and disbursed to the Subordinated Lender under the terms of the Escrow and Servicing Agreement.

*Section 4.3.* In the event that any holder of any Subordinated Secured Liabilities shall have received any payment or distribution at a time when such payment or distribution was prohibited by the provisions of either of Section 4.1 or 4.2 hereof, then, and in such event, such payment or distribution shall be deemed to have been paid to such holder of the Subordinated Secured Liabilities in trust for the benefit of the Senior Lender and shall be immediately paid over to the Senior Lender to the extent necessary to cause the Senior Secured Liabilities to be Finally Paid after giving effect to any concurrent payment to the holders of the Senior Secured Liabilities. Any such payments or distributions so paid over to the Senior Lender by a holder of the Subordinated Secured Liabilities in accordance with the foregoing sentence shall not constitute payments in respect of the Subordinated Secured Liabilities and will not reduce the outstanding amount of the Subordinated Secured Liabilities. To the extent there are any excess amounts paid over to the Senior Lender after the Senior Secured Liabilities have been Finally Paid, such excess amounts shall be remitted to the Subordinated Lender until such time as all the Subordinated Secured Liabilities have been Finally Paid, which amounts shall constitute payments in respect of the Subordinated Secured Liabilities and will so reduce the outstanding amount of the Subordinated Secured Liabilities.

*Section 4.4.* The provisions of this Section 4 shall not modify or limit in any way the application of Section 3 hereof.

#### SECTION 5. SUBROGATION.

After the Senior Secured Liabilities have been Finally Paid, the Subordinated Lender shall be subrogated, to the extent of any payments or distributions (if any) made to the Senior Lender, or otherwise applied to payment of the Senior Secured Liabilities solely by reason of the provisions of this Agreement, to any rights of the Senior Lender to receive payments and distribution of cash, securities and other property applicable to the Senior Secured Liabilities, if any, until the Subordinated Secured Liabilities owed to the Subordinated Lender shall have been Finally Paid.

For purposes of such subrogation, no payments or distributions to the Senior Lender of any cash, securities or other property to which the Subordinated Lender would have been entitled, except for the provisions of this Agreement, and no payments pursuant to the provisions of this Agreement to the Senior Lender by the Subordinated Lender, shall be deemed to be a payment or distribution by the Company to or on account of the Senior Secured Liabilities, it being understood and agreed that the provisions of this Agreement are solely for the purpose of defining the relative rights of the Senior Lender, on the one hand, and the Subordinated Lender, on the other hand. A release of any claim by the Subordinated Lender shall not, as between the Company and the Subordinated Lender, limit the rights of subrogation of the Subordinated Lender under this Section 5. No payment or distribution to Senior Lender pursuant to the provisions of this Agreement and no Protective Advance by Subordinated Lender shall entitle Subordinated Lender to exercise any right of subrogation in respect thereof prior to the Senior Secured Liabilities being Finally Paid, and Subordinated Lender agrees that, except with respect to the enforcement of its remedies under the Subordinated Loan Documents permitted hereunder, prior to the satisfaction of all Senior Secured Liabilities it shall not acquire, by subrogation or otherwise, any lien, estate, right or other interest in any portion of the Company Property or any other collateral now or hereafter securing the Senior Secured Liabilities or the proceeds therefrom that is or may be prior to, or of equal priority with, any of the Senior Loan Documents or the liens, rights, estates and interests created thereby.

#### SECTION 6. RELATIVE RIGHTS.

Except as otherwise expressly set forth in this Agreement, nothing contained in this Agreement is intended to or shall:

(A) impair the obligations of the Company, which are absolute and unconditional, to the Subordinated Lender to pay the Subordinated Secured Liabilities as and when the same shall become due and payable in accordance with their terms, and nothing contained in this Agreement is intended to alter or amend the relative interests as among the Company and its creditors (other than the Senior Lender); or

(B) affect the relative rights of the holders of the Subordinated Secured Liabilities and the creditors of the Company (other than the Senior Lender) against the Company.

Notwithstanding the foregoing and notwithstanding the occurrence of any default under any or all of the Subordinated Loan Documents or otherwise, but subject to the terms of Section 7 hereof, the holders of the Subordinated Secured Liabilities shall not be entitled to take any Collection Action until such date as the Senior Secured Liabilities are Finally Paid.

#### SECTION 7. PROOF OF CLAIMS AND VOTING.

(a) In the event of any Insolvency or Liquidation Proceeding of the Company and/or the Tenant, the Subordinated Lender hereby irrevocably appoints the Senior Lender its agent and attorney-in-fact (i) to make, file and present for and on behalf of the holders of the Subordinated Secured Liabilities such proofs of claims against the Company and/or the Tenant, as the case may be, on account of the Subordinated Secured Liabilities and (ii) to vote such claims in such

proceedings (in the name of the Senior Lender or the holders of the Subordinated Secured Liabilities as the Senior Lender may deem necessary or advisable); *provided* that (y) the Senior Lender shall have no obligation to make, file, present and/or vote any such proof of claim, but if the Senior Lender shall not timely make, file, present and/or vote any such proof of claim, the Subordinated Lender, subject to the terms of Section 7(b) hereof, may so make, file, present and/or vote any such proof of claim and (z) to the extent any proof of claim is made, filed, presented or voted upon by the Senior Lender, the Senior Lender shall include the claim of the Subordinated Lender.

(b) The Subordinated Lender agrees, in connection with any Insolvency or Liquidation Proceeding of the Company and/or the Tenant, it will not take any action or vote in any way so as to (i) contest the validity of the liens securing the Senior Secured Liabilities, (ii) contest the enforceability of any of the Senior Loan Documents, (iii) contest the Senior Lender's priority position over the Subordinated Lender created by this Agreement, (iv) contest the Subordinated Lender's junior and subordinate position with respect to the Senior Lender created by this Agreement, or (v) take any position or action which would have directly or indirectly any of the following effects: (A) challenging in any respect treatment of the Senior Secured Liabilities as a first priority perfected fully secured claim or (B) blocking current payment of any obligation in respect of the Senior Secured Liabilities. In the event of any violation of any provisions of this section by the Subordinated Lender, the Senior Lender may in the name of the Subordinated Lender, or in its own name thereafter amend, modify or rescind any such prior act taken or vote issued in violation of this Agreement.

(c) Until the Senior Secured Liabilities have been Finally Paid, if an Insolvency or Liquidation Proceeding of the Company and/or the Tenant shall occur and be continuing, the Subordinated Lender hereby agrees that it will not unreasonably withhold or delay in giving its consent to any post-petition financing to be provided to the Company and/or the Tenant by the Senior Lender or the granting by the Company and/or the Tenant to the Senior Lender of senior liens and priorities in connection therewith and/or the use of cash collateral.

(d) The Subordinated Lender, if and to the extent it holds any secured claim, waives any claim or defense the Subordinated Lender may now or hereafter have arising out of the election by the Senior Lender in any Insolvency or Liquidation Proceeding of the Company and/or the Tenant of any use of cash collateral, any borrowing or any grant of a security interest under any applicable bankruptcy or insolvency laws or statutes by the Company, as debtor-in-possession. To the extent that the Senior Lender receives payments on, or proceeds of collateral for, the Senior Secured Liabilities which are subsequently invalidated, declared to be fraudulent or preferential, set aside, clawed back and/or required to be repaid to the Company or a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law, or equitable cause, then as between the Senior Lender, on the one hand, and the Subordinated Lender, on the other hand, to the extent of such payment or proceeds received, the Senior Secured Liabilities, or part thereof, intended to be satisfied shall be revived and continue in full force and effect as if such payments or proceeds had not been received by the Senior Lender.

(e) The Subordinated Lender agrees that it will not object to or oppose (i) a sale or other disposition of any Company Property (or any portion thereof) under Section 363 of the Bankruptcy

Code or any other provision of the Bankruptcy Code if the Senior Lender shall have consented to such sale or disposition of such Company Property and all senior liens and junior liens will attach to the proceeds of the sale or other disposition with the same priorities set forth herein or (ii) any lawful exercise by any holder of claims in respect of any Senior Secured Liabilities of the right to credit bid such claims under Section 363(k) of the Bankruptcy Code or any other applicable provision of the Bankruptcy Code or in any sale in foreclosure of Company Property that is collateral with respect to such claims.

## SECTION 8. AMENDMENTS.

*Section 8.1.* The Senior Lender and the Company may modify, supplement or amend the terms of the Senior Loan Documents (other than the Lease), all without consent of the Subordinated Lender and without affecting the liabilities and obligations of the Subordinated Lender under this Agreement, *except* that, unless and to the extent that such modification, supplement or amendment meets the Default Restructuring Limit, the aggregate principal amount and/or interest rate of the Senior Secured Liabilities may not be increased (except for increases in principal in the amount of any Protective Advances or costs of collection or the accrual and compounding of interest (including default interest) under the Senior Loan Documents nor shall the term of the Senior Secured Liabilities be extended or the amortization schedule be changed without the prior written consent of the Subordinated Lender. Except during the Lease Amendment Delay Period but after the Senior Lender has provided the Tenant Default Notice to the Tenant and during the continuance of the related default under the Lease, the Senior Lender may consent to a modification, supplement or amendment to the terms of the Lease, all without consent of the Subordinated Lender and the Company and without affecting the liabilities and obligations of the Subordinated Lender under this Agreement.

Notwithstanding anything to the contrary in this Section 8.1, nothing in this Section 8.1 shall prohibit (A) a change to the amortization schedule of the Senior Note resulting from a partial prepayment of the Senior Note pursuant to Section 2.12(a) of the Senior Deed of Trust, (B) the Tenant's rights under the Lease with respect to contesting matters which may give rise to liens as permitted under the terms of the Lease, (C) the Tenant's rights under the Lease to assign its interest in the Lease in accordance with the terms thereof, or (D) any actions taken by the Company in exercising Excepted Rights as permitted under the Senior Deed of Trust.

*Section 8.2.* The Subordinated Lender shall have the right, without the consent of the Senior Lender in each instance, to enter into any amendment, deferral, extension, modification, increase, renewal, replacement, consolidation, supplement or waiver (collectively, a "*Subordinated Loan Modification*") of the Subordinated Secured Liabilities or the Subordinated Loan Documents, *provided* that no such Subordinated Loan Modification shall (i) increase the interest rate or principal amount of the Subordinated Secured Liabilities including for increases in principal in the amount of any protective advances or the accrual and compounding or accretion of interest (including default interest) under the Subordinated Loan Documents, (ii) increase in any other respect any obligations of the Company under the Subordinated Loan Documents, (iii) shorten the scheduled maturity date or extend the scheduled maturity date of the Subordinated Secured Liabilities, (iv) provide for any additional contingent interest, additional interest or so-called "kicker" or other similar equity participation measured on the basis of the cash flow or

appreciation of the Granted Property, (v) amend or modify the provisions limiting transfers of interest in the Company, (vi) modify or amend the manner, timing, priority, amounts or method of the application of payments under the Subordinated Loan Documents, (vi) add any additional default provisions, (vii) extend the period during which voluntary prepayments are prohibited or during which prepayments require the payment of a prepayment fee or premium or yield maintenance charge, increase the amount of any such prepayment fee, premium or yield maintenance charge, or impose any new prepayment fee, premium or yield maintenance charge, (viii) impose any new or additional fees not provided for in the Subordinated Loan Documents, or (ix) substitute or add any guarantor or indemnitor under any guaranty or indemnity delivered with respect to the Subordinated Loan Documents (other than as permitted or required under the terms of the Subordinated Loan Documents on the date hereof); *provided, however*, that none of the foregoing items (i) through (ix) inclusive shall prohibit (A) a change to the amortization schedule of the Subordinated Note resulting from a partial prepayment of the Subordinated Note *provided* that such change is in accordance with the terms of Section 2.12(a) of the Senior Deed of Trust, (B) the Tenant's rights under the Lease with respect to contesting matters which may give rise to liens as permitted under the terms of the Lease, (C) the Tenant's rights under the Lease to assign its interest in the Lease in accordance with the terms thereof, or (D) any actions taken by the Company in exercising Excepted Rights as permitted under the Senior Deed of Trust.

*Section 8.3.* The Senior Lender shall use commercially reasonable efforts to deliver to the Subordinated Lender promptly upon execution thereof copies of any and all material modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Senior Loan Documents (including, without limitation, any side letters, waivers or consents entered into, executed or delivered by the Senior Lender) within a reasonable time after any of such applicable instruments have been executed by the Senior Lender; *provided however*, that the failure of the Senior Lender to so deliver the aforesaid items shall not result in a default under this Agreement or give rise to the right of the Subordinated Lender to exercise any remedies or seek damages against the Senior Lender. The Subordinated Lender shall deliver to the Senior Lender promptly upon execution thereof copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Subordinated Loan Documents (including, without limitation, any side letters, waivers or consents entered into, executed or delivered by the Subordinated Lender) within a reasonable time after any of such applicable instruments have been executed by the Subordinated Lender. The Company shall deliver to the Subordinated Lender promptly upon execution thereof copies of any and all modifications, amendments, extensions, consolidations, spreaders, restatements, alterations, changes or revisions to any one or more of the Senior Loan Documents (including, without limitation, any side letters, waivers or consents entered into, executed or delivered by the Senior Lender) within a reasonable time after any of such applicable instruments have been executed by the Senior Lender.

## SECTION 9. RELIANCE.

*Section 9.1.* The failure by the Subordinated Lender to have received notice of the facts or circumstances that would prohibit the Subordinated Lender from receiving any payments hereunder shall not limit any rights of any holder of the Senior Secured Liabilities under this



Agreement to recover from any holder of the Subordinated Secured Liabilities any payment to such holder that, under this Agreement, such holder is not entitled to retain.

*Section 9.2.* Upon any payment or distribution of assets of the Company referred to in Section 3 hereof, the Subordinated Lender shall be entitled to rely upon a certificate of the receiver, trustee in bankruptcy, liquidating trustee, agent or other person making such payment or distribution delivered to the Subordinated Lender for the purpose of ascertaining the persons entitled to participate in such payment or distribution, the holders of the Senior Secured Liabilities and other indebtedness of the Company, the amount thereof or payable thereon, and the facts pertinent thereto or to this Agreement.

#### SECTION 10. WAIVER AND AMENDMENT.

No waiver of any provision of this Agreement shall be deemed to be made by the Senior Lender of any of its rights hereunder unless the same shall be in writing signed by the Senior Lender. Each waiver, if any, by the Senior Lender shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the Senior Lender in any other respect at any other time. No waiver of any provision of this Agreement shall be deemed to be made by the Subordinated Lender of any of its rights hereunder unless the same shall be in writing signed by the Subordinated Lender. Each waiver, if any, by the Subordinated Lender shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the Subordinated Lender in any other respect at any other time.

#### SECTION 11. SUBORDINATION OF LIENS.

The Subordinated Lender hereby covenants and agrees that (a) it has no liens against the Company and/or any Company Property, except the Subordinated Deed of Trust the lien of which is hereby agreed to be junior, subordinate and subject in all respects to the lien of the Senior Deed of Trust and all other Senior Loan Documents, and (b) if any Subordinated Lender should at any time in contravention of this Agreement have, be deemed to have, or acquire, any liens against the Company and/or any Company Property, in addition to all other rights and remedies of the Senior Lender, any such liens of the Subordinated Lender shall be junior, subordinate and subject in all respects to the liens and rights against the Company and/or Company Property of the Senior Lender, arising from or out of the Senior Secured Liabilities, regardless of the order, time or manner in which any liens attach to or are perfected in any Company Property.

#### SECTION 12. APPROVAL SENIOR SECURED LIABILITIES; APPROVAL SUBORDINATED SECURED LIABILITIES.

The Subordinated Lender hereby declares, agrees and acknowledges that the Subordinated Lender consents to and approves all provisions of the Senior Note, the Senior Deed of Trust and each of the other Senior Loan Documents. The Senior Lender hereby declares, agrees and acknowledges that the Senior Lender consents to and approves all provisions of the Subordinated Note, the Subordinated Deed of Trust and each of the other Subordinated Loan Documents.

SECTION 13. NO PARTNERSHIP; NO FIDUCIARY RELATIONSHIP; SEPARATE TRANSACTIONS.

This Agreement shall not in any respect be interpreted, deemed or construed as making the Subordinated Lender a partner or joint venturer with any other Person, including without limitation, the Senior Lender or the Company, nor shall it be interpreted, deemed or construed as making the Subordinated Lender the agent or representative of the Senior Lender or the Company nor the Senior Lender or the Company the agent, fiduciary, trustee or representative of the Subordinated Lender, except as specifically set forth in this Agreement. Each of Senior Lender and Subordinated Lender acknowledges that the Senior Secured Liabilities and the Senior Loan Documents on the one hand, and the Subordinated Secured Liabilities and the Subordinated Loan Documents on the other hand, are distinct, separate transactions and loans, separate and apart from each other and that Senior Lender and Subordinated Lender are distinct, separate lenders with distinct and separate loans with various rights and remedies with respect to the Company Property which are not in all respects aligned.

SECTION 14. SENIOR SECURED LIABILITIES PURCHASE OPTION.

If, subject to Subordinated Lender's rights to cure as set forth in Section 15 hereof, a Tenant Default Notice (as defined in the definition of Lease Amendment Delay Period) is provided to the Tenant, or the Senior Secured Liabilities have been accelerated, or any remedial enforcement action has been commenced under the Senior Loan Documents, or an Insolvency or Liquidation Proceeding has been commenced by or against the Company and/or the Tenant, or if the Senior Lender (or its designee) agrees or desires to agree to accept a deed-in-lieu of foreclosure in a transaction that will result in a transfer of the Company Property to the Senior Lender or its designee free and clear of the lien of the Subordinated Loan Documents and of any other lien in favor of the Subordinated Lender (each of the foregoing, a "*Purchase Option Event*"), Senior Lender shall provide prompt written notice of the same to Subordinated Lender (the "*Purchase Notice*"), and upon ten (10) Business Days' prior written notice to Senior Lender, Subordinated Lender shall have the right to purchase, in whole but not in part, the Senior Secured Liabilities for a price equal to the sum of (without duplication) the outstanding principal balance thereof, all accrued interest, and other amounts due thereon (including, without limitation, (i) any unreimbursed advances (including Protective Advances) made by Senior Lender or any servicer or escrow agent pursuant to the Escrow and Servicing Agreement (as defined in the Senior Deed of Trust), together with interest thereon, for amounts which the Company are obligated to pay under the Senior Loan Documents, (ii) post-petition interest, (iii) if the Senior Secured Liabilities are not purchased within ninety (90) days of the delivery to Subordinated Lender of the Purchase Notice, any workout fee, special servicing fee or liquidation fee payable to any special servicer or the Escrow Agent under the Escrow and Servicing Agreement, (iv) all costs and expenses (including reasonable legal fees and expenses) actually incurred by Senior Lender in enforcing the terms of the Senior Loan Documents), and (v) the Make-Whole Amount and any yield maintenance premiums, prepayment fees or premiums that would be due if the Company were voluntarily prepaying the Senior Secured Liabilities at the time of such purchase, any liquidated damage amount, any spread maintenance charges, any late charges or any default interest (the "*Loan Purchase Price*"). Concurrently with payment to Senior Lender of the Loan Purchase Price, Senior Lender shall deliver or cause to be delivered to Subordinated Lender all Senior Loan Documents held by or on behalf of Senior Lender and will execute in favor of Subordinated Lender

or its designee assignment documentation, in form and substance reasonably acceptable to Subordinated Lender, at the sole cost and expense of Subordinated Lender, to assign the Senior Secured Liabilities and its rights under the Senior Loan Documents (without recourse, representations or warranties, except for representations as to the outstanding balance of the Senior Secured Liabilities and as to Senior Lender's ownership and not having previously assigned, transferred, participated or encumbered its rights in the Senior Secured Liabilities as of the consummation of the assignment of the Senior Secured Liabilities). The right of Subordinated Lender to purchase the Senior Secured Liabilities shall automatically terminate (x) if a Purchase Option Event ceases to exist, or (y) upon a transfer of all of the Company Property by foreclosure sale, sale by power of sale or delivery of a deed in lieu of foreclosure; *provided, however*, in the event the Company tenders a deed in lieu of foreclosure to Senior Lender which is accepted by Senior Lender within thirty (30) days following delivery of a Purchase Notice, Subordinated Lender or its nominee may, within ten (10) Business Days of the acceptance of such deed in lieu of foreclosure, purchase the Company Property from Senior Lender for a sum equal to the Loan Purchase Price plus (1) any and all costs and expenses incurred by Senior Lender to acquire the Company Property and during the time it owned the Company Property, net of all cash receipts from the Company Property actually received by Senior Lender during such period (from tenants, by apportionment with Subordinated Lender or otherwise), and (2) any and all costs and expenses incurred by Senior Lender in connection with both the acquisition of the Company Property and the transfer of the Company Property to Subordinated Lender, including, without limitation, reasonable attorneys fees and expenses, and any transfer or gains or similar taxes and fees actually paid in connection with both the acquisition of the Premises and such transfer to Subordinated Lender or its nominee.

#### SECTION 15. SUBORDINATED LENDER RIGHTS OF CURE.

(a) *Notice of Senior Default.* The Senior Lender agrees that at the time it gives any notice of default to the Tenant under the Lease, the Senior Lender shall also contemporaneously give a copy of such notice to the Company and the Subordinated Lender. Senior Lender shall permit Subordinated Lender an opportunity to cure such default in accordance with the below provisions of this Section 15.

(b) *Senior Secured Liabilities Cure Period.* Subordinated Lender shall have until the end of the Subordinated Lender Cure Period (as defined below), to cure any Specified Curable Defaults (as defined below). In the event Subordinated Lender elects to cure any such default, Subordinated Lender shall (x) reimburse Senior Lender for any interest charged by Senior Lender on any Protective Advances for amounts which the Company would be obligated to pay under the Senior Loan Documents, together with payment of all other amounts then due under the Senior Loan Documents, and (y) with respect to any liquidated sum of money first due and payable pursuant to the Senior Loan Documents after the delivery of a Senior Default Notice, Subordinated Lender shall pay such amount on the due date with respect to such amount pursuant to the Senior Loan Documents, subject only to any grace period with respect to such amount provided in the Senior Loan Documents. Notwithstanding anything to the contrary contained in this Agreement, the Senior Loan Documents and/or the Subordinated Loan Documents, and for the avoidance of doubt, Subordinated Lender shall have no right to cure any default under the Senior Secured Liabilities with respect to the Company upon the occurrence and during the continuance of an Insolvency or

Liquidation Proceeding of the Company and/or the Tenant, and any cure rights which Subordinated Lender may then be exercising with respect to the Company shall immediately and automatically terminate upon the commencement and during the continuance of a voluntary or involuntary Insolvency or Liquidation Proceeding involving the Company and/or the Tenant, *provided, however*, such cure rights (as prescribed by the provisions of this Section 15(b)) shall be reinstated after the termination or dismissal of the Insolvency or Liquidation Proceeding; *provided, however*, that the Subordinated Lender shall have given written notice, prior to the expiration of the Company's cure period under the Senior Deed of Trust, of its intent to exercise its cure rights under this Section 15(b). The term "*Subordinated Lender Cure Period*" shall mean, with respect to any Specified Curable Default, the period from the date of such default until the date that is ten (10) Business Days after the expiration of the Company's cure period set forth the Senior Deed of Trust for such default. The term "*Specified Curable Default*" shall mean a default by the Company under any of the following Sections in the Senior Deed of Trust: Sections 2.8, 2.15, 2.16, 2.17, and 2.18(b)(i) and any default described in Section 5.1(a) or 5.1(d) of the Senior Deed of Trust.

(c) *Copies of Enforcement Action Notices and Pleadings; Right to Information.* Senior Lender shall provide Subordinated Lender with copies of any and all material notices relating to each Event of Default under the Senior Secured Liabilities and pleadings, agreements, motions and briefs served upon, delivered to or with any party to any enforcement action and otherwise keep Subordinated Lender reasonably apprised as to the current status of any enforcement action. Prior to or concurrently with undertaking any curative action with respect to the Senior Secured Liabilities, Subordinated Lender shall provide Senior Lender with written notice thereof and otherwise keep Senior Lender reasonably apprised as to the current status of such action.

#### SECTION 16. REPRESENTATIONS AND WARRANTIES REGARDING SUBORDINATED LOAN.

Each of the Company and the Subordinated Lender represents and warrants to the Senior Lender that:

- (a) the only obligations of the Company to the Subordinated Lender or any Affiliate of the Subordinated Lender are set forth in the Subordinated Loan Documents; and
- (b) there is no default or event of default in existence under any or all of the Subordinated Loan Documents.

#### SECTION 17. SUCCESSORS AND ASSIGNS.

(a) This Agreement shall be binding upon and shall inure to the benefit of the Senior Lender, the Subordinated Lender and the Company, and its successors and assigns. The Senior Lender, without the Subordinated Lender's prior notice or consent of any kind, may sell, assign or transfer any Senior Secured Liabilities, and in such event each and every immediate and successive assignee or transferee thereof shall be bound by and subject to and enjoy the benefits of this Agreement.

(b) The Subordinated Lender shall not sell, assign, pledge, dispose of or otherwise transfer all or any portion of the Subordinated Secured Liabilities: (i) unless, prior to the consummation of any such action, the transferee thereof shall execute and deliver to the Senior Lender an agreement substantially identical to this Agreement, providing for the continued subordination of the Subordinated Secured Liabilities to the Senior Secured Liabilities as provided herein and for the continued effectiveness of all of the rights of the Senior Lender arising under this Agreement; and (ii) unless all of the related Subordinated Loan Documents evidencing the Subordinated Secured Liabilities contain the legend referred to in Section 2 above.

(c) Notwithstanding the failure of any transferee to execute or deliver an agreement substantially identical to this Agreement, the subordination effected hereby shall survive any sale, assignment, pledge, disposition or other transfer of all or any portion of the Subordinated Secured Liabilities, and the terms of this Agreement shall be binding upon the successors and assigns of each holder of Subordinated Secured Liabilities, as provided in this Section 17.

(d) The Subordinated Lender hereby agrees that any Person that refinances the Senior Secured Liabilities may rely on and enforce this Agreement and shall for all purposes hereof be considered a "Senior Lender" hereunder. The Subordinated Lender further hereby agrees that it will, at the request of the Senior Lender, enter into an agreement, in the form of this Agreement, *mutatis mutandis*, to subordinate the Subordinated Secured Liabilities, to the same extent as provided herein, to the party refinancing all or a portion of the Senior Secured Liabilities; *provided* that the failure of the Subordinated Lender to execute such an agreement shall not affect such party's right to rely on and enforce the terms of this Agreement.

#### SECTION 18. NOTICES.

Any notices or other communications required or permitted to be given hereunder shall be delivered personally or mailed, certified mail, return receipt requested, or sent by commercial overnight courier service to the following addresses (or such other addresses as shall be given by a notice delivered hereunder), and shall be deemed to have been given on the day of delivery if delivered personally, four days after mailing if mailed, or one business day after delivery to the courier if delivered by commercial overnight courier service:

If to the Company, to:

Cornerstone Main Partners, L.P.  
17671 Irvine Boulevard, Suite 204  
Tustin, California 92780  
Attention: David H. Paynter

with a copy to:

[ ]

If to the Senior Lender, to:

Wells Fargo Trust Company, National Association, as Trustee of the 2019 Tulare  
County Lease-Backed Trust  
299 South Main Street, 5th Floor  
MAC: U1228-051  
Salt Lake City, Utah 84111  
Attention: Corporate Trust Lease Group

with a copy to:

Chapman and Cutler LLP  
111 West Monroe Street  
Chicago, Illinois 60603  
Attn: Philip M. J. Edison, Esq.

If to the Subordinated Lender, to (which notice shall be deemed to be effective notice to the Subordinated Lender as of the date given):

City of Porterville  
291 North Main Street  
Porterville, California 93257  
Attention: City Manager

Any party may change the address to which notices to it are sent by giving written notice pursuant to this Section to the other parties hereto.

SECTION 19. *INTENTIONALLY OMITTED.*

SECTION 20. *MISCELLANEOUS.*

*Section 20.1.* The provisions of Section 3 and Section 4 shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Senior Secured Liabilities is rescinded or must otherwise be returned by the Senior Lender or any other recipient thereof, as

the case may be, in connection with an Insolvency or Liquidation Proceeding of the Company and/or the Tenant or otherwise, all as though such payment had not been made.

*Section 20.2.* The Subordinated Lender hereby waives promptness, diligence, notice of acceptance and any other notice with respect to any of the Senior Secured Liabilities and any requirement that the Senior Lender (if applicable) protect, secure, perfect or insure any security interest or lien or any property subject thereto or exhaust any right or take any action against the Company or any other person or entity or any collateral for the Senior Secured Liabilities.

*Section 20.3.* The Subordinated Lender understands that there may be various agreements between the Senior Lender and the Company evidencing and governing the Senior Secured Liabilities, and the Subordinated Lender acknowledges and agrees that such agreements are not intended to confer any benefits or rights on the Subordinated Lender. The Subordinated Lender acknowledges and agrees that, except as otherwise expressly provided in this Agreement: (a) the Senior Lender shall not have any direct or indirect obligation to the Subordinated Lender of any kind with respect to the manner or time in which the Senior Lender, exercise or refrain from exercising any of its rights or remedies with respect to any of the Senior Secured Liabilities, the Company, or the Company's assets; (b) the Senior Lender may administer the Senior Secured Liabilities and any of the Senior Lender's agreements with the Company in any way the Senior Lender deems appropriate consistent with the terms and provisions of the Senior Loan Documents and this Agreement, without regard to the Subordinated Lender or the Subordinated Secured Liabilities; (c) the Subordinated Lender waives any right it might have to require a marshaling of any security held by the Senior Lender for all or any part of the Senior Secured Liabilities, or to direct or affect the manner or timing with which the Senior Lender enforces any of its securities; (d) nothing in this Agreement shall impair or adversely affect the manner or timing with which the Senior Lender enforces any of its security; (e) nothing in this Agreement shall impair or adversely affect any right, privilege, power or remedy of the Senior Lender with respect to the Senior Secured Liabilities, the Company or any assets of the Company, including without limitation, the Senior Lender's right to (i) waive or release any of such Senior Lender's security or rights, (ii) waive or ignore any defaults by the Company; and/or (iii) restructure, renew, modify, or supplement the Senior Secured Liabilities or any portion thereof or any agreement with the Company relating to the Senior Secured Liabilities, except as set forth in Section 8.1 hereof; and (f) all rights, privileges, power and remedies of the Senior Lender may be exercised from time to time by such Senior Lender without notice to or consent of the Subordinated Lender.

*Section 20.4.* No failure on the part of the Senior Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

*Section 20.5.* If any party to this Agreement seeks to enforce its rights under this Agreement by legal proceedings or otherwise, the non-prevailing party shall pay all reasonable costs and expenses incurred by the prevailing party, including, without limitation, all reasonable attorneys' fees.

*Section 20.6.* This Agreement shall be binding upon, and inure to the benefit of the parties hereto and their respective successors and assigns.

*Section 20.7.* This Agreement shall be construed in accordance with and governed by the laws of the State of California without regard to principles of conflict of laws.

*Section 20.8.* THE COMPANY, THE SENIOR LENDER AND THE SUBORDINATED LENDER EACH HEREBY IRREVOCABLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (I) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR (II) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE SUBORDINATED LENDER IRREVOCABLY AGREES THAT, SUBJECT TO THE SENIOR LENDER'S SOLE AND ABSOLUTE ELECTION, ANY ACTION OR PROCEEDING IN ANY WAY, MANNER OR RESPECT ARISING OUT OF THIS AGREEMENT, OR ARISING FROM ANY DISPUTE OR CONTROVERSY ARISING IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, SHALL BE LITIGATED ONLY IN THE STATE OR FEDERAL COURTS LOCATED IN THE STATE OF CALIFORNIA, AND THE SUBORDINATED LENDER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY SUCH STATE OR FEDERAL COURT. THE SUBORDINATED LENDER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST THE SUBORDINATED LENDER BY THE SENIOR LENDER IN ACCORDANCE WITH THIS SECTION 20.8. THE SENIOR LENDER AND THE COMPANY ACKNOWLEDGE AND AGREE THAT NOTHING HEREIN IS INTENDED AS A WAIVER BY THE SUBORDINATED LENDER OF ITS RIGHTS TO BRING ACTIONS AGAINST THE COMPANY OR ITS SUBSIDIARIES IN SUCH JURISDICTIONS AND IN SUCH MANNER AS IS PROVIDED IN THE SUBORDINATED LOAN DOCUMENTS.

*Section 20.9.* Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Agreement unless the consummation of the transactions contemplated hereby is materially adversely affected thereby.

*Section 20.10.* This Agreement and any amendments hereto may be executed in any number of counterparts, each of which shall be an original, and all of which taken together shall constitute one and the same instrument.

*Section 20.11.* The headings appearing in this Agreement have been inserted solely for reference and shall not affect the meaning or interpretation of any provision of this Agreement.

*Section 20.12.* This Agreement is not intended to and does not create any rights in or confer any benefits upon any person or entity other than the parties hereto.

*Section 20.13.* Each party hereto hereby acknowledges that Wells Fargo Trust Company, National Association ("Wells Fargo") is acting in this transaction as Senior Trustee under the Senior Trust Agreement (as defined in the Senior Deed of Trust) and as Escrow Agent hereunder. Each party agrees and acknowledges that such roles are separate and distinct legal roles and that



Wells Fargo, acting in each capacity, may take any actions, or refrain from taking such actions, that it has the legal or contractual right to take or refrain from taking in such roles, including, but not limited to, in connection with the enforcement of any right and/or remedy available to it. Each party agrees that it will not (i) make or assert any claim whatsoever against Wells Fargo, (ii) allege any breach of any fiduciary duty, duty of care or other duty whatsoever against Wells Fargo, or (iii) assert in any action any defense to the extent that, in the case of (i) or (ii) above, any such claim, action or assertion is based solely on the fact that Wells Fargo is acting in such multiple roles.

*Section 20.14.* This Agreement embodies the entire Agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter.

[REMAINDER OF PAGE INTENTIONALLY BLANK. SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, this Subordination and Intercreditor Agreement has been duly executed by the parties hereto as of the date first above written.

CORNERSTONE MAIN PARTNERS, L.P., a  
California limited partnership

By:\_\_\_\_\_

Name: David H. Paynter

Title: General Partner

WELLS FARGO TRUST COMPANY, NATIONAL  
ASSOCIATION, AS TRUSTEE OF THE 2019  
TULARE COUNTY LEASE-BACKED TRUST

By: \_\_\_\_\_  
Name:  
Title:

CITY OF PORTERVILLE

By: \_\_\_\_\_  
Name:  
Title:

**WHEN RECORDED, RETURN TO:**

**City of Porterville**  
**291 N. Main St.**  
**Porterville, CA 93257**

**TO BE RECORDED IN THE  
OFFICIAL RECORDS OF  
TULARE COUNTY, CALIFORNIA**

NO FEE PURSUANT TO GOVERNMENT SECTION 27383

---

**DEED OF TRUST, SECURITY AGREEMENT, AND FIXTURE FILING WITH ASSIGNMENT  
OF RENTS**

THIS DEED OF TRUST, SECURITY AGREEMENT, AND FIXTURE FILING WITH ASSIGNMENT OF RENTS (this "Deed of Trust") is made as of December 3, 2018, by CORNERSTONE MAIN PARTNERS, L.P., A California Limited Partnership ("Trustor"), having an address at 17671 Irvine Boulevard, Suite 204, Tustin, CA 92680, in favor of FIRST AMERICAN TITLE COMPANY, as Trustee ("Trustee"), whose address is 484 N. Prospect St, Ste C, Porterville, CA 93257, for the benefit of CITY OF PORTERVILLE, a municipal corporation ("Beneficiary"), whose address is 291 N. Main Street, Porterville, CA 93257.

**WITNESSETH:**

FOR VALUABLE CONSIDERATION, INCLUDING THE INDEBTEDNESS HEREIN RECITED AND THE TRUST HEREIN CREATED, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, TRUSTOR HERE IRREVOCABLY GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS, PLEDGES, SETS OVER AND ASSIGNS, AND GRANTS A SECURITY INTEREST, TO AND IN FAVOR OF TRUSTEE FOR THE BENEFIT OF BENEFICIARY, ITS SUCCESSORS AND ASSIGNS, WITH POWER OF SALE, in all of Trustor's estate, right, title and interest in, to and under any and all of the following described property, whether now owned or hereafter acquired (collectively, the "Property"):

A) All that certain real property ("Land") located in Tulare County, California and more particularly described in attached Exhibit A, incorporated by reference (Trustor agrees that any greater title to the Land later acquired during the term of this Deed of Trust will be subject to this Deed of Trust); together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining and all the estate, right, title, interest, claims and demand whatsoever of Trustor therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired;

B) All structures, buildings, and improvements of every kind and description now of at any time hereafter located, or placed on the Land (the "Improvements");

C) All easements, rights-of-way, streets, alleys, passages, sewer rights, and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interest, tenements, hereditaments, and appurtenances, reversions or remainders



whatsoever, in any way belonging relating or appertaining to the Property or any part thereof, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Trustor;

D) all furniture, furnishings, fixtures, goods, equipment, inventory or personal property owned by Trustor and now or hereafter located on, attached to or used in or about the Improvements, including, but not limited to, all machines, engines, boilers, dynamos, elevators, stokers, tanks, cabinets, awnings, screens, shades, blinds, carpets, draperies, lawn mowers, and all appliances, plumbing, heating, air conditioning, lighting, ventilating, refrigerating, disposal and incinerating equipment, and all fixtures and appurtenances thereto, and such other goods and chattels and personal property owned by Trustor as are now or hereafter used or furnished in operating the Improvements, or the activities conducted therein, and all building materials and equipment hereafter situate on or about the Land or Improvements, and all warranties and guaranties relating thereto, and all additions thereto and substitutions and replacements therefor (exclusive of any of the foregoing owned or leased by tenants of space in the Improvements);

E) All water, water courses, ditches, wells, reservoirs and drains and all water, ditch, well, reservoir and drainage rights and powers which are appurtenant to, located on, under or above or used in connection with the Land or the Improvements, or any part thereof, together with (i) all utilities, utility lines, utility commitments, utility capacity, in connection with the same, (ii) reimbursements or other rights pertaining to utility or utility services provided to the Land and/or Improvements and (iii) the present or future use or availability of waste water capacity, or other utility facilities to the extent the same pertain to or benefit the Land and/or Improvements, including, without limitation, all reservations of or commitments or letters covering any such use in the future, whether now existing or hereafter created or acquired;

F) All minerals, crops, timber, trees, shrubs, flower and landscaping features now or hereafter located on, under or above the Land;

G) All leases, licenses, tenancies, concessions and occupancy agreements of the Land or the Improvements now or hereafter entered into and all rents, royalties, issues, profits, revenue, income, accounts receivable and other benefits (collectively, the "Rents" or "Rents and Profits") of the Land, Improvements, or the fixtures or equipment, now or hereafter arising from the use or enjoyment of all or any portion thereof or from and lease, license, tenancy, concession, occupancy agreement or other agreement pertaining hereto or arising from any of the Contracts (as hereafter defined) or any of the General Intangibles (as hereinafter defined) and all cash or securities (the "Security Deposits") that secure performance by the tenants, lessees or licensees, as applicable, of their obligations under any such leases, licenses, concessions or occupancy agreements, or which may be available to Trustor or its designee to effect repairs or maintenance, whether said cash or securities are to be held until the expiration of the terms of said leases, licenses, concessions or occupancy agreements or applied to one or more of the installments of rent coming due prior to the expiration of said terms, subject to, however the provisions contained in this Deed of Trust;

H) All contracts and agreements now or hereafter entered into covering any part of the Land or the Improvements (collectively the "contracts") and all revenue, income and other benefits thereof, including, without limitation, management agreements, service contracts, maintenance contracts, equipment leases, personal property leases and any contracts or documents, relating to construction on any part of the Land or the Improvements (including plans, specifications, studies, drawings, surveys, tests, operating and other reports, bonds and governmental approvals) or to the management or operation of any part of the Land or the Improvements;



I) All water taps, sewer taps, certificates of occupancy, permits, special permits, uses, licenses, franchises, certificates, consents, approvals and other rights and privileges now or hereafter obtained in connection with the Land or the Improvements and all present and future warranties and guaranties relating to the Improvements or to any equipment, fixtures, furniture, furnishings, personal property or components of any of the foregoing now or hereafter located or installed on the Land or the Improvements;

J) All building materials, supplies, and equipment now or hereafter placed on the Land or in the Improvements and all architectural renderings, models, drawings, plans, specification, studies and data now or hereafter relating to the Land or the Improvements;

K) All right, title and interest of Trustor in any insurance policies or binders now or hereafter relating to the Property (whether or not such insurance was requested or required by the Beneficiary) including any unearned premiums thereon; and

L) All proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance (whether or not such insurance was requested or required by Beneficiary) and condemnation awards;

**FOR THE PURPOSE OF SECURING:**

1) Payment of the indebtedness evidenced by a note of Trustor of the same date as this Deed of Trust in the principal amount of \$2,720,000.00 ("Note"), payable to Beneficiary or to order, and all extensions, modifications, amendments, restatements, consolidations, substitutions, replacements, or renewals of that Note, together with interest as thereon provided;

2) Performance of every provision, agreement, covenant, and obligation in this Deed of Trust, the Note, the Loan Agreement, any instrument now or later evidencing or securing any indebtedness secured by this Deed of Trust, and any agreements, supplemental agreements, or other instruments of security executed by Trustor dated the same date as this Deed of Trust or at any time subsequent to the date of this Deed of Trust for the purpose of further securing any indebtedness secured by this Deed of Trust, or any part of it, or for the purpose of supplementing or amending this Deed of Trust or any instrument secured by this Deed of Trust;

3) Any and all future or additional advances (whether or not obligatory) made by Beneficiary to protect or preserve the Property, or the lien or security interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Trustor's obligations hereunder or under the other Loan Documents or for any other purpose provided herein or in the other Loan Documents (whether or not the original Trustor remains the owner of the Property at the time of such advances), together with interest thereon; and

4) Any and all other indebtedness now owing or which may hereafter be owing by Trustor to Beneficiary, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements and extensions thereof. (All of the sums referred to in Paragraphs 1 through 3 above are herein sometimes referred to as the "secured indebtedness" or the "indebtedness secured hereby").

TO HAVE AND TO HOLD the Property unto Trustee, its successors and assigns forever, and Trustor does hereby bind itself, its successors and assigns, to DEFEND the title to the Property unto Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof for the purposes and uses herein set forth;

PROVIDED HOWEVER, that if the principal and interest and all other sums due or to become due under the Note shall have been paid at the time and in the manner stipulated therein and all other sums payable hereunder and all other indebtedness secured hereby shall have been paid, the, upon written request of Beneficiary stating all sums secure hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor or Trustee's fees, Trustee shall reconvey to Trustor, or the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as the "the person or persons legally entitled thereto."

### **Article 1 COVENANTS OF TRUSTOR**

For the purpose of further securing the indebtedness secured hereby and for the protection of the security of this Deed of Trust, for so long as the indebtedness secured hereby or any part thereof remains unpaid, Trustor represents, covenants, and agrees as follows:

#### **Section 1.1. Title.**

Trustor warrants that:

- (a) Trustor is the lawful owner of and has fee simple title to the Property,
- (b) Trustor will maintain and preserve the lien of this Deed of Trust until the Indebtedness has been paid in full,
- (c) Trustor has good, right, and lawful authority to grant the Property as provided in this Deed of Trust, and
- (d) Trustor will forever warrant and defend the grant made in this Deed of Trust against all claims and demands, except as are specifically set forth in this Deed of Trust.

#### **Section 1.2. Loan Agreement.**

All representations and warranties set forth in the Loan Agreement are true and correct.

**Section 1.3 Organization and Existence.** Trustor is duly organized and validly existing as a limited partnership in good standing under the laws of California and in all other jurisdictions in which Trustor is transacting business.

**Section 1.4 Authorization.** Trustor has the power and the authority to execute, deliver and perform the obligations imposed on it under the Loan Documents and to consummate the transactions contemplated by the Loan Documents and has taken all necessary actions in furtherance thereof including, without limitation, that those partners, shareholders or members or Trustor whose approval or consent is required by the terms of Trustor's organizational documents have authorized execution and delivery thereof by the respective signatories. To the best of Trustor's knowledge, no other consent by any local, state or federal agency is required in connection with the execution and delivery of the Loan Documents.



**Section 1.5 Valid Execution and Delivery.** All of the Loan Documents requiring execution by Trustor have been duly and validly executed and delivered by Trustor.

**Section 1.6 Enforceability.** All of the Loan Documents constitute valid, legal, and binding obligations of Trustor and are fully enforceable against Trustor in accordance with their terms, subject only to any right of rescission, set-off, counterclaim or defense, including the defense of usury. The Note, this Deed of Trust and the other Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense, now would the operation of any of the terms of the Note, this Deed of Trust or any of the other Loan Documents, or the exercises of any right thereunder, render this Deed of Trust unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury. Trustor knows of no facts that would support a claim of usury to defeat or avoid its obligation to repay the principal of, interest on, and other sums or amounts due and payable under, the Loan Documents.

**Section 1.7 No Conflict/Violation of Law.** The execution, delivery and performance of the Loan Documents by the Trustor will not cause or constitute a default under or conflict with the organizational documents of Trustor, any indemnitor or any general partner, shareholder or managing member of Trustor or any indemnitor. The execution, delivery, and performance of the obligations imposed on the Trustor under the Loan Documents will not cause Trustor to be in default, including after due notice or lapse of time or both, under the provisions of any agreement, judgment or order to which Trustor is a party or by which Trustor is bound.

**Section 1.8 No Litigation.** There are no pending actions, suits or proceedings, arbitrations or governmental investigations against the Property, Trustor or any guarantor of Trustor and adverse outcome of which would materially affect (i) the Trustor's performance under the Note, the Deed of Trust or other Loan Documents, (ii) the Property or (iii) the ability of the Property to continue to generate income, or continue in operation, in a manner consistent with current operations.

**Section 1.9 Permitted Exceptions.** The Permitted Exceptions do not and will not materially and adversely affect i) the ability of the Trustor to pay in full the principal and interest on the Note in a timely manner or ii) the use of the Property for the use currently being made thereof, the operation of the Property as currently being operated or the value of the Property.

**Section 1.10 First Lien.** Upon execution by the Trustor and the recording of this Deed of Trust, and upon the execution and filing of UCC-1 financing statements or amendments thereto, the Beneficiary will have a valid first lien on the Property and a valid security interest in all personal property encumbered hereby, subject to no liens, charges or encumbrances other than the Permitted Exceptions. Pursuant to the Loan Agreement, Section I. C., this Deed of Trust shall be subordinate to Borrower's primary construction loan, permanent loan and any refinancing ("Primary Loan") during the term of this Deed of Trust as may be necessary to obtain financing for development, construction of Improvements and placement of permanent financing to the Property.

**Section 1.11 Contingent Liabilities.** The Trustor has no know material contingent liabilities.

**Section 1.12 No Other Obligations.** The Trustor has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Trustor is a party or by which the Trustor or the Property is otherwise bound, other than obligations incurred in the ordinary course of the operation of the Property and other than obligations under this Deed of Trust, the Note and the other Loan Documents.



**Section 1.13 Fraudulent Conveyance.** The Trust i) has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and ii) received reasonably equivalent value in exchange for its obligations under the Loan Documents. The Trustor does not intend to, and does not believe that it will, incur debts and liabilities (including, without limitation, contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of the Trustor).

**Section 1.14 Access/Utilities.** The Property has adequate rights of access to public ways and is served by adequate water, sewer, electric, gas, telephone, and cable (where appropriate), sanitary sewer and storm drain facilities. All public utilities necessary to the continued use and enjoyment of the Property, and all such utilities are connected so as to serve the Property without passing over other property. All roads, and access to such roads, necessary for the full utilization of the Property for its current purpose have been completed and dedicated to public use and accepted by all governmental authorities or are the subject of access easements for the benefit of the Property without any further condition or cost to Trustor or Tenants.

**Section 1.15 Taxes Paid.** Trustor has filed all federal, state, county and municipal tax returns required to have been filed by Trustor or with respect to the Property, and has paid all taxes which have become due pursuant to such returns or to any notice of assessment with respect to such taxes. Further, the Property is free from delinquent water charges, sewer rents, taxes and assessments.

**Section 1.16 Special Assessments.** Except has disclosed in the title insurance policy, there are no pending or, to the knowledge of the Trustor, proposed special or other assessments for public improvements or otherwise affecting the Property, nor, to the knowledge of the Trustor, are there any contemplated improvements to the Property that may result in such special assessments.

**Section 1.17 Flood Zone.** The Property is not located in a flood hazard areas as defined by the Federal Insurance Administration.

**Section 1.18 Seismic Exposure.** The Land is not located in Zone 3 or Zone 4 of the "Seismic Zone Map of the U.S."

**Section 1.19 No Insolvency or Judgment.** Neither Trustor, any general partner or member of Trustor, any guarantor of the Loan is currently i) the subject of or a party to any completed or pending bankruptcy, reorganization, or insolvency proceeding; or ii) the subject of any unsatisfied judgment of record or docketed in any court of the state in which the Property is located or in any other court located in the United States. The proposed Loan will not render the Trustor nor any general or limited partner or member of Trustor insolvent. As used in this Certificate, the term "insolvent" means that the sum total of all of an entity's liabilities (whether secured or unsecured, contingent or fixed, or liquidated or unliquidated) is in excess of the value of all such entity's non-exempt assets, i.e. all of the assets of the entity that are available to satisfy claims of creditors.

**Section 1.20 No Condemnation.** No part of any property subject to the Deed of Trust has been taken in condemnation or other like proceeding to an extent which would impair the value of the Property, the Deed of Trust or the Loan or the usefulness of such property for the purposes contemplated by the loan application relating to the Loan (the "Loan Application"), nor is any proceeding pending, threatened or known to be contemplated for the partial or total condemnation or taking of the Property.



**Section 1.21 No Labor or Materialmen Claims.** All parties furnishing labor and materials have been paid in full, and except for such liens or claims insured against by the policy of title insurance to be issued in connection with the Loan, there are no mechanics', laborers' or materialmen's liens or claims outstanding for work, labor or materials affecting the Property, whether prior to, equal with or subordinate to the lien of the Deed of Trust.

**Section 1.22 No Purchase Options.** Except as otherwise set forth in the Loan or Purchase Documents or a lease by and between Borrower and the County of Tulare, no tenant, person, firm, corporation or other entity has an option to purchase the Property, any portion thereof or any interest therein.

**Section 1.23 Leases.** The Property is not subject to any leases, subleases, licenses, concessions, or other agreements related to the leasing or renting of the Property or any portion thereof, except as Trustor has previously notified Beneficiary. No person has any possessory interest in the Property or right to occupy the same, except pursuant to the Leases. As of the date hereof, i) the Trustor is the owner and holder of the landlord's interest under the Leases; ii) there are no prior assignments of all or any portion of the Leases or any portion of the Rents and Profits which are presently outstanding and have priority over the assignment of lease and rent contained herein given by Trustor to Beneficiary; iii) all Rents due and payable under each Lease have been paid in full and no said Rents have been paid more than one month in advance of the due dates thereof, and iv) there are no offsets or defenses to the payment of any portion of the Rents. The representations set forth in the Paragraph are in addition to those set forth in this Deed of Trust.

**Section 1.24 Boundary Lines.** All of the Improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and no improvements on adjoining property encroach upon the Property, and no easements or other encumbrances upon the Land encroach upon any of the Improvements, so as to affect the value or marketability of the Property except those which are insured against by title insurance.

**Section 1.25 Survey.** The survey of the Property delivered to Beneficiary in connection with this Deed of Trust, has been performed by a duly licensed surveyor or registered professional engineer in the jurisdiction in which the Property is stated, is certified to the Beneficiary, its successors and assigns, and the title insurance company, and is in accordance with the most current minimum standards for title surveys as determined by the American Land Title Association, with a signature and seal of a licensed engineer or surveyor affixed thereto, and does not fail to reflect any material matter affecting the Property or the title thereto.

**Section 1.26 Use of Rents and Profits.** All Rents and Profits generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to Trustor's liabilities and obligations with respect to this Deed of Trust and the other Loan Documents, and none of the Rents and Profits generated by or derived from the Property shall be diverted by Trustor and utilized for any other purposes unless all such current expenses attributable to the ownership and operation of the Property have been fully paid and satisfied. Any license agreements which generate income with respect to the Property, including cable licenses or similar arrangements, are not prepaid and the benefits thereof have been assigned for the benefit of Beneficiary.

**Section 1.27 No Broker.** No financial advisors, brokers, underwriters, placement agents, agents or finders have been dealt with by the Trustor in connection with the Loan, except for any broker whose full



commission was paid out of the proceeds of the Loan and is set forth in the written instructions from Trustor to Beneficiary regarding disbursement of the proceeds of the Loan.

Section 1.28 **Work.** [Omitted.]

Section 1.29 **Security Agreements.** There are no security agreements or financing statements affecting any of the Property other than (i) as disclosed in writing by Trustor to Beneficiary prior to the date hereof and (ii) the security agreements and financing statements created in favor of Beneficiary.

Section 1.30 **Homestead.** The Property forms no part of any property owned, used or claimed by Trustor as a residence or business homestead and is not exempt from forced sale under the laws of the State in which the Real Estate is located. Trustor hereby disclaims and renounces each and every claim to all or any portion of the Property as a homestead.

Section 1.31 **Contracts.** Trustor will comply with all of its obligations under all Contracts which are material to the operation of the Property in accordance with Trustor's current practice, and with all material obligations under all other Contracts.

Section 1.32 **Defense of Title.** If, while this Deed of Trust is in force, the title to the Property or the interest of Beneficiary therein shall be the subject, directly or indirectly, of any action at law or in equity, or be attacked directly or indirectly, or endangered, clouded or adversely affected in any manner, Trustor, at Trustor's expense, shall take all necessary and proper steps for the defense of said title or interest, including the employment of counsel reasonably approved by Beneficiary, the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest. Notwithstanding the foregoing, in the event that Beneficiary reasonably determines that Trustor is not adequately performing its obligations under this Section, Beneficiary may, without limiting or waiving any other rights or remedies of Beneficiary hereunder, take such steps with respect thereto as Beneficiary shall deem necessary or proper; any and all costs and expenses incurred by Beneficiary in connection therewith, together with interest thereon from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

Section 1.33 **Performance of Obligations.** Trustor shall pay when due the principal of and the interest on the indebtedness secured hereby including all charges, fees and other sums required to be paid by Trustor as provided in the Loan Documents, and shall observe, perform and discharge all obligations, and conditions, and comply with all prohibitions, covenants and agreements to be observed, performed or discharged by Trustor set forth in the Loan Documents in accordance with their terms. In the event that Beneficiary determines that Trustor is not adequately performing any of its obligations under this Deed of Trust or under any of the other Loan Documents, Beneficiary may, without limiting or waiving any other rights or remedies of Beneficiary hereunder, take such steps with respect thereto as Beneficiary shall deem necessary or proper, and any and all costs and expenses reasonably incurred by Beneficiary in connection therewith, together with interest thereon from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.



Section 1.34 **Insurance.** Trustor shall, at Trustor's expense, maintain in force and effect on the Property at all times while this Deed of Trust continues in effect the following insurance:

i) Insurance against loss or damage to the Property by fire, windstorm, tornado and hail and against loss and damage by such other, further and additional risks as may be now or hereafter embraced by an "all-risk" form of insurance policy. The amount of such insurance shall be not less than one ) hundred percent ( 100%) of the full replacement (insurable) cost of the Improvements, furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Property and owned by Trustor from time to time, without reduction for depreciation. The determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing such coverage or, at Beneficiary's election, by reference to such indices, appraisals or information as Beneficiary determines in its reasonable discretion. Full replacement cost, as used herein, means, with respect to the Improvements, the cost of replacing the Improvements without regard to deduction for depreciation, exclusive of the cost of excavations, foundations and footings below the lowest basement floor, and means, with respect to such furniture, furnishings, fixtures, equipment and other items, the cost of replacing the same, in each case, with inflation guard coverage to reflect the effect of inflation, or annual valuation. Each policy or policies shall contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any co- insurance provisions) or a waiver of any co-insurance provisions, all subject to Beneficiary's approval.

ii) Comprehensive Commercial General Liability Insurance for personal injury, bodily injury, death and property damage liability in amounts not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate (both inclusive of umbrella coverage). During any construction on the Property, each contractor having a contract for construction in an amount equal to or greater than \$100,000 shall also provide the insurance required in this Subsection (b), except that the minimum required coverages shall be \$1,000,000 per occurrence and \$2,000,000 in the aggregate (both inclusive of umbrella coverage). Beneficiary hereby retains the right to periodically review the amount of said liability insurance being maintained by Trustor and to require an increase in the amount of said liability insurance should Beneficiary deem an increase to be reasonably prudent under the existing circumstances.

iii) If the Property or any part thereof is identified by the Secretary of Housing and Urban Development as being situated in an area now or subsequently designated as having special flood hazards (including, without limitation, those areas designated as Zone A or Zone V), flood insurance in an amount equal to the lesser of: (i) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance of the indebtedness secured hereby if replacement cost coverage is not available for the type of building insured); or (ii) the maximum insurance available under the appropriate National Flood Insurance Administration program.

iv) During the period of any construction on the Property or renovation or alteration of the Improvements, a so-called "Builder's All-Risk Completed Value" or "Course of Construction" insurance policy in non-reporting form for any Improvements under construction, renovation or alteration in an amount approved by Beneficiary and Worker's Compensation Insurance covering all persons engaged in such construction, renovation or alteration.



v) Loss of rents or loss of business income insurance in amounts sufficient to compensate Trustor for all Rents and Profits during a period of not less than twelve (12) months in which the Property may be damaged or destroyed. The amount of coverage shall be adjusted annually to reflect the Rents and Profits or income payable during the succeeding twelve (12) month period.

vi) Such other insurance on the Property or on any replacements or substitutions thereof or additions thereto as may from time to time be required by Beneficiary against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated including, without limitation, Sinkhole, Mine Subsidence, Earthquake and Environmental insurance, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

All such insurance shall (a) be with insurers authorized to do business in the state within which the Property is located and who have and maintain a rating of at least "A" (or its equivalent) from Standard & Poors or any other nationally recognized statistical agency selected by Beneficiary, or at Beneficiary's election, a Best Rating of A-VIII or better (b) contain the complete address of the Property (or a complete legal description), (c) be for terms of at least one year, (d) contain deductibles which do not exceed \$10,000.00 or, with respect to the policy described above \$3,000, and (e) be subject to the approval of Beneficiary as to insurance companies, amounts, content, forms of policies, method by which premiums are paid and expiration dates. The all risk insurance and loss or rents or business income insurance policies required under subsections (i) and (vi) above, respectively, shall be required to cover perils of terrorism and acts of terrorism.

Trustor shall as of the date hereof deliver to Beneficiary evidence that said insurance policies have been paid current as of the date hereof and copies of such insurance policies and certificates of insurance signed by an authorized agent of the applicable insurance companies evidencing such insurance satisfactory to Beneficiary. Trustor shall renew all such insurance and deliver to Beneficiary certificates evidencing such renewals at least thirty (30) days before any such insurance shall expire. Without limiting the required endorsements to the insurance policies, Trustor further agrees that all such policies shall include a standard, non-contributory, mortgagee clause naming Trustee and Beneficiary: (a) as an additional insured under all liability insurance policies, (b) as the first mortgagee on all property insurance policies and (c) as the loss payee on all loss of rents or loss of business income insurance policies. Trustor further agrees that all such insurance policies: (1) shall provide for at least thirty (30) days' prior written notice to Beneficiary prior to any cancellation or termination thereof and prior to any modification thereof which affects the interest of Beneficiary; (2) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Beneficiary in accordance with the terms of such policy notwithstanding any act or negligence of Trustor which might otherwise result in forfeiture of such insurance; (3) shall waive all rights of subrogation against Beneficiary; and (4) in the event that the Real Estate or the Improvements constitutes a legal non-conforming use under applicable building, zoning or land use laws or ordinances, shall include an ordinance or law coverage endorsement which will contain Coverage A: "Loss Due to Operation of Law" (with a minimum liability limit equal to Replacement Cost With Agreed Value Endorsement), Coverage B: "Demolition Cost" and Coverage C: "Increased Cost of Construction" coverages. Beneficiary agrees that such insurance policies may be in the form of a blanket policy provided that, in the event that any such coverage is provided in the form of a blanket policy, Trustor hereby acknowledges and agrees that failure to pay any portion of the premium therefor which is not allocable to the Property



or by any other action not relating to the Property which would otherwise permit the issuer thereof to cancel the coverage thereof, would require the Property to be insured by a separate, single-property policy. The blanket policy must properly identify and fully protect the Property as if a separate policy were issued for 100% of Replacement Cost at the time of loss and otherwise meet all of Beneficiary's applicable insurance requirements set forth in this Section. The delivery to Beneficiary of the insurance policies or the certificates of insurance as provided above shall constitute an assignment of all proceeds payable under such insurance policies relating to the Property by Trustor to Beneficiary as further security for the indebtedness secured hereby. In the event of foreclosure of this Deed of Trust, or other transfer of title to the Property in extinguishment in whole or in part of the secured indebtedness, all right, title and interest of Trustor in and to all proceeds payable under such policies then in force concerning the Property shall thereupon vest in the purchaser at such foreclosure, or in Beneficiary or other transferee in the event of such other transfer of title. Approval of any insurance by Beneficiary shall not be a representation of the solvency of any insurer or the sufficiency of any amount of insurance. In the event Trustor fails to provide, maintain, keep in force or deliver and furnish to Beneficiary the policies of insurance required by this Deed of Trust or evidence of their renewal as required herein, Beneficiary may, but shall not be obligated to, procure such insurance and Trustor shall pay all amounts advanced by Beneficiary therefor, together with interest thereon from and after the date advanced by Beneficiary until actually repaid by Trustor, promptly upon demand by Beneficiary. Any amounts so advanced by Beneficiary, together with interest thereon, shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness secured hereby. Beneficiary shall not be responsible for nor incur any liability for the insolvency of the insurer or other failure of the insurer to perform, even though Beneficiary has caused the insurance to be placed with the insurer after failure of Trustor to furnish such insurance. Trustor shall not obtain insurance for the Property in addition to that required by Beneficiary without the prior written consent of Beneficiary, which consent will not be unreasonably withheld provided that (i) Beneficiary is a named insured on such insurance, (ii) Beneficiary receives complete copies of all policies evidencing such insurance, and (iii) such insurance and the related insurer comply with all of the applicable requirements set forth herein.

Provided, however, notwithstanding any other provision hereof, if the Property is in possession of a person pursuant to a written lease ("Lessee") and the Lessee is a self-insured governmental entity or obtains and maintains policies of insurance from insurers who meet the criteria set forth in this Section 1.4, insuring risks provided in this Section 1.4, with coverage and benefits as set forth herein, and Trustor provides Beneficiary evidence of such insurance, Trustor shall be deemed to satisfy its obligations under this Deed of Trust with respect to insurance. Any insurance provided by the Lessee shall be primary as to the lease premises, and any insurance provided by Trustor shall be contributory.

**Section 1.35 Payment of Taxes.** Trustor shall pay or cause to be paid all taxes and assessments which are or may become a lien on the Property or which are assessed against or imposed upon the Property. Notwithstanding the foregoing, Trustor may in good faith, by appropriate proceedings and upon notice to Beneficiary, contest the validity, applicability or amount of any asserted tax or assessment so long as (a) such contest is diligently pursued, (b) Beneficiary determines, in its subjective opinion, that such contest suspends the obligation to pay the tax or assessment and that nonpayment of such tax or assessment will not result in the sale, loss, forfeiture or diminution of the Property or any part thereof or any interest of Beneficiary therein, and (c) prior to the earlier of the commencement of such contest or the delinquency date of the asserted tax or assessment, Trustor deposits in the Impound Account (as hereinafter defined) an amount determined by Beneficiary to be adequate to cover the payment of such tax or assessment and a reasonable additional sum to cover possible interest, costs and



penalties; provided, however, that Trustor shall promptly cause to be paid any amount adjudged by a court of competent jurisdiction to be due, with all interest, costs and penalties thereon, promptly after such judgment becomes final; and provided further that in any event each such contest shall be concluded and the taxes, assessments, interest, costs and penalties shall be paid prior to the date any writ or order is issued under which the Property may be sold, lost or forfeited.

**Section 1.36 Casualty and Condemnation.** Trustor shall give Beneficiary prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof (collectively, an "Insured Event"). All insurance proceeds on the Property, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of all or any part of the Property or for any damage or injury to it for any loss or diminution in value of the Property, are hereby assigned to and shall be paid to Beneficiary. Beneficiary may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and Beneficiary is hereby authorized, in its own name or in Trustor's name, to adjust any loss covered by insurance or any condemnation claim or cause of action, and to settle or compromise any claim or cause of action in connection therewith, and Trustor shall from time to time deliver to Beneficiary any instruments required to permit such participation. Any reduction in the indebtedness secured hereby resulting from Beneficiary's application of any sums received by it hereunder shall take effect only when Beneficiary actually receives such sums and elects to apply such sums to the indebtedness secured hereby and, in any event, the unpaid portion of the indebtedness secured hereby shall remain in full force and effect and Trustor shall not be excused in the payment thereof. Partial payments received by Beneficiary, as described in the preceding sentence, shall be applied as set forth in the Note. If Trustor undertakes to restore or repair the Property after the occurrence of a casualty or partial taking of the Property, Trustor shall promptly and diligently, at Trustor's sole cost and expense and regardless of whether the insurance proceeds or condemnation award, as appropriate, shall be sufficient for the purpose, restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such casualty or partial taking in accordance with the foregoing provisions. Trustor agrees to execute and deliver from time to time such further instruments as may be requested by Beneficiary to confirm the foregoing assignment to Beneficiary of any award, damage, insurance proceeds, payment or other compensation.

**Section 1.37 Mechanics' Liens.** Trustor shall pay when due all claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered for the Real Estate or the Improvements; provided, however, that Trustor shall have the right to contest in good faith any such claim or demand, so long as it does so diligently, by appropriate proceedings and without prejudice to Beneficiary and provided that neither the Property nor any interest therein would be in any danger of sale, loss or forfeiture as a result of such proceeding or contest. In the event Trustor shall contest any such claim or demand, Trustor shall promptly notify Beneficiary of such contest and thereafter shall, upon Beneficiary's request, promptly provide a bond, cash deposit or other security satisfactory to Beneficiary to protect Beneficiary's interest and security should the contest be unsuccessful. If Trustor shall fail to immediately discharge or provide security against any such claim or demand as aforesaid, Beneficiary may do so and any and all expenses incurred by Beneficiary, together with interest thereon at the Default Interest Rate from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.



**Section 1.38 Assignment of Leases and Rents.** As additional and collateral security for the payment of the indebtedness secured hereby and cumulative of any and all rights and remedies herein provided for, Trustor hereby absolutely and presently assigns to Beneficiary all existing and future Leases, and all existing and future Rents and Profits. Trustor hereby grants to Beneficiary the sole, exclusive and immediate right, without taking possession of the Property, to demand, collect (by suit or otherwise), receive and give valid and sufficient receipts for any and all of said Rents and Profits, for which purpose Trustor does hereby irrevocably make, constitute and appoint Beneficiary its attorney-in-fact with full power to appoint substitutes or a trustee to accomplish such purpose (which power of attorney shall be irrevocable so long as any indebtedness secured hereby is outstanding, shall be deemed to be coupled with an interest, shall survive the voluntary or involuntary dissolution of Trustor and shall not be affected by any disability or incapacity suffered by Trustor subsequent to the date hereof). Beneficiary shall be without liability for any loss which may arise from a failure or inability to collect Rents and Profits, proceeds or other payments. However, until the occurrence of an Event of Default under this Deed of Trust, Trustor shall have a license to collect and receive the Rents and Profits when due and prepayments thereof for not more than one month prior to due date thereof. Upon the occurrence of an Event of Default, Trustor's license shall automatically terminate without notice to Trustor and Beneficiary may thereafter, without taking possession of the Property, collect the Rents and Profits itself or by an agent or receiver. From and after the termination of such license, Trustor shall be the agent of Beneficiary in collection of the Rents and Profits and all of the Rents and Profits so collected by Trustor shall be held in trust by Trustor for the sole and exclusive benefit of Beneficiary and Trustor shall, within one (1) business day after receipt of any Rents and Profits, pay the same to Beneficiary to be applied by Beneficiary as hereinafter set forth. Neither the demand for or collection of Rents and Profits by Beneficiary, nor the exercise of Beneficiary's rights as assignee of the Leases, shall constitute any assumption by Beneficiary of any obligations under any Lease or other agreement relating thereto. Beneficiary is obligated to account only for such Rents and Profits as are actually collected or received by Beneficiary. Trustor irrevocably agrees and consents that the respective payors of the Rents and Profits shall, upon demand and notice from Beneficiary of an Event of Default hereunder, pay said Rents and Profits to Beneficiary without liability to determine the actual existence of any Event of Default claimed by Beneficiary. Trustor hereby waives any right, claim or demand which Trustor may now or hereafter have against any such payor by reason of such payment of Rents and Profits to Beneficiary, and any such payment shall discharge such payor's obligation to make such payment to Trustor. All Rents and Profits collected or received by Beneficiary shall be applied against all expenses of collection, including, without limitation, attorneys' fees, against costs of operation and management of the Property and against the indebtedness secured hereby, in whatever order or priority as to any of the items so mentioned as Beneficiary directs in its sole subjective discretion and without regard to the adequacy of its security. Neither the exercise by Beneficiary of any rights under this Section nor the application of any Rents and Profits to the secured indebtedness shall cure or be deemed a waiver of any Default or Event of Default hereunder. The assignment of Leases and of Rents and Profits hereinabove granted shall continue in full force and effect during any period of foreclosure or redemption with respect to the Property.

**Section 1.39 Leases and Licenses.**

(i) Lease Requirements. Each Lease executed after the date hereof affecting any of the Real Estate or the Improvements must provide that (a) such Lease is subject and subordinate to this Deed of Trust, and (b) the Tenant will attorn to, and recognize as its landlord, lessor or licensor, any person succeeding to the interest of Trustor in such Lease upon any foreclosure of this Deed of Trust or deed in lieu of foreclosure. Each such Lease shall also provide that, upon request of said successor-in-interest, the Tenant shall execute and deliver an instrument or instruments confirming its attornment as



provided for in this Section. With the exception of a lease between Borrower and the County of Tulare, no Lease shall contain any option or right of first refusal to purchase all or any portion of the Property. No Lease shall contain any right to terminate the term thereof (except in the event of the destruction of all or substantially all of the Property).

(ii) Covenants Regarding Leases. Trustor shall at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all Leases, now or hereafter existing, on the part of the landlord, lessor or licensor thereunder to be kept and performed. Trustor shall promptly send copies to Beneficiary and any servicer of all notices of default which Trustor shall send or receive under any Lease. Trustor, at no cost or expense to Beneficiary, shall enforce, short of termination, the performance and observance of each and every condition and covenant of each of the other parties under each Lease. Trustor shall furnish to Beneficiary, within ten (10) days after a request by Beneficiary to do so, and, in any event by January 1 of each year, a current rent roll certified by Trustor as being true and correct containing the names of all Tenants, the terms of their respective Leases, the spaces occupied and the rentals or fees payable thereunder and the amount of each tenant's security deposit. Upon the request of Beneficiary, Trustor shall deliver to Beneficiary (i) a copy of each Lease; and (ii) an estoppel certificate from the tenant under each Lease (provided that Beneficiary shall not be required to deliver such certificates more frequently than twice in any calendar year).

(iii) Security Deposits. Any security deposits of tenants, whether held in cash or in any other form, may be commingled with any other funds of Trustor or any other person and, if cash, shall be deposited by Trustor at such commercial or savings bank or banks, or otherwise held in compliance with applicable law. Any bond or other instrument which Trustor is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as hereinabove described and shall, in all respects, comply with any applicable legal requirements. Upon an Event of Default under this Deed of Trust, Trustor shall, immediately upon Beneficiary's request (if permitted by applicable law), deliver to Beneficiary the security deposits (and any interest previously earned thereon and not disbursed to the person(s) lawfully entitled to receive same) with respect to all or any portion of the Property, to be held by Beneficiary subject to the terms of the Leases.

(iv) Rights of Beneficiary Upon Default. Upon an Event of Default, whether before or after the whole principal sum secured hereby is declared to be immediately due or whether before or after the institution of legal proceedings to foreclose this Deed of Trust, forthwith, upon demand of Beneficiary, Trustor shall surrender to Beneficiary and Beneficiary shall be entitled to take actual possession of the Property or any part thereof personally, or by its agent or attorneys; In such event, Beneficiary shall have, and Trustor hereby gives and grants to Beneficiary, the right, power and authority to make and enter into Leases for such rents and for such periods of occupancy and upon conditions and provisions as Beneficiary may deem desirable in its sole discretion, and Trustor expressly acknowledges and agrees that the term of such Lease may extend beyond the date of any foreclosure sale at the Property; it being the intention of Trustor that in such event Beneficiary shall be deemed to be and shall be the attorney-in-fact of Trustor for the purpose of making and entering into Leases for the rents and upon the terms, conditions and provisions deemed desirable to Beneficiary in its sole discretion and with like effect as if such Leases had been made by Trustor as the owner in fee simple of the Property free and clear of any conditions or limitations established by this Deed of Trust. The power and authority hereby given and granted by Trustor to Beneficiary shall be deemed to be coupled with an interest, shall not be revocable by Trustor so long as any indebtedness secured hereby is outstanding, shall survive the voluntary or involuntary dissolution of Trustor and shall not be affected by any disability or incapacity suffered by Trustor subsequent to the date hereof. In connection with any action taken by Beneficiary pursuant to this Section, Beneficiary shall not be



liable for any loss sustained by Trustor resulting from any failure to let the Property, or any part thereof, or from any other act or omission of Beneficiary in managing the Property, nor shall Beneficiary be obligated to perform or discharge any obligation, duty or liability under any Lease or under or by reason of this instrument or the exercise of rights or remedies hereunder. Trustor shall, and does hereby, indemnify Beneficiary for, and hold Beneficiary harmless from, any and all claims, actions, demands, liabilities, loss or damage which may or might be incurred by Beneficiary under any such Lease or under this Deed of Trust or by the exercise of rights or remedies hereunder and from any and all claims and demands whatsoever which may be asserted against Beneficiary by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any such Lease other than those finally determined to have resulted solely from the gross negligence or willful misconduct of Beneficiary. Should Beneficiary incur any such liability, the amount thereof, including, without limitation, costs, expenses and attorneys' fees, together with interest thereon at the Default Interest Rate from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately due and payable to Beneficiary by Trustor on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Nothing in this Section shall impose on Beneficiary any duty, obligation or responsibility for the control, care, management or repair of the Property, or for the carrying out of any of the terms and conditions of any such Lease, nor shall it operate to make Beneficiary responsible or liable for any waste committed on the Property by the tenants or by any other parties or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Trustor hereby assents to, ratifies and confirms any and all actions of Beneficiary with respect to the Property taken under this Section. The foregoing rights are in addition to all other rights and remedies granted to Beneficiary pursuant to this Deed of Trust.

#### **Section 1.40 Alienation and Further Encumbrances.**

(i) Trustor acknowledges that Beneficiary has relied upon the principals of Trustor and their experience in owning and operating properties similar to the Property in connection with the closing of the loan evidenced by the Note. Accordingly, except as specifically allowed herein below in this Section and notwithstanding anything to the contrary contained in Section 4.6 hereof, in the event that the Property or any part thereof or interest therein shall be sold, conveyed, disposed of, alienated, hypothecated, leased (except to Tenants under Leases which are approved, or deemed approved, in accordance with the provisions herein), assigned, pledged, mortgaged, further encumbered (with the exception of Trustor's Primary Loan) or otherwise transferred or Trustor shall be divested of its title to the Property or any interest therein, in any manner or way, whether voluntarily or involuntarily, without the prior written consent of Beneficiary being first obtained, which consent may be withheld in Beneficiary's sole discretion, then, the same shall constitute an Event of Default hereunder and Beneficiary shall have the right, at its option, to declare any or all of the indebtedness secured hereby, irrespective of the maturity date specified in the Note, immediately due and payable and to otherwise exercise any of its other rights and remedies contained in Article III hereof. For the purposes of this Section: (a) in the event either Trustor or any of its general partners or managing members is a corporation or trust, the sale, conveyance, transfer or disposition of more than 10% of the issued and outstanding capital stock of Trustor or any of its general partners or managing members or of the beneficial interest of such trust (or the issuance of new shares of capital stock in Trustor or any of its general partners or managing members so that immediately after such issuance the total capital stock then issued and outstanding is more than 110% of the total immediately prior to such issuance) shall be deemed to be a transfer of an interest in the Property, and (b) in the event Trustor or any general partner or managing member of Trustor is a limited or general partnership, a joint venture or a limited liability company, a change in the ownership interests in any general partner, any joint venturer or any



member, either voluntarily, involuntarily or otherwise, or the sale, conveyance, transfer, disposition, alienation, hypothecation or encumbering of all or any portion of the interest of any such general partner, joint venturer or member in Trustor or such general partner (whether in the form of a beneficial or partnership interest or in the form of a power of direction, control or management, or otherwise), shall be deemed to be a transfer of an interest in the Property. Notwithstanding the foregoing, however, (1) up to but not in excess of 49% of the aggregate limited partnership and/or non-managing member interests in Trustor or in any general partner or managing member of Trustor shall be freely transferable without the consent of Beneficiary, provided that no such transfer shall result in a change in management control of the Trustor and no such transfer shall result in the dissolution or termination of the Trustor, and (2) any involuntary transfer caused by the death of Trustor or any general partner, shareholder, joint venturer, or beneficial owner of a trust shall not be a default under this Deed of Trust so long as Trustor is reconstituted, if required, following such death and so long as those persons responsible for the management of Trustor and the Property remain unchanged as a result of such death or any replacement management is approved by Beneficiary and (3) gifts for estate planning purposes of any individual's interests in Trustor or in any of Trustor's general partners, managing members or joint venturers to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, shall not be an Event of Default under this Deed of Trust so long as Trustor is reconstituted, if required, following such gift and so long as those persons responsible for the management of the Property and Trustor remain unchanged following such gift or any replacement management is approved by Beneficiary.

(ii) Notwithstanding the foregoing provisions of this Section, after the first anniversary of the first Payment Date under the Note, Beneficiary shall consent to a sale, conveyance or transfer of the Property in its entirety (hereinafter, a "Sale") to any person or entity provided that each of the following terms and conditions are satisfied:

(a) No default is then continuing hereunder or under any of the other Loan Documents;

(b) Trustor gives Beneficiary written notice of the terms of such prospective Sale not less than sixty (60) days before the date on which such Sale is scheduled to close and, concurrently therewith, gives Beneficiary all reasonable information concerning the proposed transferee of the Property (hereinafter, a "Buyer") as Beneficiary would require in evaluating an initial extension of credit to a borrower. Beneficiary shall have the right, in its reasonable discretion, to approve or disapprove the proposed Buyer. In determining whether to give or withhold its approval of the proposed Buyer, Beneficiary shall consider, among other things, the Buyer's experience and track record in owning and operating facilities similar to the Property, the Buyer's entity structure, the Buyer's financial strength, the Buyer's general business standing and the Buyer's relationships and experience with contractors, vendors, tenants, lenders and other business entities;

(c) The Buyer assumes and agrees to pay the indebtedness secured hereby and to perform the covenants of Trustor under the Loan Documents, and, prior to or concurrently with the closing of such Sale, the Buyer executes, without any cost or expense to Beneficiary, such documents and agreements as Beneficiary shall reasonably require to evidence and effectuate said assumption and delivers such legal opinions as Beneficiary may require;

(d) Buyer executes, without any cost or expense to Beneficiary, new financing statements or financing statement amendments and any additional documents reasonably requested by Beneficiary;



(e) Trustor delivers to Beneficiary, without any cost or expense to Beneficiary, such endorsements to Beneficiary's Title Insurance Policy, hazard insurance endorsements or certificates and other similar materials as Beneficiary may deem necessary at the time of the Sale, all in form and substance satisfactory to Beneficiary, including, without limitation, an endorsement or endorsements to Beneficiary's Title Insurance Policy insuring the lien of this Deed of Trust, extending the effective date of such policy to the date of execution and delivery (or, if later, of recording) of the assumption agreement referenced above with no additional exceptions added to such policy and insuring that fee simple title to the Property is vested in the Buyer;

(f) The Buyer shall furnish, if the Buyer is a corporation, partnership or other entity, all documents evidencing the Buyer's capacity and good standing, and the qualification of the signers to execute the assumption of the indebtedness secured hereby, which papers shall include, but not in any way be limited to, certified copies of all documents relating to the organization and formation of the Buyer and of the entities, if any, which are partners of the Buyer. The Buyer and such constituent partners, members or shareholders of Buyer (as the case may be), as Beneficiary may require, shall be single-purpose, single-asset "bankruptcy remote" entities, whose formation documents shall be approved by counsel to Beneficiary. Unanimous consent of the board of directors shall be required for, among other things, any merger, consolidation, dissolution, bankruptcy or insolvency of any such constituent partner, member or shareholder of Buyer (as the case may be), or of the Buyer;

**Section 1.41 Payment of Utilities, Assessments, Charges, Etc.** Trustor shall pay when due all utility charges which are incurred by Trustor or which may become a charge or lien against any portion of the Property for gas, electricity, water and sewer services furnished to the Real Estate and/or the Improvements and all other assessments or charges of a similar nature, or assessments payable pursuant to any restrictive covenants, whether public or private, affecting the Real Estate and/or the Improvements or any portion thereof, whether or not such assessments or charges are or may become liens thereon.

**Section 1.42 Access Privileges and Inspections.** Beneficiary and the agents, representatives and employees of Beneficiary shall, subject to the rights of tenants, have full and free access to the Real Estate and the Improvements and any other location where books and records concerning the Property are kept at all reasonable times for the purposes of inspecting the Property and of examining, copying and making extracts from the books and records of Trustor relating to the Property. Trustor shall lend assistance to all such agents, representatives and employees of Beneficiary.

**Section 1.43 Waste; Alteration of the Property.** Trustor shall not commit, suffer or permit any waste on the Property nor take any actions that might invalidate any insurance carried on the Property. Trustor shall maintain the Property in good condition and repair. No part of the Improvements may be removed, demolished or materially altered, without the prior written consent of Beneficiary. Without the prior written consent of Beneficiary, Trustor shall not commence construction of any improvements on the Real Estate other than improvements required for the maintenance or repair of the Property and tenant improvements required under leases approved by Beneficiary.

**Section 1.44 Further Documentation.** Trustor shall, on the request of Beneficiary in its reasonable discretion and at the expense of Trustor, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust or in any of the other Loan Documents and promptly execute, acknowledge, deliver and record or file such further instruments and do such further act as may be necessary, desirable or proper to carry out more effectively the purposes of this Deed of Trust



and the other Loan Documents or as may be deemed advisable by Beneficiary to protect, continue or preserve the liens and security interests hereunder including, without limitation, security instruments, financing statements and continuation statements.

**Section 1.45 Advances to Protect Property.** Without limiting or waiving any other rights and remedies of Beneficiary hereunder, if Beneficiary determines that Trustor is not adequately performing or has failed to perform any of its obligations, covenants or agreements contained in this Deed of Trust or in any of the other Loan Documents and such inadequacy or failure is not cured within any applicable grace or cure period, or if any action or proceeding of any kind (including, but not limited to, any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced which might affect Beneficiary's interest in the Property or Beneficiary's right to enforce its security, then Beneficiary may, at its option, with or without notice to Trustor, make any appearances, disburse or advance any sums and take any actions as may be necessary or desirable to protect or enforce the security of this Deed of Trust or to remedy the failure of Trustor to perform its covenants and agreements (without, however, waiving any default of Trustor). Trustor agrees to pay on demand all expenses of Beneficiary reasonably incurred with respect to the foregoing (including, but not limited to, fees and disbursements of counsel), together with interest thereon at the Default Interest Rate from and after the date on which Beneficiary incurs such expenses until reimbursement thereof by Trustor. Any such expenses so incurred by Beneficiary, together with interest thereon as provided above, shall be additional indebtedness of Trustor secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The necessity for any such actions and of the amounts to be paid shall be determined by Beneficiary in its sole and absolute discretion. Beneficiary is hereby empowered to enter and to authorize others to enter upon the Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Trustor or any person in possession holding under Trustor. Trustor hereby acknowledges and agrees that the remedies set forth in this Section shall be exercisable by Beneficiary, and any and all payments made or costs or expenses incurred by Beneficiary in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Trustor with interest thereon, notwithstanding the fact that such remedies were exercised and such payments made and costs incurred by Beneficiary after the filing by Trustor of a voluntary case or the filing against Trustor of an involuntary case pursuant to or within the meaning of the Bankruptcy Reform Act of 1978, as amended (the "Act"), Title 11 U.S.C., or after any similar action pursuant to any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable to Trustor, Beneficiary, any guarantor or indemnitor, the secured indebtedness or any of the Loan Documents. This indemnity shall survive payment in full of the indebtedness secured hereby. This Section shall not be construed to require Beneficiary to incur any expenses, make any appearances or take any actions.

**Section 1.46 Security Interest.** This Deed of Trust is also intended to encumber and create a security interest in, and Trustor hereby grants to Beneficiary a security interest in, all fixtures, chattels, accounts, equipment, inventory, contract rights, and other personal property included within the Property that are owned by Trustor, all renewals, replacements of any of the aforementioned items, or articles in substitution therefor or in addition thereto or the proceeds thereof (said property is hereinafter referred to collectively as the "Collateral"), whether or not the same shall be attached to the Real Estate or the Improvements in any manner. It is hereby agreed that to the extent permitted by law, all of the foregoing property is to be deemed and held to be a part of and affixed to the Real Estate and the Improvements. The foregoing security interest shall also cover Trustor's leasehold interest in any of the foregoing property which is leased by Trustor. Notwithstanding the foregoing,



all of the foregoing property shall be owned by Trustor and no leasing or installment sales or other financing with exception to Trustor's Primary Loan or title retention agreement in connection therewith shall be permitted without the prior written approval of Beneficiary. Trustor shall promptly replace all of the Collateral subject to the lien or security interest of this Deed of Trust when worn out or obsolete with Collateral comparable to the worn out or obsolete Collateral when new and will not, without the prior written consent of Beneficiary, remove from the Real Estate or the Improvements any of the Collateral subject to the lien or security interest of this Deed of Trust except such as is replaced by an article of equal suitability and value as above provided, owned by Trustor free and clear of any lien or security interest except that created by this Deed of Trust and the other Loan Documents and except as otherwise expressly permitted by the terms of this Deed of Trust. All of the Collateral shall be kept at the location of the Real Estate except as otherwise required by the terms of the Loan Documents. Trustor shall not use any of the Collateral in violation of any applicable statute, ordinance or insurance policy.

**Section 1.47 Security Agreement.** This Deed of Trust constitutes both a real property mortgage and a "security agreement" between Trustor and Beneficiary with respect to the Collateral in which Beneficiary is granted a security interest hereunder, and, cumulative of all other rights and remedies of Beneficiary hereunder, Beneficiary shall have all of the rights and remedies of a secured party under any applicable Uniform Commercial Code. Trustor hereby agrees to execute and deliver on demand such security agreements, financing statements, continuation statements or other instruments as Beneficiary may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Trustor agrees to furnish Beneficiary with notice of any permitted change in the name, identity, corporate structure, residence, or principal place of business or mailing address of Trustor within ten (10) days of the effective date of any such change. Expenses of retaking, holding, preparing for sale, selling or the like (including, without limitation, Beneficiary's reasonable attorneys' fees and legal expenses), together with interest thereon from the date incurred by Beneficiary until actually paid by Trustor, shall be paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. If notice is required by law, Beneficiary shall give Trustor at least ten (10) days' prior written notice of the time and place of any public sale of such property or of the time of or after which any private sale or any other intended disposition thereof is to be made, and if such notice is sent to Trustor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Trustor. No such notice is necessary for any such property which is perishable, threatens to decline speedily in value or is of a type customarily sold on a recognized market. Any sale made pursuant to the provisions of this Section 1.22 shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the foreclosure sale as provided in Section 3.1(e) hereof upon giving the same notice with respect to the sale of the Property hereunder as is required under said Section 3.1(e). Furthermore, to the extent permitted by law, in conjunction with, in addition to or in substitution for the rights and remedies available to Beneficiary pursuant to any applicable Uniform Commercial Code:

(i) In the event of a foreclosure sale, the Property may, at the option of Beneficiary, be sold as a whole;

(ii) It shall not be necessary that Beneficiary take possession of the aforementioned Collateral, or any part thereof, prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that said Collateral, or any part thereof, be present at the location of such sale; and



(iii) Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Beneficiary, including the sending of notices and the conduct of the sale, but in the name and on behalf of Beneficiary. In addition, a carbon, photographic or other reproduction of this Deed of Trust and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement. The filing of any other financing statement relating to any personal property rights or interests described herein shall not be construed to diminish any right or priority hereunder. Trustor agrees to execute and deliver to Beneficiary any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Deed of Trust in such form as Beneficiary may require to perfect a security interest with respect to said items. Trustor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Beneficiary may reasonably require. At the option of the Beneficiary, if an Event of Default occurs and the Beneficiary directs the Trustee to institute a sale of the real estate secured by this Deed of Trust, the collateral may be sold by the Trustee together with and in the same sale as the real estate. All of the collateral shall be kept at the location of the Property except as otherwise required by the terms of the Loan Documents.

**Section 1.48 Easements and Rights-of-Way.** Trustor shall not grant any easement or right-of-way with respect to all or any portion of the Real Estate or the Improvements without the prior written consent of Beneficiary. The purchaser at any foreclosure sale hereunder may, at its discretion, disaffirm any easement or right-of-way granted in violation of any of the provisions of this Deed of Trust and may take immediate possession of the Property free from, and despite the terms of, such grant of easement or right-of-way. If Beneficiary consents to the grant of an easement or right-of-way, Beneficiary agrees to grant such consent without charge to Trustor other than reasonable expenses, including, without limitation, reasonable attorneys' fees, incurred by Beneficiary in the review of Trustor's request and, if applicable, in the preparation of documents relating to the subordination of this Deed of Trust to such easement or right-of-way.

**Section 1.49 Compliance with Laws.**

(i) Trustor shall at all times comply with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Property, including, but not limited to, those concerning employment and compensation of persons engaged in operation and maintenance of the Property and any environmental or ecological requirements, even if such compliance shall require structural changes to the Property; provided, however, that Trustor may, upon providing Beneficiary with security satisfactory to Beneficiary, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, regulation or requirement so long as during such contest the Property shall not be subject to any lien, charge, fine or other liability and shall not be in danger of being forfeited, lost or closed. Trustor shall not use or occupy, or allow the use or occupancy of, the Property in any manner which violates any lease of or any other agreement applicable to the Property or any applicable law, rule, regulation or order or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto.

(ii) Trustor agrees that the Property shall at all times comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988 and all other state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with



Disabilities Act Accessibility Guidelines for Buildings and Facilities. Trustor agrees to give prompt notice to Beneficiary of the receipt by Trustor of any complaints related to violations of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

**Section 1.50 Additional Taxes.** In the event of the enactment after this date of any law of the state where the Property is located or of any other governmental entity deducting from the value of the Property for the purpose of taxation any lien or security interest thereon, or imposing upon Beneficiary the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Trustor, or changing in any way the laws relating to the taxation of mortgages or security agreements or debts secured by mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to adversely affect this Deed of Trust or the indebtedness secured hereby or Beneficiary, then, and in any such event, Trustor, upon demand by Beneficiary, shall pay such taxes, assessments, charges or liens, or reimburse Beneficiary therefor; provided, however, that if in the opinion of counsel for Beneficiary (a) it might be unlawful to require Trustor to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in either such event, Beneficiary may elect, by notice in writing given to Trustor, to declare all of the indebtedness secured hereby to be and become due and payable in full, thirty (30) days from the giving of such notice.

**Section 1.51 SUBMISSION TO JURISDICTION.**

TRUSTOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (a) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF CALIFORNIA OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THE NOTE, THIS DEED OF TRUST OR ANY OTHER OF THE LOAN DOCUMENTS, (b) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN TULARE COUNTY, CALIFORNIA, (c) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND, (d) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF BENEFICIARY TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). TRUSTOR FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO TRUSTOR AT THE ADDRESS FOR NOTICES DESCRIBED HEREIN, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

**Section 1.52 Management.** The management of the Property shall be by either: (a) Trustor or an entity affiliated with Trustor approved by Beneficiary for so long as Trustor or said affiliated entity is managing the Property in a first class manner; or (b) a professional property management company approved by Beneficiary. Beneficiary hereby approves Paynter Realty & Investments, Inc. as manager of the Property. Such management by an affiliated entity or a professional property management company shall be pursuant to a written agreement approved by Beneficiary. In no event shall any manager be removed or replaced or the terms of any management agreement modified or amended



without the prior written consent of Beneficiary. In the event of default hereunder or under any management contract then in effect, which default is not cured within any applicable grace or cure period, Beneficiary shall have the right to terminate, or to direct Trustor to terminate, such management contract upon thirty (30) days' notice and to retain, or to direct Trustor to retain, a new management agent approved by Beneficiary. All Rents and Profits generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to Trustor's liabilities and obligations with respect to this Deed of Trust and the other Loan Documents, and none of the Rents and Profits generated by or derived from the Property shall be diverted by Trustor and utilized for any other purposes unless all such current expenses attributable to the ownership and operation of the Property have been fully paid and satisfied. For purposes of this Section, the debt service coverage ratio shall mean the ratio of net operating income from the Property to required debt service payments under the Note; and net operating income shall, for this purpose, be determined in the same manner as utilized for the underwriting of the Loan at origination.

#### **Section 1.53 Hazardous Materials and Environmental Concerns.**

(i) Trustor hereby represents to Beneficiary that, as of the date hereof: (a) the Property is not, and to the best of Trustor's actual knowledge, information and belief, without inquiry or investigation, has not been in direct or indirect violation of any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination, remediation or human health and safety (including the regulation or remediation of Hazardous Substances as defined below) (collectively, "Environmental Laws"), all as amended; (b) no hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, radon, lead-based paint, flammable explosives, radioactive materials, infectious substances or raw materials which may include hazardous constituents) or any other substances or materials which are included under or regulated by Environmental Laws (collectively, "Hazardous Substances") are located on or have been handled, manufactured, generated, stored, processed, transported to or from, or disposed of on or Released or discharged from the Property (including underground contamination) except for those substances used by Trustor in the ordinary course of its business and in compliance with all Environmental Laws; (c) the Property is not subject to any private or governmental lien or judicial, administrative or other notice or action relating to Hazardous Substances or noncompliance with Environmental Laws, nor is Trustor aware of any basis for such lien, notice or action; (d) there are no underground storage tanks or other underground storage receptacles (whether active or abandoned) for Hazardous Substances on the Property; (e) Trustor has received no notice of, and to the best of Trustor's knowledge and belief, after due inquiry and investigation, there does not exist any, investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Property, nor does Trustor know of any basis for such investigation, action, proceeding or claim; (f) Trustor has received no notice that, and to the best of Trustor's knowledge and belief after due inquiry and investigation, there has been no claim by any party that, any use, operation or condition of the Property has caused any nuisance, trespass or any other liability or adverse condition on any other property, nor does Trustor know of any basis for such notice or claim; and (g) there are no present environmental conditions or events or, to the best of Trustor's knowledge, after due inquiry and investigation, past environmental conditions or events on or near the Property that could be reasonably anticipated to materially adversely affect the value of the Property.



(ii) Trustor shall keep or cause the Property to be kept free from Hazardous Substances (except those substances used by Trustor in the ordinary course of its business and in compliance with all Environmental Laws) and in compliance with all Environmental Laws, shall not install or use any underground storage tanks, shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Substances by all tenants, (except those substances used by tenants in the ordinary course of their activities and in compliance with all Environmental Laws), invitees and trespassers, and, without limiting the generality of the foregoing, during the term of this Deed of Trust, shall not install in the Improvements or permit to be installed in the Improvements asbestos or any substance containing asbestos.

(iii) Trustor shall promptly notify Beneficiary if Trustor shall become aware of (a) any Hazardous Substances at, on, under, affecting or threatening to affect the Property (except those substances used by Trustor or tenants in the ordinary course of their business or activities, respectively, and in compliance with all Environmental Laws), (b) any lien, action or notice affecting or threatening to affect the Property or Trustor resulting from any violation or alleged violation of Environmental Law, (c) any investigation, inquiry or proceeding concerning Trustor on the Property pursuant to any Environmental Law or otherwise relating to Hazardous Substances, or (d) any occurrence, condition or state of facts which would render any representation or warranty in this Section incorrect in any respect if made at the time of such discovery. Further, immediately upon receipt of the same, Trustor shall deliver to Beneficiary copies of any and all orders, notices, permits, applications, reports, and other communications, documents and instruments pertaining to the actual, alleged or potential non-compliance with any Environmental Laws in connection with the Property or presence or existence of any Hazardous Substances at, on, about, under, within, near or in connection with the Property (except those substances used in the ordinary course of its business and in compliance with all Environmental Laws). Trustor shall, promptly and when and as required, at Trustor's sole cost and expense, take all actions as shall be necessary or advisable for compliance with the terms of this Section or for the remediation of any and all portions of the Property or other affected property, including, without limitation, all investigative, monitoring, removal, containment, remedial and response actions in accordance with all applicable Environmental Laws (and in all events in a manner satisfactory to Beneficiary), and shall further pay or cause to be paid, at no expense to Beneficiary, all remediation, response, administrative and enforcement costs of applicable governmental agencies which may be asserted against the Property. In the event Trustor fails to do so (a) Beneficiary may, but shall not be obligated to, undertake remediation at the Property or other affected property necessary to bring the Property into conformance with the terms of Environmental Laws, and (b) Trustor hereby grants to Beneficiary and its agents and employees access to the Property and a license to do all things Beneficiary shall deem necessary to bring the Property into conformance with Environmental Laws. Any and all costs and expenses reasonably incurred by Beneficiary in connection therewith, together with interest thereon at the Default Interest Rate from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Trustor covenants and agrees, at Trustor's sole cost and expense, to indemnify, defend (at trial and appellate levels, and with attorneys, consultants and experts acceptable to Beneficiary), and hold Beneficiary harmless from and against any and all liens, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys', consultants' and experts' fees and disbursements actually incurred in investigating, defending, settling or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Beneficiary or the Property, and arising directly or indirectly from or out of: (a) the presence, Release or threat of Release of any Hazardous Substances on, in, under, affecting or threatening to affect all or any portion of the



Property or any surrounding areas, regardless of whether or not caused by or within the control of Trustor; (b) the violation of any Environmental Laws relating to, affecting or threatening to affect the Property, whether or not caused by or within the control of Trustor; (c) the failure by Trustor to comply fully with the terms and conditions of this Section 1.30; (d) the breach of any representation or warranty contained in this Section; or (e) the enforcement of this Section, including, without limitation, the cost of assessment, containment and/or removal of any and all Hazardous Substances on and/or from all or any portion of the Property or any surrounding areas, the cost of any actions taken in response to the presence, Release or threat of Release of any Hazardous Substances on, in, under or affecting any portion of the Property or any surrounding areas to prevent or minimize such release or threat of release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with the Environmental Laws in connection with all or any portion of the Property or any surrounding areas. The indemnity set forth in this Section shall also include any diminution in the value of the security afforded by the Property or any future reduction in the sales price of the Property by reason of any matter set forth in this Section. Beneficiary's rights under this Section shall survive payment in full of the indebtedness secured hereby and shall be in addition to all other rights of Beneficiary under this Deed of Trust, the Note and the other Loan Documents.

(iv) Without limiting the foregoing, Beneficiary and its authorized representatives may, during normal business hours and at its own expense, inspect the Property and Trustor's records related thereto for the purpose of determining compliance with Environmental Laws and the terms and conditions of this Section.

(v) As used herein, the term "Release" shall include, without limitation, any intentional or unintentional placing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, discarding or abandoning of any Hazardous Substance, other than in the normal course of business or activities or its tenants, and in compliance with all Environmental Laws.

#### **Section 1.54 Indemnification; Subrogation.**

(i) Trustor shall indemnify, defend and hold Beneficiary harmless against: (a) any and all claims for brokerage, leasing, finder's or similar fees which may be made relating to the Property or the secured indebtedness, (b) any and all liability, obligations, losses, damages, penalties, claims, actions, suits, liens, charges, encumbrances, costs and expenses (including Beneficiary's attorneys' fees, together with appellate counsel fees, if any) of whatever kind or nature which may be asserted against, imposed on or incurred by Beneficiary under any lease or occupancy agreement for any loss arising from a failure or inability to collect Rents and Profits or in connection with the secured indebtedness, this Deed of Trust, the Property, or any part thereof, or the exercise by Beneficiary of any rights or remedies granted to it under this Deed of Trust, and any default under this Deed of Trust, (c) any liens (whether judgments, mechanics', materialmen's or otherwise), charges and encumbrances filed against the Property, and (d) any claims and demands for damages or injury, including claims for property damage, personal injury or wrongful death, arising out of or in connection with any accident or fire or other casualty on the Real Estate or the Improvements or any nuisance or trespass made or suffered thereon, including, in any case, attorney's fees, costs and expenses as aforesaid, whether at pretrial, trial or appellate level for any civil, criminal or administrative proceedings. Should Beneficiary incur any liability under this Deed of Trust or any of the other Loan Documents, the amount thereof, including, without limitation, costs, expenses and reasonable attorneys' fees, together with interest thereon from the date incurred by Beneficiary until actually paid by Trustor, shall be



immediately due and payable to Beneficiary by Trustor on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. However, nothing herein shall be construed to obligate Trustor to indemnify, defend and hold harmless Beneficiary from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses enacted against, imposed on or incurred by Beneficiary by reason of Beneficiary's acts or omissions. This indemnity shall survive payment in full of the indebtedness secured hereby.

(ii) A waiver of subrogation shall be obtained by Trustor from its insurance carrier and, consequently, Trustor waives any and all right to claim or recover against Beneficiary, its officers, employees, agents and representatives, for loss of or damage to Trustor, the Property, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.

**Section 1.55 Litigation.** Trustor will give prompt written notice to Beneficiary of any litigation or governmental proceedings pending or threatened (in writing) against Trustor.

## ARTICLE II EVENTS OF DEFAULT

**Section 2.1 Events of Default.** The indebtedness secured hereby shall become immediately due and payable at the option of Beneficiary upon the happening of any one or more of the following events of default (each, an "Event of Default"):

(i) Trustor fails to make any payment under the Note when due.

(ii) Trustor fails to punctually perform any covenant, agreement, obligation, term or condition hereof which requires payment of any money to Beneficiary (except those regarding payments to be made under the Note).

(iii) Trustor fails to provide insurance as required hereof or fails to perform any covenant, agreement obligation, term or condition set forth in this Deed of Trust.

(iv) Trustor fails to perform any other covenant, agreement, obligation, term or condition set forth herein other than those otherwise described in this Section and, to the extent such failure or default is susceptible of being cured, the continuance of such failure or default for thirty (30) days after written notice thereof from Beneficiary to Trustor; provided, however, that if such default is susceptible of cure but such cure cannot be accomplished with reasonable diligence within said period of time, and if Trustor commences to cure such default promptly after receipt of notice thereof from Beneficiary, and thereafter prosecutes the curing of such default with reasonable diligence, such period of time shall be extended for such period of time as may be necessary to cure such default with reasonable diligence, but not to exceed an additional sixty (60) days.

(v) Any representation or warranty made herein, in or in connection with any application or commitment relating to the loan evidenced by the Note, or in any of the other Loan Documents to Beneficiary by Trustor, by any principal or general partner in Trustor or by any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby is determined by Beneficiary to have been false or misleading in any material respect at the time made.



(vi) There shall be a sale, conveyance, disposition, alienation, hypothecation, leasing, assignment, pledge, mortgage, granting of a security interest in or other transfer or further encumbrancing of the Property except for Trustor's Primary Loan, Trustor or its owners, or any portion thereof or any interest therein, in violation of this Deed of Trust.

(vii) A default occurs under any of the other Loan Documents which has not been cured within any applicable grace or cure period therein provided.

(viii) Trustor, any principal, general partner or managing member (as applicable) in Trustor or any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby becomes insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors, shall file a petition in bankruptcy, shall voluntarily be adjudicated insolvent or bankrupt or shall admit in writing the inability to pay debts as they mature, shall petition or apply to any tribunal for or shall consent to or shall not contest the appointment of a receiver, trustee, custodian or similar officer for Trustor, for any such principal, general partner or managing member (as applicable) of Trustor or for any such indemnitor or guarantor or for a substantial part of the assets of Trustor, of any such principal or general partner of Trustor or of any such indemnitor or guarantor, or shall commence any case, proceeding or other action under any bankruptcy, reorganization, arrangement, readjustment or debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect.

(ix) A petition ("Petition") is filed or any case, proceeding or other action is commenced against Trustor, against any principal, general partner or managing member of Trustor or against any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby seeking to have an order for relief entered against it as debtor or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or other relief under any law relating to bankruptcy, insolvency, arrangement, reorganization, receivership or other debtor relief under any law or statute of any jurisdiction, whether now or hereafter in effect, or a court of competent jurisdiction enters an order for relief against Trustor, against any principal or general partner of Trustor or against any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby, as debtor, or an order, judgment or decree is entered appointing, with or without the consent of Trustor, of any such principal or general partner of Trustor or of any such indemnitor or guarantor, a receiver, trustee, custodian or similar officer for Trustor, for any such principal or general partner of Trustor or for any such indemnitor or guarantor, or for any substantial part of any of the properties of Trustor, of any such principal, general partner or managing member of Trustor or of any such indemnitor or guarantor, and if any such event shall occur, such petition, case, proceeding, action, order, judgment or decree shall not be dismissed within sixty (60) days after being commenced.

(x) Trustor solicits or aids the solicitation of the filing of any Petition against Trustor including, without limitation: (a) providing information regarding the identity of creditors or the nature of creditors' claims to any third party unless compelled to do so by order of a court of competent jurisdiction or by regulation promulgated, by a governmental agency, or (b) paying the legal fees or expenses of any creditor or of interest holder in Trustor with respect to any matter whatsoever.

(xi) The Property or any part thereof shall be taken on execution or other process of law in any action against Trustor.

(xii) Trustor abandons all or a portion of the Property.



(xiii) The holder of any lien or security interest on the Property (without implying the consent of Beneficiary to the existence or creation of any such lien or security interest), whether superior or subordinate to this Deed of Trust or any of the other Loan Documents, declares a default and such default is not cured within any applicable grace or cure period set forth in the applicable document or such holder institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(xiv) The Property, or any part thereof, is subjected to actual or threatened waste or to removal, demolition or material alteration so that the value of the Property is materially diminished thereby and Beneficiary determines (in its subjective determination) that it is not adequately protected from any loss, damage or risk associated therewith.

(xv) Any dissolution, termination, partial or complete liquidation, merger or consolidation of Trustor, any of its principals, members, or general partners.

### ARTICLE III REMEDIES

**Section 3.1 Remedies Available.** If there shall occur a default under this Deed of Trust, and such default has not been cured within any applicable grace or cure period, then this Deed of Trust is subject to foreclosure as provided by law and Beneficiary may, at its option and by or through a trustee, nominee, assignee or otherwise, to the fullest extent permitted by law, exercise any or all of the following rights, remedies and recourses, either successively or concurrently.

(i) Acceleration. Accelerate the maturity date of the Note and declare any or all of the indebtedness secured hereby to be immediately due and payable without any presentment, demand, protest, notice or action of any kind whatever (each of which is hereby expressly waived by Trustor), whereupon the same shall become immediately due and payable. Upon any such acceleration, payment of such accelerated amount shall constitute a prepayment of the principal balance of the Note and any applicable prepayment fee provided for in the Note shall then be immediately due and payable.

(ii) Entry on the Property. Without in any way curing or waiving any default of Trustor, either in person, by agent or by court-appointed receiver, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, in its own name, without force or with such force as is permitted by law and without notice or process or with such notice or process as is required by law unless such notice and process is waivable, in which case Trustor hereby waives such notice and process, and do any and all acts and perform any and all work which may be desirable or necessary in Beneficiary's judgment to complete any unfinished construction on the Real Estate, to preserve and/or enhance the value, marketability or rentability of the Property, to increase the income therefrom, to manage and operate the Property or to protect the security hereof and all sums expended by Beneficiary therefor, together with interest thereon at the Default Interest Rate (as defined in the Note), shall be immediately due and payable to Beneficiary by Trustor on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

(iii) Collect Rents and Profits. With or without taking possession of the Property, sue for or otherwise collect the Rents and Profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, all in such order as Beneficiary in its discretion may determine.



(iv) Appointment of Receiver. Upon, or at any time prior or after, initiating the exercise of any power of sale, instituting any judicial foreclosure or instituting any other foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, make application, ex-parte, to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as a matter of strict right and without notice to Trustor and without regard to the adequacy of the Property for the repayment of the indebtedness secured hereby or the solvency of Trustor or any person or persons liable for the payment of the indebtedness secured hereby, and Trustor does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Beneficiary, but nothing herein is to be construed to deprive Beneficiary of any other right, remedy or privilege Beneficiary may now have under the law to have a receiver appointed, provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Beneficiary to receive payment of the Rents and Profits pursuant to other terms and provisions of this Deed of Trust or the Assignment. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Property upon such terms and conditions as said receiver may deem to be prudent and reasonable under the circumstances as more fully set forth in Section 3.3 below. Such receivership shall, at the option of Beneficiary, continue until full payment of all of the indebtedness secured hereby or until title to the Property shall have passed by foreclosure sale under this Deed of Trust or deed in lieu of foreclosure.

(v) Foreclosure. Immediately commence an action to foreclose this Deed of Trust or to specifically enforce its provisions or any of the indebtedness secured hereby, pursuant to the statutes in such case made and provided, and sell the Property or cause the Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Beneficiary.

(a) Should Beneficiary have elected to accelerate the indebtedness secured hereby, Beneficiary may initiate foreclosure of the Property by requesting the Trustee to effectuate a non-judicial foreclosure sale.

(b) Should Beneficiary have not elected to accelerate the indebtedness secured hereby, Beneficiary may nonetheless proceed with foreclosure in satisfaction of such default, either through the courts or by directing the Trustee to proceed as if under a full foreclosure, conducting sale as hereinbefore provided, but without declaring the entire indebtedness secured by this Deed of Trust due, and provided that if said sale is made because of such default, such sale may be made subject to the unmatured part of the secured indebtedness. Such sale, if so made, shall not in any manner affect the unmatured part of the debt secured by this Deed of Trust, but as to such unmatured part, this Deed of Trust shall remain in full force as though no sale had been made. Several sales may be made without exhausting the right of sale with respect to any unmatured part of the secured indebtedness, it being the purpose and intent hereof to provide for a foreclosure and the sale of the Property for any matured portion of said secured indebtedness without exhausting the power of foreclosure.

(c) In the event foreclosure proceedings are instituted by Beneficiary, all expenses incident to such proceedings, including, but not limited to, attorneys' fees and costs, shall be paid by Trustor and secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The secured indebtedness and all other obligations secured by this Deed of Trust, including, without limitation, interest at the Default Interest Rate (as



defined in the Note), any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), reasonable attorneys' fees and any other amounts due and unpaid to Beneficiary under the Loan Documents, may be bid by Beneficiary in the event of a foreclosure sale hereunder.

(vi) **Judicial Remedies.** Proceed by suit or suits, at law or in equity, instituted by Beneficiary, or Trustee, upon written request of Beneficiary, to enforce the payment of the indebtedness secured hereby or the other obligations of Trustor hereunder or pursuant to the Loan Documents, to foreclose the liens and security interests of this Deed of Trust as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction. In the event of a judicial sale pursuant to a foreclosure decree, it is understood and agreed that Beneficiary or its assigns may become the purchaser of the Property. This remedy shall be cumulative of any other non-judicial remedies available to the Beneficiary with respect to the Loan Documents. Proceeding with the request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available non-judicial remedy of the Beneficiary.

(vii) **Other.** Exercise any other right or remedy available hereunder, under any of the other Loan Documents or at law or in equity.

**Section 3.2 Application of Proceeds.** To the fullest extent permitted by law, the proceeds of any sale under this Deed of Trust shall be applied to the extent funds are so available to the following items in such order as Beneficiary in its discretion may determine:

(i) To payment of the costs, expenses and fees of taking possession of the Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing and selling the same and of otherwise enforcing Beneficiary's right and remedies hereunder and under the other Loan Documents, including, but not limited to, receivers' fees, court costs, attorneys', accountants', appraisers', managers' and other professional fees, title charges and transfer taxes.

(ii) To payment of all sums expended by Beneficiary under the terms of any of the Loan Documents and not yet repaid; together with interest on such sums at the Default Interest Rate.

(iii) To payment of the secured indebtedness and all other obligations secured by this Deed of Trust, including, without limitation, interest at the Default Interest Rate and, to the extent permitted by applicable law, any prepayment fee, charge or premium required to be paid under the Note in order to prepay principal, in any order that Beneficiary chooses in its sole discretion.

(iv) The remainder, if any, of such funds shall be disbursed to Trustor or to the person or persons legally entitled thereto.

**Section 3.3 Right and Authority of Receiver or Beneficiary in the Event of Default; Power of Attorney.** Upon the occurrence of a default hereunder, which default is not cured within any applicable grace or cure period, and entry upon the Property pursuant to Section 3.1(ii) hereof or appointment of a receiver pursuant to Section 3.1(iv) hereof, and under such terms and conditions as may be prudent and reasonable under the circumstances in Beneficiary's or the receiver's sole discretion, all at Trustor's expense, Beneficiary or said receiver, or such other persons or entities as they shall hire, direct or engage, as the case may be, may do or permit one or more of the following, successively or concurrently: (a) enter upon and take possession and control of any



and all of the Property; (b) take and maintain possession of all documents, books, records, papers and accounts relating to the Property; (c) exclude Trustor and its agents, servants and employees wholly from the Property; (d) manage and operate the Property; (e) preserve and maintain the Property; (f) make repairs and alterations to the Property; (g) complete any construction or repair of the Improvements, with such changes, additions or modifications of the plans and specifications or intended disposition and use of the Improvements as Beneficiary may in its sole discretion deem appropriate or desirable to place the Property in such condition as will, in Beneficiary's sole discretion, make it or any part thereof readily marketable or rentable; (h) conduct a marketing or leasing program with respect to the Property, or employ a marketing or leasing agent or agents to do so, directed to the leasing or sale of the Property under such terms and conditions as Beneficiary may in its sole discretion deem appropriate or desirable; (i) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents, or other employees, agents, independent contractors or professionals, as Beneficiary may in its sole discretion deem appropriate or desirable to implement and effectuate the rights and powers herein granted; (j) execute and deliver, in the name of Beneficiary, such documents and instruments as are necessary or appropriate to consummate authorized transactions; (k) enter into such leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Beneficiary may in its sole discretion deem appropriate or desirable; (l) collect and receive the Rents and Profits from the Property; (m) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of their leases or other agreements; (n) sue for unpaid Rents and Profits, payments, income or proceeds in the name of Trustor or Beneficiary; (o) maintain actions in forcible entry and detainer, ejectment for possession and actions in distress for rent; (p) compromise or give acquittance for Rents and Profits, payments, income or proceeds that may become due; (q) delegate or assign any and all rights and powers given to Beneficiary by this Deed of Trust; and (r) do any acts which Beneficiary in its sole discretion deems appropriate or desirable to protect the security hereof and use such measures, legal or equitable, as Beneficiary may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions of this Deed of Trust. This Deed of Trust shall constitute a direction to and full authority to any lessee, or other third party who has heretofore dealt or contracted or may hereafter deal or contract with Trustor or Beneficiary, at the request of Beneficiary, to pay all amounts owing under any lease, contract, concession, license or other agreement to Beneficiary without proof of the default relied upon. Any such lessee or third party is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected by Trustor in so doing) any request, notice or demand by Beneficiary for the payment to Beneficiary of any Rents and Profits or other sums which may be or thereafter become due under its lease, contract, concession, license or other agreement, or for the performance of any undertakings under any such lease, contract, concession, license or other agreement, and shall have no right or duty to inquire whether any default under this Deed of Trust or under any of the other Loan Documents has actually occurred or is then existing. Any money advanced by Beneficiary in connection with any action taken under this Section 3.3, together with interest thereon from the date of making such advancement by Beneficiary until actually paid by Trustor, shall be a demand obligation owing by Trustor to Beneficiary and shall be secured by this Deed of Trust and by every other instrument securing the secured indebtedness.

**Section 3.4 Occupancy After Foreclosure.** In the event there is a foreclosure sale hereunder and at the time of such sale, Trustor or Trustor's representatives, successors or assigns, or any other persons claiming any interest in the Property by, through or under Trustor (except tenants of space in the Improvements subject to leases entered into prior to the date hereof), are occupying or using the Property, or any part thereof, then, to the extent not prohibited by applicable law, each and all shall, at the option of Beneficiary or the purchaser at such sale, as the case may be, immediately become



the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by applicable law, in the event the tenant fails to surrender possession of the Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Property in the appropriate court of the county in which the Real Estate is located.

**Section 3.5 Notice to Account Debtors.** Beneficiary may, at any time after a default hereunder, which default is not cured within any applicable grace or cure period, notify the account debtors and obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness to Trustor included in the Property to pay Beneficiary directly. Trustor shall at any time or from time to time upon the request of Beneficiary provide to Beneficiary a current list of all such account debtors and obligors and their addresses.

**Section 3.6 Cumulative Remedies.** All remedies contained in this Deed of Trust are cumulative and Beneficiary shall also have all other remedies provided at law and in equity or in any other Loan Documents. Such remedies may be pursued separately, successively or concurrently at the sole subjective direction of Beneficiary and may be exercised in any order and as often as occasion therefor shall arise. No act of Beneficiary shall be construed as an election to proceed under any particular provisions of this Deed of Trust to the exclusion of any other provision of this Deed of Trust or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Beneficiary. No delay or failure by Beneficiary to exercise any right or remedy under this Deed of Trust shall be construed to be a waiver of that right or remedy or of any default hereunder. Beneficiary may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

**Section 3.7 Payment of Expenses.** Trustor shall pay on demand all of Beneficiary's expenses reasonably incurred in any efforts to enforce any terms of this Deed of Trust, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, reasonable legal fees and disbursements, foreclosure costs and title charges, together with interest thereon from and after the date incurred by Beneficiary until actually paid by Trustor, and the same shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

#### ARTICLE IV CONCERNING THE TRUSTEE

**Section 4.1 No Required Action.** Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in his opinion, such action would be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and



Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Beneficiary.

**Section 4.2 Certain Rights.** With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (a) to select, employ, and consult with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (b) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (c) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee (and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith), and (d) any and all other lawful action that Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Trustor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

**Section 4.3 Retention of Money.** All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law), and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

**Section 4.4 Successor Trustees.** Trustee may resign by the giving of notice of such resignation in writing or verbally to Beneficiary. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary shall prefer to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of the aforementioned Trustee, Beneficiary shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees) in succession who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers, and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be



conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Trustor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or his successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to this Deed of Trust or applicable law.

**Section 4.5 Perfection of Appointment.** Should any deed, conveyance, or instrument of any nature be required from Trustor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Trustor.

**Section 4.6 Succession Instruments.** Any substitute Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the substitute Trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute Trustee so appointed in the Trustee's place.

**Section 4.7 No Representation by Trustee.** By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee (on its own behalf or on behalf of Beneficiary) pursuant to the Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee, either on its own behalf or on behalf of Beneficiary.

## ARTICLE V

### MISCELLANEOUS TERMS AND CONDITIONS

**Section 5.1 Time of Essence.** Time is of the essence with respect to all provisions of this Deed of Trust.

**Section 5.2 Release of Deed of Trust.** If and when Trustor has paid all of the secured indebtedness as the same becomes due and payable, or there is a Defeasance regarding the lien of this Deed of Trust in accordance with, and in satisfaction of, the provisions of this Deed of Trust, then, and in such event only, all rights under this Deed of Trust shall terminate except for those provisions hereof which by their terms survive, and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be



released by Beneficiary in due form at Trustor's cost. Trustor shall be responsible for the recordation of such release and payment of any recordation costs associated therewith.

**Section 5.3 Certain Rights of Beneficiary.** Without affecting Trustor's liability for the payment of any of the indebtedness secured hereby, Beneficiary may from time to time: (a) release any person liable for the payment of the indebtedness secured hereby; (b) extend or modify the terms of payment of the indebtedness secured hereby; (c) accept additional real or personal property of any kind as security or alter, substitute or release any property securing the indebtedness secured hereby; (d) recover any part of the Property; (e) consent in writing to the making of any subdivision map or plat thereof; (f) join in granting any easement therein; or (g) join in any extension agreement of this Deed of Trust or any agreement subordinating the lien hereof.

**Section 5.4 Notices.** All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, in any event addressed to the intended addressee at its address set forth on the first page of this Deed of Trust or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier service, or two (2) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least fifteen (15) days' prior written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

**Section 5.5 Successors and Assigns.** The terms, provisions, indemnities, covenants and conditions hereof shall be binding upon Trustor and the successors and assigns of Trustor, including all successors in interest and to all or any part of the Property, and shall inure to the benefit of Beneficiary, and its successors and assigns and shall constitute covenants running with the land. If Trustor consists of more than one person or entity, each will be jointly and severally liable to perform the obligations of Trustor.

**Section 5.6 Severability.** A determination that any provision of this Deed of Trust is unenforceable or invalid shall not affect the enforceability or validity of any other provision.

**Section 5.7 General Interpretative Principles.** Within this Deed of Trust, words of any gender shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, and vice versa, unless the context otherwise requires.

**Section 5.8 Waiver; Discontinuance of Proceedings.** Beneficiary may waive any single default by Trustor hereunder without waiving any other prior or subsequent default, and may remedy any default by Trustor hereunder without waiving the default remedied. Neither the failure or delay by Beneficiary in exercising, any right, power or remedy upon any default by Trustor hereunder shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Beneficiary of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Trustor therefrom shall in any event be effective unless the same shall be in writing and signed by Beneficiary, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose given. No notice to nor demand on Trustor in any case shall of itself entitle Trustor to any other or further notice or demand in similar or other circumstances. Acceptance by Beneficiary of any payment in an amount less



than the amount then due on any of the secured indebtedness shall be deemed an acceptance on account only and shall not in any way affect the existence of a default hereunder.

**Section 5.9 Section Headings.** The headings of the sections and paragraphs of this Deed of Trust are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

**Section 5.10 Governing Law.** This Deed of Trust will be governed by and construed in accordance with the laws of the State in which the Property is located, provided that to the extent that any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling.

**Section 5.11 Counting of Days.** The term "days" when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the state within which the Real Estate is located, the period shall be deemed to end on the next succeeding business day. The term "business day" or "Business Day" when used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in New York, New York are authorized by law to be closed.

**Section 5.12 Application of the Proceeds of the Note.** To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released.

**Section 5.13 Unsecured Portion of Indebtedness.** If any part of the secured indebtedness cannot be lawfully secured by this Deed of Trust or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is unsecured by this Deed of Trust.

**Section 5.14 Cross Default.** A default hereunder which has not been cured within any applicable grace or cure period shall be a default under each of the other Loan Documents.

**Section 5.15 Construction of this Document.** This document may be construed as a mortgage, security deed, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of the foregoing, in order to fully effectuate the liens and security interests created hereby and the purposes and agreements herein set forth.

**Section 5.16 No Merger.** It is the desire and intention of the parties hereto that this Deed of Trust and the lien hereof do not merge in fee simple title to the Property.

**Section 5.17 Beneficiary May File Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Trustor or the principals or general partners in Trustor, or their respective creditors or property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Beneficiary allowed in such proceedings for the entire secured indebtedness at the date of the institution of such proceedings and for any additional amount which may become due and payable by Trustor hereunder after such date.

**Section 5.18 After-Acquired Property.** All property acquired by Trustor after the date of this Deed of Trust which by the terms of this Deed of Trust shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Trustor and without further mortgage, conveyance or assignment become subject to the lien and security interest created by this Deed of Trust.



**Section 5.19 No Representation.** By accepting delivery of any item required to be observed, performed or fulfilled or to be given to Beneficiary pursuant to the Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Beneficiary shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance of delivery thereof shall not be or constitute any warranty, consent or affirmation with respect thereto by Beneficiary.

**Section 5.20 Personal Liability.** Notwithstanding anything to the contrary contained in this Deed of Trust, the liability of Trustor and its general partners for the indebtedness secured hereby and for the performance of the other agreements, covenants and obligations contained herein and in the Loan Documents shall be limited as set forth in Section 1.05 of the Note; provided, however, that nothing herein shall be deemed to be a waiver of any right which Beneficiary may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the indebtedness secured hereby or to require that all collateral shall continue to secure all indebtedness owing to Beneficiary in accordance with the Note, this Deed of Trust and the other Loan Documents.

**Section 5.21 Recording and Filing.** Trustor will cause the Loan Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and re-filed in such manner and in such places as Beneficiary shall reasonably request, and will pay on demand all such recording, filing, re-recording and re-filing taxes, fees and other charges.

**Section 5.22 Entire Agreement and Modifications.** This Deed of Trust and the other Loan Documents contain the entire agreements between the parties and supersede any prior agreements (oral or written), and may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted.

**Section 5.23 Further Stipulations.** The additional covenants, agreements and provisions set forth in Exhibit B attached hereto, if any, shall be a part of this Deed of Trust and shall, in the event of any conflict between such further stipulations and any of the other provisions of this Deed of Trust, be deemed to control.

**Section 5.24 Relationship of the Parties.** The relationship between Trustor and Beneficiary is that of a borrower and a lender only and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party.

**Section 5.25 Fixture Filing.** This Deed of Trust shall be effective from the date of its recording as a financing statement filed as a fixture filing with respect to all goods constituting part of the Property which are or are to become fixtures.

IN WITNESS WHEREOF, Trustor, intending to be legally bound hereby, has duly executed this Deed of Trust on \_\_\_\_\_, 20\_\_ to be effective as of \_\_\_\_\_, 20\_\_.

CORNERSTONE MAIN PARTNERS, L.P.,

a California Limited Partnership

  
By: David H. Paynter, General Partner

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT****CIVIL CODE § 1189**

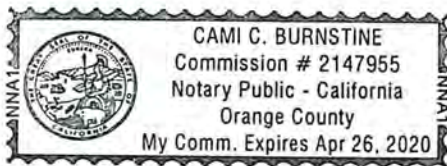
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Orange )  
On November 28, 2018 before me, Cami C. Burnstine, notary public,  
Date Here Insert Name and Title of the Officer  
personally appeared David H. Paynter  
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature Cami C. Burnstine  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_  
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_  
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

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

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



State of California )

)

County of )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

EXHIBIT A  
LEGAL DESCRIPTION

**That portion of the Northwest quarter of the Northwest quarter, Section 36, Township 21 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California, more particularly described as follows:**

**Lots 17, 18, 19, and 20 in Block 54 of the City of Porterville, in the City of Porterville, County of Tulare, State of California, according to the map thereof recorded in Book 3, Page 18 of Maps, Tulare County Records.**



## CITY OF PORTERVILLE

### LOAN AGREEMENT BETWEEN THE CITY OF PORTERVILLE AND CORNERSTONE MAIN PARTNERS, L.P.

THIS LOAN AGREEMENT (hereinafter "Agreement") is entered into as of this 30<sup>th</sup> day of November, 2018 by and between the CITY OF PORTERVILLE, a municipal corporation (the "City"), and CORNERSTONE MAIN PARTNERS, L.P., a California Limited Partnership ("Borrower").

#### RECITALS

A. The Borrower desires to acquire approximately 11,071 square feet of commercial property from the City for the purposes of developing an approximate 46,290 square foot, three-story building at 14 N. Main Street (APN #261-122-007), Porterville California. Borrower will secure a separate lease agreement with the County of Tulare for government offices at the site. The site is located in the City of Porterville, County of Tulare, State of California, and a diagram/legal description is attached hereto as Exhibit A ("Property").

B. The City desires to assist in the downtown revitalization and infill development effort and encourage the development of community services, by providing financial assistance in the form of a loan to the Borrower.

NOW, THEREFORE, in consideration of the mutual promises, and for other good and valuable consideration, for which the receipt and adequacy is hereby acknowledged, the parties agree that the funds be loaned to Borrower by City subject to the following conditions and limitations:

#### I. GENERAL TERMS AND CONDITIONS

- A. **Loan Terms.** City shall loan Two Million Seven Hundred and Twenty Thousand Dollars (\$2,720,000.00) to Borrower at a compound interest rate of 2.4% amortized over a 20 year term (240 months), to assist with costs, fees and services related to the purchase of the property and financing of the Development (the "Loan"). The parties acknowledge that disbursement will be made back to the City in the amount of the balance of the Property purchase price at the close of escrow. Thereafter, interest-only payments shall be made monthly, with the first payment due on December 1<sup>st</sup>, 2019. A Schedule of payments is attached hereto as Exhibit "B." Repayment of the principal (and any remaining unpaid interest) shall be made in full no later than November 30, 2038. There shall be no penalty for partial or full early repayment. This loan shall be secured by the Promissory Note and Deed of Trust attached hereto as Exhibit "C."

**B. Disbursement of Funds.** The loan funds shall be disbursed in lump sum as a deposit into escrow as financing for the purchase and development of the Property. Borrower agrees to use the loan funds for the costs of acquisition, soft costs, services, materials and construction of the Property for the initial period of development and construction, which is estimated to be four (4) months from the date of funding, at which time Borrower shall obtain a Primary Loan as further defined in Section C below. Disbursement of the full sale price balance for the Property from the loan funds will be made to City at the close of escrow.

**C. Subordination to Primary Loan.** The City agrees that its Loan ("City Loan") shall be subordinate to Borrower's primary construction loan, permanent loan and any refinancing during the term of the Loan as may be necessary ("Primary Loan") obtained as financing for the development, construction of improvements and placement of permanent financing to the property. The City Loan shall be automatically subordinated to a deed of trust executed by Borrower to secure a Primary Loan obtained for the purpose of constructing improvements and obtaining permanent financing on the Property, provided that:

- a) At the time of recordation of the deed of trust securing the Primary Loan, no unrescinded notice of default of the City Loan shall appear of record, no mechanic's liens shall appear of record and Buyer shall not be in default of the payment of any taxes or assessments affecting the property then encumbered by the City Loan.
- b) The total amount of the Primary Loan shall not exceed \$10,000,000.00, for which the maximum interest rate will not exceed 7.0%.
- c) The Primary Loan shall be payable monthly over a period of time of not less than 240 months or more than 21 years or the date of the expiration of the initial lease term between the Borrower and the County of Tulare, whichever is later.
- d) The Primary Loan shall be made by a bank, life insurance company, building and loan association, savings and loan association, investment bank or other institutional lender ("Primary Lender").
- e) The proceeds of the Primary Loan shall be disbursed by the Primary Lender either through its own offices or through a bonded disbursement control agency.
- f) Borrower shall deliver to City a binding written commitment from a Primary Lender to make the Primary Loan on the Property.
- g) The remaining terms and provisions of the Primary Loan shall be as required by the Primary Lender.





h) The City Loan shall record and fund prior to the Primary Loan. Upon recordation of the Primary Loan, City shall provide a signed subordination agreement mutually acceptable to the City and Primary Lender.

i) The City Loan and Primary Loan shall not cause the combined loan to value ratio for the Property to exceed 85%. Valuation for the purposes of this Agreement shall be made based on an appraisal performed within six (6) months of the proposed encumbrance by either the Primary Lender's appraiser or an appraiser mutually agreed upon by both parties.

**D. Borrower Conditions.** Borrower agrees to abide by all conditions fully set forth below.

1. This Agreement is contingent upon Borrower's purchase of the Property from the City, and Borrower securing the County of Tulare as a tenant for the Property, with a commitment for the opening of the government offices.

2. Borrower has requested the financial support of City provided for in this Agreement in order to enable Borrower to develop the Property and lease the Property to the above-referenced tenant. City shall have no relationship whatsoever with the services provided, except the provision of financial support. To the extent, if at all, that any relationship to such services on the part of City may be claimed or found to exist, Borrower shall be an independent contractor only.

3. Borrower shall obtain any and all federal, state, and local permits and licenses required to complete the Development as described in this Agreement. Borrower further agrees to abide by all applicable federal, state, and local codes, regulations, statutes, ordinances, and laws.

4. Subject only to the exception as stated in Section I.C., Borrower shall not allow the Development to be attached in any manner, including any liens or other encumbrances or any mortgages or other security interest without the prior written consent of City and only as provided in this Agreement.

5. Borrower shall not assign or delegate any of its rights, interests or duties under this Agreement without the prior written consent of City. Any such assignment or delegation made without the required consent shall be voidable by City, and may, at the option of City, result in the termination and repayment of all financial support provided herein.

6. Borrower shall maintain or cause its tenants to maintain a comprehensive general liability policy in not less than the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate (both inclusive of umbrella coverage) or such other policy limits as the City may approve at its discretion, including contractual liability, as shall protect Borrower from claims for such damages, and which policy shall be issued by an insurance carrier with an Alfred



M. Best Company, Inc. general policy holder rating of A-VIII. Such policy or policies shall be written on an occurrence form. Notwithstanding anything contained herein, the County of Tulare is a self-insured entity and City waives any requirement of the County of Tulare as a tenant of the Property to procure and/or maintain insurance of any kind, including liability and/or fire/extended coverage insurance.

7. To the fullest extent permitted by law, Borrower shall protect, defend, indemnify, and save and hold harmless City, its officers, employees and agents from and against any and all liability, damages, demands, claims, suits, liens, and judgments of whatever nature including, but not limited to, claims for contribution or indemnification for injuries to or death of any person or persons, caused by, in connection with, or arising out of any activities undertaken pursuant to this Agreement. Borrower's obligation to protect, defend, indemnify, and save and hold harmless as set forth in this paragraph shall include any and all attorneys' fees incurred by City, its officers, employees and agents in the defense of handling of said suits, demands, judgments, liens and claims and all attorneys fees and investigation expenses incurred by City, its officers, employees and agents in enforcing or obtaining compliance with the provisions of the Agreement. Borrower may comply with this requirement by obtaining insurance coverage through its tenant or via an insurance carrier/company rated in accordance with Section I.C.6., above. However, any applicable policy limits shall not serve as a cap or limit concerning the extent of indemnification responsibility or amount of liability under this section.

8. Borrower shall not use any funds or resources which are supplied by City in litigation against any person, natural or otherwise, or in its own defense in any such litigation and also to agree to notify City of any legal action which is filed by or against it.

9. Borrower shall keep and maintain in effect at all times any and all licenses, permits, notices and certifications which may be required by any City regulation or state or federal statute.

10. Any material breach of this Agreement may, after 30-day notice to Borrower and a failure (within a reasonable amount of time) thereby to cure such material breach, in the discretion of City, result in forfeiture of all funds received by Borrower pursuant to this Agreement, or any part thereof.

## **II. MISCELLANEOUS TERMS**

**A. Modification.** This Agreement shall only be modified by a written amendment signed by the parties, or as otherwise set forth in the terms of the Agreement.

**B. Attorneys' Fees.** If any litigation is commenced between the parties to this Agreement concerning the Agreement or the rights and duties of either in relation to the



Agreement, the party prevailing in that litigation shall be entitled, in addition to any other relief that may be granted in the litigation, to its cost for the litigation including expert witness fees and a reasonable sum as and for its attorneys' fees in the litigation, which shall be determined by the court in that litigation or in a separate action brought for that purpose.

C. **Entire Agreement.** This Agreement (including the Promissory Note and Deed of Trust) contains the entire understanding between the parties relating to the transaction contemplated by this Agreement.

D. **Notices.** Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or any other address as that party may later designate by Notice.

To City: City of Porterville  
291 N. Main Street  
Porterville, CA 93257  
Attention: City Manager

To Borrower: Cornerstone Main Partners, L.P.  
17671 Irvine Blvd., Suite 204  
Tustin, CA 92780  
Attention: David H. Paynter

E. **Applicable law/Venue.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement. This Agreement is entered into and to be performed in Tulare County, California. To the fullest extent permitted by law, Borrower hereby waives any rights it might have to remove any such action pursuant to California Code of Civil Procedure Section 394.

F. **Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

G. **Rights and Remedies Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

H. **Successors and Assigns.** All of the terms, covenants and conditions of this Agreement shall be binding upon the parties and their successors and assigns.

I. **Severability.** If any term, provision, condition or covenant of this Agreement or its application to nay party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

J. **Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

K. **Ambiguities.** Each party and its legal counsel have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

CORNERSTONE MAIN PARTNERS, L.P.

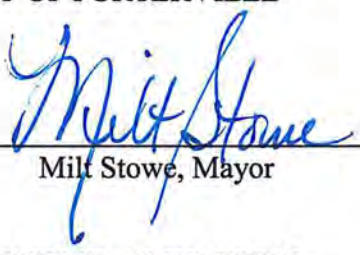
By: 

David H. Paynter, General Partner

APPROVED AS TO FORM:

\_\_\_\_\_, Esq.

CITY OF PORTERVILLE

By: 

Milt Stowe, Mayor

APPROVED AS TO FORM:

By: 

Julia Lew, City Attorney



**EXHIBIT "A"**

That portion of the Northwest quarter of the Northwest quarter, Section 36, Township 21 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California, more particularly described as follows:

Lots 17, 18, 19, and 20 in Block 54 of the City of Porterville, in the City of Porterville, County of Tulare, State of California, according to the map thereof recorded in Book 3, Page 18 of Maps, Tulare County Records.

A handwritten signature in blue ink, consisting of several loops and a final vertical stroke, located in the bottom right corner of the page.

## EXHIBIT "B"

### LOAN AGREEMENT CORNERSTONE MAIN PARTNERS, L.P.

|                                      |                 |
|--------------------------------------|-----------------|
| Principal                            | \$ 2,720,000.00 |
| Interest rate                        | 2.40%           |
| Term                                 | 240 months      |
| Funding Date                         | 12/7/18         |
| First Payment Due                    | 12/1/19         |
| Full Payment of Principal + Interest | 11/30/38        |

| <u>Date</u> | <u>Days</u> | <u>Month</u> | <u>Principal<br/>Payment</u> | <u>Interest<br/>Payment</u> | <u>Accrued<br/>Interest</u> | <u>Balance</u> |
|-------------|-------------|--------------|------------------------------|-----------------------------|-----------------------------|----------------|
| 12/7/18     |             |              |                              |                             |                             | 2,720,000.00   |
| 1/1/19      | 25          | 1            | -                            | -                           | 4,471.23                    | 2,724,471.23   |
| 2/1/19      | 31          | 2            | -                            | -                           | 5,553.44                    | 2,730,024.67   |
| 3/1/19      | 28          | 3            | -                            | -                           | 5,026.24                    | 2,735,050.91   |
| 4/1/19      | 31          | 4            | -                            | -                           | 5,575.01                    | 2,740,625.92   |
| 5/1/19      | 30          | 5            | -                            | -                           | 5,406.17                    | 2,746,032.09   |
| 6/1/19      | 31          | 6            | -                            | -                           | 5,597.39                    | 2,751,629.48   |
| 7/1/19      | 30          | 7            | -                            | -                           | 5,427.87                    | 2,757,057.35   |
| 8/1/19      | 31          | 8            | -                            | -                           | 5,619.86                    | 2,762,677.21   |
| 9/1/19      | 31          | 9            | -                            | -                           | 5,631.32                    | 2,768,308.53   |
| 10/1/19     | 30          | 10           | -                            | -                           | 5,460.77                    | 2,768,308.53   |
| 11/1/19     | 31          | 11           | -                            | -                           | 5,642.80                    | 2,768,308.53   |
| 12/1/19     | 30          | 12           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/20      | 31          | 13           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/20      | 31          | 14           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/20      | 29          | 15           |                              | 5,278.75                    |                             | 2,768,308.53   |
| 4/1/20      | 31          | 16           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/20      | 30          | 17           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/20      | 31          | 18           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/20      | 30          | 19           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/20      | 31          | 20           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/20      | 31          | 21           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/20     | 30          | 22           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/20     | 31          | 23           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/20     | 30          | 24           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/21      | 31          | 25           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/21      | 31          | 26           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/21      | 28          | 27           |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/21      | 31          | 28           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/21      | 30          | 29           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/21      | 31          | 30           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/21      | 30          | 31           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/21      | 31          | 32           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/21      | 31          | 33           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/21     | 30          | 34           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/21     | 31          | 35           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/21     | 30          | 36           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/22      | 31          | 37           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/22      | 31          | 38           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/22      | 28          | 39           |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/22      | 31          | 40           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/22      | 30          | 41           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/22      | 31          | 42           |                              | 5,642.80                    |                             | 2,768,308.53   |

# EXHIBIT "B"

| <u>Date</u> | <u>Days</u> | <u>Month</u> | <u>Principal<br/>Payment</u> | <u>Interest<br/>Payment</u> | <u>Accrued<br/>Interest</u> | <u>Balance</u> |
|-------------|-------------|--------------|------------------------------|-----------------------------|-----------------------------|----------------|
| 7/1/22      | 30          | 43           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/22      | 31          | 44           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/22      | 31          | 45           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/22     | 30          | 46           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/22     | 31          | 47           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/22     | 30          | 48           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/23      | 31          | 49           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/23      | 31          | 50           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/23      | 28          | 51           |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/23      | 31          | 52           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/23      | 30          | 53           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/23      | 31          | 54           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/23      | 30          | 55           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/23      | 31          | 56           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/23      | 31          | 57           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/23     | 30          | 58           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/23     | 31          | 59           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/23     | 30          | 60           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/24      | 31          | 61           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/24      | 31          | 62           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/24      | 29          | 63           |                              | 5,278.75                    |                             | 2,768,308.53   |
| 4/1/24      | 31          | 64           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/24      | 30          | 65           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/24      | 31          | 66           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/24      | 30          | 67           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/24      | 31          | 68           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/24      | 31          | 69           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/24     | 30          | 70           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/24     | 31          | 71           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/24     | 30          | 72           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/25      | 31          | 73           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/25      | 31          | 74           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/25      | 28          | 75           |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/25      | 31          | 76           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/25      | 30          | 77           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/25      | 31          | 78           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/25      | 30          | 79           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/25      | 31          | 80           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/25      | 31          | 81           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/25     | 30          | 82           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/25     | 31          | 83           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/25     | 30          | 84           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/26      | 31          | 85           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/26      | 31          | 86           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/26      | 28          | 87           |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/26      | 31          | 88           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/26      | 30          | 89           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/26      | 31          | 90           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/26      | 30          | 91           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/26      | 31          | 92           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/26      | 31          | 93           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/26     | 30          | 94           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/26     | 31          | 95           |                              | 5,642.80                    |                             | 2,768,308.53   |



# EXHIBIT "B"

| <u>Date</u> | <u>Days</u> | <u>Month</u> | <u>Principal<br/>Payment</u> | <u>Interest<br/>Payment</u> | <u>Accrued<br/>Interest</u> | <u>Balance</u> |
|-------------|-------------|--------------|------------------------------|-----------------------------|-----------------------------|----------------|
| 12/1/26     | 30          | 96           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/27      | 31          | 97           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/27      | 31          | 98           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/27      | 28          | 99           |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/27      | 31          | 100          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/27      | 30          | 101          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/27      | 31          | 102          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/27      | 30          | 103          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/27      | 31          | 104          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/27      | 31          | 105          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/27     | 30          | 106          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/27     | 31          | 107          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/27     | 30          | 108          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/28      | 31          | 109          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/28      | 31          | 110          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/28      | 29          | 111          |                              | 5,278.75                    |                             | 2,768,308.53   |
| 4/1/28      | 31          | 112          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/28      | 30          | 113          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/28      | 31          | 114          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/28      | 30          | 115          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/28      | 31          | 116          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/28      | 31          | 117          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/28     | 30          | 118          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/28     | 31          | 119          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/28     | 30          | 120          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/29      | 31          | 121          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/29      | 31          | 122          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/29      | 28          | 123          |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/29      | 31          | 124          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/29      | 30          | 125          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/29      | 31          | 126          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/29      | 30          | 127          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/29      | 31          | 128          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/29      | 31          | 129          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/29     | 30          | 130          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/29     | 31          | 131          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/29     | 30          | 132          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/30      | 31          | 133          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/30      | 31          | 134          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/30      | 28          | 135          |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/30      | 31          | 136          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/30      | 30          | 137          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/30      | 31          | 138          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/30      | 30          | 139          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/30      | 31          | 140          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/30      | 31          | 141          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/30     | 30          | 142          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/30     | 31          | 143          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/30     | 30          | 144          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/31      | 31          | 145          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/31      | 31          | 146          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/31      | 28          | 147          |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/31      | 31          | 148          |                              | 5,642.80                    |                             | 2,768,308.53   |

# EXHIBIT "B"

| <u>Date</u> | <u>Days</u> | <u>Month</u> | <u>Principal<br/>Payment</u> | <u>Interest<br/>Payment</u> | <u>Accrued<br/>Interest</u> | <u>Balance</u> |
|-------------|-------------|--------------|------------------------------|-----------------------------|-----------------------------|----------------|
| 5/1/31      | 30          | 149          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/31      | 31          | 150          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/31      | 30          | 151          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/31      | 31          | 152          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/31      | 31          | 153          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/31     | 30          | 154          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/31     | 31          | 155          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/31     | 30          | 156          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/32      | 31          | 157          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/32      | 31          | 158          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/32      | 29          | 159          |                              | 5,278.75                    |                             | 2,768,308.53   |
| 4/1/32      | 31          | 160          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/32      | 30          | 161          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/32      | 31          | 162          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/32      | 30          | 163          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/32      | 31          | 164          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/32      | 31          | 165          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/32     | 30          | 166          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/32     | 31          | 167          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/32     | 30          | 168          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/33      | 31          | 169          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/33      | 31          | 170          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/33      | 28          | 171          |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/33      | 31          | 172          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/33      | 30          | 173          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/33      | 31          | 174          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/33      | 30          | 175          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/33      | 31          | 176          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/33      | 31          | 177          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/33     | 30          | 178          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/33     | 31          | 179          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/33     | 30          | 180          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/34      | 31          | 181          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/34      | 31          | 182          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/34      | 28          | 183          |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/34      | 31          | 184          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/34      | 30          | 185          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/34      | 31          | 186          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/34      | 30          | 187          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/34      | 31          | 188          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/34      | 31          | 189          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/34     | 30          | 190          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/34     | 31          | 191          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/34     | 30          | 192          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/35      | 31          | 193          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/35      | 31          | 194          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/35      | 28          | 195          |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/35      | 31          | 196          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/35      | 30          | 197          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/35      | 31          | 198          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/35      | 30          | 199          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/35      | 31          | 200          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/35      | 31          | 201          |                              | 5,642.80                    |                             | 2,768,308.53   |



# EXHIBIT "B"

| <u>Date</u> | <u>Days</u> | <u>Month</u> | <u>Principal<br/>Payment</u> | <u>Interest<br/>Payment</u> | <u>Accrued<br/>Interest</u> | <u>Balance</u> |
|-------------|-------------|--------------|------------------------------|-----------------------------|-----------------------------|----------------|
| 10/1/35     | 30          | 202          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/35     | 31          | 203          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/35     | 30          | 204          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/36      | 31          | 205          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/36      | 31          | 206          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/36      | 29          | 207          |                              | 5,278.75                    |                             | 2,768,308.53   |
| 4/1/36      | 31          | 208          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/36      | 30          | 209          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/36      | 31          | 210          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/36      | 30          | 211          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/36      | 31          | 212          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/36      | 31          | 213          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/36     | 30          | 214          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/36     | 31          | 215          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/36     | 30          | 216          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/37      | 31          | 217          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/37      | 31          | 218          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/37      | 28          | 219          |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/37      | 31          | 220          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/37      | 30          | 221          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/37      | 31          | 222          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/37      | 30          | 223          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/37      | 31          | 224          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/37      | 31          | 225          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/37     | 30          | 226          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/37     | 31          | 227          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/37     | 30          | 228          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/38      | 31          | 229          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/38      | 31          | 230          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/38      | 28          | 231          |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/38      | 31          | 232          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/38      | 30          | 233          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/38      | 31          | 234          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/38      | 30          | 235          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/38      | 31          | 236          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/38      | 31          | 237          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/38     | 30          | 238          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/38     | 31          | 239          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 11/30/38    | 29          | 240          | 2,768,308.53                 | 5,278.75                    |                             | -              |
|             |             |              |                              | 1,268,537.50                | 59,412.10                   | 2,768,308.53   |



## EXHIBIT "C"

### PROMISSORY NOTE

#### SECURED BY DEED OF TRUST

\$2,720,000.00

\_\_\_\_\_, 20\_\_

THIS PROMISSORY NOTE (this "Note") is made as of \_\_\_\_\_, 20\_\_, by CORNERSTONE MAIN PARTNERS, L.P., a California limited partnership ("Borrower"), having an address at 17671 Irvine Boulevard, Suite 204, Tustin, CA 92680, to and in favor of CITY OF PORTERVILLE, a municipal corporation, its successors and assigns ("Lender"), having an address at 291 North Main Street, Porterville, CA 93257.

FOR VALUE RECEIVED, Borrower, unconditionally promises to pay to the order of Lender, without any counterclaim, setoff or deduction whatsoever, on the Maturity Date (as hereinafter defined), at the office of Lender, or at such other place as Lender may designate to Borrower in writing from time to time, the principal sum of TWO MILLION SEVEN HUNDRED TWENTY THOUSAND DOLLARS (\$2,720,000.00), together with interest on so much thereof as is from time to time outstanding and unpaid, from the date of the advance of the principal evidenced hereby, payable in lawful money of the United States of America, which shall at the time of payment be legal tender in payment of all debts and dues, public and private, as set forth in Section 1.01 of this Note.

### ARTICLE I

#### TERMS AND CONDITIONS

1.01 Payment of Principal and Interest. Interest shall be computed hereunder based on a 365-day year and paid for the actual number of days elapsed for any whole or partial month in which interest is being calculated. Such principal and interest shall be payable at a compound interest rate of two and four-tenths percent (2.4%) amortized over a 240 month (20 year). Interest-only payments shall be made monthly, with the first payment due on December 1, 2019. A schedule of payments is attached hereto as Exhibit "A." Repayment of the principal (and any remaining unpaid interest) shall be made in full no later than November 30, 2038 at which time the entire outstanding principal balance hereof, together with all accrued but unpaid interest thereon, shall be due and payable in full. Each such installment shall be applied first to the payment of accrued interest and then to reduction of principal.

1.02 Prepayment. This Note may be prepaid at any time without penalty.

1.03 Security. The indebtedness evidenced by this Note and the obligations created hereby are secured by, among other things, (a) that certain Deed of Trust, Security Agreement, and Fixture Filing with Assignment of Rents, (the "Security Instrument"), dated of even date herewith made by Borrower in favor of Lender, encumbering certain property located in Tulare County, California, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, and extensions and modifications thereof, are herein referred to collectively as the "Loan Documents." The whole of the principal sum of this Note, together with all interest accrued and unpaid thereon and all other sums due under the Loan Documents is herein referred to as the "Debt." All of the terms and provisions of the Loan Documents are incorporated herein by reference. Some of the Loan Documents are to be filed for record on or about the date hereof in the appropriate public records.

1.04 Default



## EXHIBIT "C"

(a) It is hereby expressly agreed that should any default occur in the payment of principal or interest as stipulated above and such payment is not made when due, or should any other default occur under any of the Loan Documents which is not cured within any applicable grace or cure period therein, including without limitation, any sale, transfer, conveyance or other violation of the terms of the Security Instrument, then a default shall exist hereunder, and in such event the indebtedness evidenced hereby, including all sums advanced or accrued hereunder or under any other Loan Document, and all unpaid interest accrued thereon, shall, at the option of Lender and without notice to Borrower, at once become due and payable and may be collected forthwith, whether or not there has been a prior demand for payment and regardless of the stipulated date of maturity.

(b) The remedies of Lender in this Note or in the other Loan Documents, or at law or in equity, shall be cumulative and concurrent, and may be pursued singly, successively or together in Lender's discretion. Time is of the essence with respect to all matters concerning or relating to this Note. Borrower agrees to pay on demand all expenses and costs of enforcement, administration and collection incurred or paid, including but not limited to reasonable attorney fees and disbursements of Lender.

**1.05 Exculpation.** Notwithstanding anything in the Loan Documents to the contrary, but subject to the qualifications set forth below, Lender agrees that (i) Borrower shall be liable upon the indebtedness evidenced hereby and for the other obligations arising under the Loan Documents to the full extent (but only to the extent) of the security therefor, the same being all properties (whether real or personal), rights, estates and interests now or at any time hereafter securing the payment of this Note and/or the other obligations of Borrower under the Loan Documents (collectively, the "Security Property"); (ii) if default occurs in the timely and proper payment of all or any part of such indebtedness evidenced hereby or in the timely and proper performance of the other obligations of Borrower under the Loan Documents, any judicial proceedings brought by Lender against Borrower shall be limited to the preservation, enforcement and foreclosure, or any thereof, of the liens, security titles, estates, assignments, rights and security interests now or at any time hereafter securing the payment of this Note and/or the other obligations of Borrower under the Loan Documents, and confirmation of any sale under power of sale, and no attachment, execution or other writ of process shall be sought, issued or levied upon any assets, properties or funds of Borrower or its general or limited partners other than the Security Property except with respect to the liability described below in this section, and (iii) in the event of a foreclosure of such liens, security titles, estates, assignments, rights or security interests securing the payment of this Note and/or the other obligations of Borrower under the Loan Documents, whether by judicial proceedings or exercise of power of sale, no judgment for any deficiency upon the indebtedness evidenced hereby shall be sought or obtained by Lender against Borrower.

**1.06 Cost Reimbursement.** If this Note is not paid when due, or if an event of default occurs, Borrower agrees to pay all costs and expenses (including attorneys' fees) incurred by Lender as a result thereof, including, without limitation, all costs and expenses (including attorneys' fees) incurred in (i) any proceeding for collection of the debt evidenced hereby, (ii) any foreclosure or exercise of the power of sale under the Security Instrument, (iii) protecting or sustaining the lien of the Security Instrument, or (iv) any litigation or Controversy arising from or connected with this Note or the Security Instrument, including any action to protect or enhance Lender's rights in the event 'Borrower becomes subject to a proceeding under applicable bankruptcy law (including filing, or responding to, as appropriate, a motion to obtain relief from the automatic stay under applicable bankruptcy law, to obtain adequate protection and to use cash collateral). The attorneys' fees and other costs which Lender shall be entitled to recover from Borrower shall include all those incurred by Lender.



## EXHIBIT "C"

### ARTICLE II

#### GENERAL CONDITIONS

**2.01 No Waiver; Amendment.** No failure to accelerate the debt evidenced hereby by reason of default hereunder, acceptance of a partial or past due payment, or indulgences granted from time to time shall be construed (i) as a novation of this Note or as a reinstatement of the indebtedness evidenced hereby or as a waiver of such right of acceleration or of the right of Lender thereafter to insist upon strict compliance with the terms of this Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted hereunder or by any applicable laws; and Borrower hereby expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing. No extension of the time for the payment of this Note or any installment due hereunder, made by agreement with any person now or hereafter liable for the payment of this Note shall operate to release; discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part unless Lender agrees otherwise in writing. This Note may not be changed orally, but only by a definitive written agreement signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

**2.02 Waivers.** Presentment for payment, demand, protest and notice of demand, protest and nonpayment and all other notices are hereby waived by Borrower. Borrower hereby further waives and renounces, to the fullest extent permitted by law, all rights to the benefits of any statute of limitations and any moratorium, reinstatement, marshalling, forbearance, valuation, stay, extension, redemption, appraisal, exemption and homestead now or hereafter provided by the Constitution and laws of the United States of America and of each state thereof, both as to itself and in and to all of its property, real and personal, against the enforcement and collection of the obligations evidenced by this Note or the other Loan Documents.

**2.03 Use of Funds.** Borrower hereby warrants, represents and covenants that no funds disbursed hereunder shall be used for purposes not related to the Security Property.

**2.04 Unconditional Payment.** Borrower is and shall be obligated to pay principal, interest and any and all other amounts which become payable hereunder or under the other Loan Documents absolutely and unconditionally and without any abatement, postponement, diminution or deduction and without any reduction for counterclaim or setoff.

**2.05 Further Assurances.** Borrower shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created under this Note and the other Loan Documents, to protect and further the validity, priority and enforceability of this Note and the other Loan Documents, to subject to the Loan Documents any property of Borrower intended by the terms of any one or more of the Loan Documents to be encumbered by the Loan Documents, or otherwise carry out the purposes of the Loan Documents and the transactions contemplated thereunder; provided, however, that no such further actions, assurances and confirmations shall increase, modify or change Borrower's obligations under this Note or under the other Loan Documents.

**2.06 Submission to Jurisdiction.** BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (A) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF CALIFORNIA OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS NOTE, (B) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF



## EXHIBIT "C"

COMPETENT JURISDICTION SITTING IN EITHER THE CITY OR THE COUNTY WHERE THE PROPERTY IS LOCATED, (C) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND (D) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT BORROWER WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM AND BORROWER FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO BORROWER AT THE ADDRESS.FOR NOTICES DESCRIBED ON THE FIRST PAGE HEREOF, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VAUD AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

2.07 Miscellaneous. This Note shall be interpreted, construed and enforced according to the laws of the State of California and the applicable laws of the United States of America. The terms and provisions hereof shall be binding upon and inure to the benefit of Borrower and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title and assigns, whether by voluntary action of the parties or by operation of law. As used herein, the terms "Borrower" and "Lender" shall be deemed to include their respective successors, successors-in-title and assigns, whether by voluntary action of the parties or by operation of law. All personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Titles of articles and sections are for convenience only and in no way define, limit, amplify or describe the scope or intent of any provisions hereof. Capitalized terms used in this Note and not otherwise defined herein shall have the meaning ascribed to them in the Security Instrument or in the other Loan Documents. Time is of the essence with respect to all provisions of this Note, the Security Instrument and the other Loan Documents. This Note and the other Loan Documents contain the entire agreements between the parties hereto relating to the subject matter hereof and thereof and all prior agreements relative hereto and thereto which are not contained herein or therein are terminated.

IN WITNESS WHEREOF, Borrower, intending to be legally bound hereby, has duly executed this Note as of the day and year first written above.

CORNERSTONE MAIN PARTNERS, L.P.

A California Limited Partnership

By: \_\_\_\_\_

David H. Paynter, General Partner



**EXHIBIT "C"**

**WHEN RECORDED, RETURN TO:**

**City of Porterville**  
**291 N. Main St.**  
**Porterville, CA 93257**

**TO BE RECORDED IN THE  
OFFICIAL RECORDS OF  
TULARE COUNTY, CALIFORNIA**

NO FEE PURSUANT TO GOVERNMENT SECTION 27383

---

**DEED OF TRUST, SECURITY AGREEMENT, AND FIXTURE FILING WITH ASSIGNMENT  
OF RENTS**

THIS DEED OF TRUST, SECURITY AGREEMENT, AND FIXTURE FILING WITH ASSIGNMENT OF RENTS (this "Deed of Trust") is made as of \_\_\_\_\_, 2018, by CORNERSTONE MAIN PARTNERS, L.P., A California Limited Partnership ("Trustor"), having an address at 17671 Irvine Boulevard, Suite 204, Tustin, CA 92680, in favor of FIRST AMERICAN TTITLE COMPANY, as Trustee ("Trustee"), whose address is \_\_\_\_\_, for the benefit of CITY OF PORTERVILLE, a municipal corporation ("Beneficiary"), whose address is 291 N. Main Street, Porterville, CA 93257.

**WITNESSETH:**

FOR VALUABLE CONSIDERATION, INCLUDING THE INDEBTEDNESS HEREIN RECITED AND THE TRUST HEREIN CREATED, THE RECEIPT AND SUFFICIENCY OF WHICH ARE HEREBY ACKNOWLEDGED, TRUSTOR HERE IRREVOCABLY GRANTS, BARGAINS, SELLS, CONVEYS, TRANSFERS, PLEDGES, SETS OVER AND ASSIGNS, AND GRANTS A SECURITY INTEREST, TO AND IN FAVOR OF TRUSTEE FOR THE BENEFIT OF BENEIFICARY, ITS SUCCESSORS AND ASSIGNS, WITH POWER OF SALE, in all of Trustor's estate, right, title and interest in, to and under any and all of the following described property, whether now owned or hereafter acquired (collectively, the "Property"):

A) All that certain real property ("Land") located in Tulare County, California and more particularly described in attached Exhibit A, incorporated by reference (Trustor agrees that any greater title to the Land later acquired during the term of this Deed of Trust will be subject to this Deed of Trust); together with all of the easements, rights, privileges, franchises, tenements, hereditaments and appurtenances now or hereafter thereunto belonging or in any way appertaining and all the estate, right, title, interest, claims and demand whatsoever of Trustor therein or thereto, either at law or in equity, in possession or in expectancy, now or hereafter acquired;

B) All structures, buildings, and improvements of every kind and description now of at any time hereafter located, or placed on the Land (the "Improvements");

C) All easements, rights-of-way, streets, alleys, passages, sewer rights, and other emblements now or hereafter located on the Land or under or above the same or any part or parcel thereof, and all estates, rights, titles, interest, tenements, hereditaments, and appurtenances, reversions or remainders whatsoever, in any way belonging relating or appertaining to the Property or any part thereof,



## EXHIBIT "C"

or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Trustor;

D) all furniture, furnishings, fixtures, goods, equipment, inventory or personal property owned by Trustor and now or hereafter located on, attached to or used in or about the Improvements, including, but not limited to, all machines, engines, boilers, dynamos, elevators, stokers, tanks, cabinets, awnings, screens, shades, blinds, carpets, draperies, lawn mowers, and all appliances, plumbing, heating, air conditioning, lighting, ventilating, refrigerating, disposal and incinerating equipment, and all fixtures and appurtenances thereto, and such other goods and chattels and personal property owned by Trustor as are now or hereafter used or furnished in operating the Improvements, or the activities conducted therein, and all building materials and equipment hereafter situate on or about the Land or Improvements, and all warranties and guaranties relating thereto, and all additions thereto and substitutions and replacements therefor (exclusive of any of the foregoing owned or leased by tenants of space in the Improvements);

E) All water, water courses, ditches, wells, reservoirs and drains and all water, ditch, well, reservoir and drainage rights and powers which are appurtenant to, located on, under or above or used in connection with the Land or the Improvements, or any part thereof, together with (i) all utilities, utility lines, utility commitments, utility capacity, in connection with the same, (ii) reimbursements or other rights pertaining to utility or utility services provided to the Land and/or Improvements and (iii) the present or future use or availability of waste water capacity, or other utility facilities to the extent the same pertain to or benefit the Land and/or Improvements, including, without limitation, all reservations of or commitments or letters covering any such use in the future, whether now existing or hereafter created or acquired;

F) All minerals, crops, timber, trees, shrubs, flower and landscaping features now or hereafter located on, under or above the Land;

G) All leases, licenses, tenancies, concessions and occupancy agreements of the Land or the Improvements now or hereafter entered into and all rents, royalties, issues, profits, revenue, income, accounts receivable and other benefits (collectively, the "Rents" or "Rents and Profits") of the Land, Improvements, or the fixtures or equipment, now or hereafter arising from the use or enjoyment of all or any portion thereof or from and lease, license, tenancy, concession, occupancy agreement or other agreement pertaining hereto or arising from any of the Contracts (as hereafter defined) or any of the General Intangibles (as hereinafter defined) and all cash or securities (the "Security Deposits") that secure performance by the tenants, lessees or licensees, as applicable, of their obligations under any such leases, licenses, concessions or occupancy agreements, or which may be available to Trustor or its designee to effect repairs or maintenance, whether said cash or securities are to be held until the expiration of the terms of said leases, licenses, concessions or occupancy agreements or applied to one or more of the installments of rent coming due prior to the expiration of said terms, subject to, however the provisions contained in this Deed of Trust;

H) All contracts and agreements now or hereafter entered into covering any part of the Land or the Improvements (collectively the "contracts") and all revenue, income and other benefits thereof, including, without limitation, management agreements, service contracts, maintenance contracts, equipment leases, personal property leases and any contracts or documents, relating to construction on any part of the Land or the Improvements (including plans, specifications, studies, drawings, surveys, tests, operating and other reports, bonds and governmental approvals) or to the management or operation of any part of the Land or the Improvements;



## EXHIBIT "C"

I) All water taps, sewer taps, certificates of occupancy, permits, special permits, uses, licenses, franchises, certificates, consents, approvals and other rights and privileges now or hereafter obtained in connection with the Land or the Improvements and all present and future warranties and guaranties relating to the Improvements or to any equipment, fixtures, furniture, furnishings, personal property or components of any of the foregoing now or hereafter located or installed on the Land or the Improvements;

J) All building materials, supplies, and equipment now or hereafter placed on the Land or in the Improvements and all architectural renderings, models, drawings, plans, specification, studies and data now or hereafter relating to the Land or the Improvements;

K) All right, title and interest of Trustor in any insurance policies or binders now or hereafter relating to the Property (whether or not such insurance was requested or required by the Beneficiary) including any unearned premiums thereon; and

L) All proceeds, products, substitutions and accessions (including claims and demands therefor) of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance (whether or not such insurance was requested or required by Beneficiary) and condemnation awards;

### FOR THE PURPOSE OF SECURING:

1) Payment of the indebtedness evidenced by a note of Trustor of the same date as this Deed of Trust in the principal amount of \$2,720,000.00 ("Note"), payable to Beneficiary or to order, and all extensions, modifications, amendments, restatements, consolidations, substitutions, replacements, or renewals of that Note, together with interest as thereon provided;

2) Performance of every provision, agreement, covenant, and obligation in this Deed of Trust, the Note, the Loan Agreement, any instrument now or later evidencing or securing any indebtedness secured by this Deed of Trust, and any agreements, supplemental agreements, or other instruments of security executed by Trustor dated the same date as this Deed of Trust or at any time subsequent to the date of this Deed of Trust for the purpose of further securing any indebtedness secured by this Deed of Trust, or any part of it, or for the purpose of supplementing or amending this Deed of Trust or any instrument secured by this Deed of Trust;

3) Any and all future or additional advances (whether or not obligatory) made by Beneficiary to protect or preserve the Property, or the lien or security interest created hereby on the Property, or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of Trustor's obligations hereunder or under the other Loan Documents or for any other purpose provided herein or in the other Loan Documents (whether or not the original Trustor remains the owner of the Property at the time of such advances), together with interest thereon; and

4) Any and all other indebtedness now owing or which may hereafter be owing by Trustor to Beneficiary, however and whenever incurred or evidenced, whether express or implied, direct or indirect, absolute or contingent, or due or to become due, and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements and extensions thereof. (All of the sums referred to in Paragraphs 1 through 3 above are herein sometimes referred to as the "secured indebtedness" or the "indebtedness secured hereby").

## EXHIBIT "C"

TO HAVE AND TO HOLD the Property unto Trustee, its successors and assigns forever, and Trustor does hereby bind itself, its successors and assigns, to DEFEND the title to the Property unto Trustee against every person whomsoever lawfully claiming or to claim the same or any part thereof for the purposes and uses herein set forth;

PROVDDED HOWEVER, that if the principal and interest and all other sums due or to become due under the Note shall have been paid at the time and in the manner stipulated therein and all other sums payable hereunder and all other indebtedness secured hereby shall have been paid, the, upon written request of Beneficiary stating all sums secure hereby have been paid, and upon surrender of this Deed of Trust and the Note to Trustee for cancellation and retention and upon payment by Trustor or Trustee's fees, Trustee shall reconvey to Trustor, or the person or persons legally entitled thereto, without warranty, any portion of the Property then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in any reconveyance may be described as the "the person or persons legally entitled thereto."

### Article 1 COVENANTS OF TRUSTOR

For the purpose of further securing the indebtedness secured hereby and for the protection of the security of this Deed of Trust, for so long as the indebtedness secured hereby or any part thereof remains unpaid, Trustor represents, covenants, and agrees as follows:

#### Section 1.1. Title.

Trustor warrants that:

- (a) Trustor is the lawful owner of and has fee simple title to the Property,
- (b) Trustor will maintain and preserve the lien of this Deed of Trust until the Indebtedness has been paid in full,
- (c) Trustor has good, right, and lawful authority to grant the Property as provided in this Deed of Trust, and
- (d) Trustor will forever warrant and defend the grant made in this Deed of Trust against all claims and demands, except as are specifically set forth in this Deed of Trust.

#### Section 1.2. Loan Agreement.

All representations and warranties set forth in the Loan Agreement are true and correct.

**Section 1.3 Organization and Existence.** Trustor is duly organized and validly existing as a limited partnership in good standing under the laws of California and in all other jurisdictions in which Trustor is transacting business.

**Section 1.4 Authorization.** Trustor has the power and the authority to execute, deliver and perform the obligations imposed on it under the Loan Documents and to consummate the transactions contemplated by the Loan Documents and has taken all necessary actions in furtherance thereof including, without limitation, that those partners, shareholders or members or Trustor whose approval or consent is required by the terms of Trustor's organizational documents have authorized execution and delivery thereof by the respective signatories. To the best of Trustor's knowledge, no other consent by any local, state or federal agency is required in connection with the execution and delivery of the Loan Documents.



## EXHIBIT "C"

**Section 1.5 Valid Execution and Delivery.** All of the Loan Documents requiring execution by Trustor have been duly and validly executed and delivered by Trustor.

**Section 1.6 Enforceability.** All of the Loan Documents constitute valid, legal, and binding obligations of Trustor and are fully enforceable against Trustor in accordance with their terms, subject only to any right of rescission, set-off, counterclaim or defense, including the defense of usury. The Note, this Deed of Trust and the other Loan Documents are not subject to any right of rescission, set-off, counterclaim or defense, now would the operation of any of the terms of the Note, this Deed of Trust or any of the other Loan Documents, or the exercises of any right thereunder, render this Deed of Trust unenforceable, in whole or in part, or subject to any right of rescission, set-off, counterclaim or defense, including the defense of usury. Trustor knows of no facts that would support a claim of usury to defeat or avoid its obligation to repay the principal of, interest on, and other sums or amounts due and payable under, the Loan Documents.

**Section 1.7 No Conflict/Violation of Law.** The execution, delivery and performance of the Loan Documents by the Trustor will not cause or constitute a default under or conflict with the organizational documents of Trustor, any indemnitor or any general partner, shareholder or managing member of Trustor or any indemnitor. The execution, delivery, and performance of the obligations imposed on the Trustor under the Loan Documents will not cause Trustor to be in default, including after due notice or lapse of time or both, under the provisions of any agreement, judgment or order to which Trustor is a party or by which Trustor is bound.

**Section 1.8 No Litigation.** There are no pending actions, suits or proceedings, arbitrations or governmental investigations against the Property, Trustor or any guarantor of Trustor and adverse outcome of which would materially affect (i) the Trustor's performance under the Note, the Deed of Trust or other Loan Documents, (ii) the Property or (iii) the ability of the Property to continue to generate income, or continue in operation, in a manner consistent with current operations.

**Section 1.9 Permitted Exceptions.** The Permitted Exceptions do not and will not materially and adversely affect i) the ability of the Trustor to pay in full the principal and interest on the Note in a timely manner or ii) the use of the Property for the use currently being made thereof, the operation of the Property as currently being operated or the value of the Property.

**Section 1.10 First Lien.** Upon execution by the Trustor and the recording of this Deed of Trust, and upon the execution and filing of UCC-1 financing statements or amendments thereto, the Beneficiary will have a valid first lien on the Property and a valid security interest in all personal property encumbered hereby, subject to no liens, charges or encumbrances other than the Permitted Exceptions. Pursuant to the Loan Agreement, Section I. C., this Deed of Trust shall be subordinate to Borrower's primary construction loan, permanent loan and any refinancing ("Primary Loan") during the term of this Deed of Trust as may be necessary to obtain financing for development, construction of Improvements and placement of permanent financing to the Property.

**Section 1.11 Contingent Liabilities.** The Trustor has no know material contingent liabilities.

**Section 1.12 No Other Obligations.** The Trustor has no material financial obligation under any indenture, mortgage, deed of trust, loan agreement or other agreement or instrument to which the Trustor is a party or by which the Trustor or the Property is otherwise bound, other than obligations incurred in the ordinary course of the operation of the Property and other than obligations under this Deed of Trust, the Note and the other Loan Documents.



## EXHIBIT "C"

**Section 1.13 Fraudulent Conveyance.** The Trust i) has not entered into the Loan or any Loan Document with the actual intent to hinder, delay, or defraud any creditor and ii) received reasonably equivalent value in exchange for its obligations under the Loan Documents. The Trustor does not intend to, and does not believe that it will, incur debts and liabilities (including, without limitation, contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of the Trustor).

**Section 1.14 Access/Utilities.** The Property has adequate rights of access to public ways and is served by adequate water, sewer, electric, gas, telephone, and cable (where appropriate), sanitary sewer and storm drain facilities. All public utilities necessary to the continued use and enjoyment of the Property, and all such utilities are connected so as to serve the Property without passing over other property. All roads, and access to such roads, necessary for the full utilization of the Property for its current purpose have been completed and dedicated to public use and accepted by all governmental authorities or are the subject of access easements for the benefit of the Property without any further condition or cost to Trustor or Tenants.

**Section 1.15 Taxes Paid.** Trustor has filed all federal, state, county and municipal tax returns required to have been filed by Trustor or with respect to the Property, and has paid all taxes which have become due pursuant to such returns or to any notice of assessment with respect to such taxes. Further, the Property is free from delinquent water charges, sewer rents, taxes and assessments.

**Section 1.16 Special Assessments.** Except has disclosed in the title insurance policy, there are no pending or, to the knowledge of the Trustor, proposed special or other assessments for public improvements or otherwise affecting the Property, nor, to the knowledge of the Trustor, are there any contemplated improvements to the Property that may result in such special assessments.

**Section 1.17 Flood Zone.** The Property is not located in a flood hazard areas as defined by the Federal Insurance Administration.

**Section 1.18 Seismic Exposure.** The Land is not located in Zone 3 or Zone 4 of the "Seismic Zone Map of the U.S."

**Section 1.19 No Insolvency or Judgment.** Neither Trustor, any general partner or member of Trustor, any guarantor of the Loan is currently i) the subject of or a party to any completed or pending bankruptcy, reorganization, or insolvency proceeding; or ii) the subject of any unsatisfied judgment of record or docketed in any court of the state in which the Property is located or in any other court located in the United States. The proposed Loan will not render the Trustor nor any general or limited partner or member of Trustor insolvent. As used in this Certificate, the term "insolvent" means that the sum total of all of an entity's liabilities (whether secured or unsecured, contingent or fixed, or liquidated or unliquidated) is in excess of the value of all such entity's non-exempt assets, i.e. all of the assets of the entity that are available to satisfy claims of creditors.

**Section 1.20 No Condemnation.** No part of any property subject to the Deed of Trust has been taken in condemnation or other like proceeding to an extent which would impair the value of the Property, the Deed of Trust or the Loan or the usefulness of such property for the purposes contemplated by the loan application relating to the Loan (the "Loan Application"), nor is any proceeding pending, threatened or known to be contemplated for the partial or total condemnation or taking of the Property.



## EXHIBIT "C"

**Section 1.21 No Labor or Materialmen Claims.** All parties furnishing labor and materials have been paid in full, and except for such liens or claims insured against by the policy of title insurance to be issued in connection with the Loan, there are no mechanics', laborers' or materialmen's liens or claims outstanding for work, labor or materials affecting the Property, whether prior to, equal with or subordinate to the lien of the Deed of Trust.

**Section 1.22 No Purchase Options.** Except as otherwise set forth in the Loan or Purchase Documents or a lease by and between Borrower and the County of Tulare, no tenant, person, firm, corporation or other entity has an option to purchase the Property, any portion thereof or any interest therein.

**Section 1.23 Leases.** The Property is not subject to any leases, subleases, licenses, concessions, or other agreements related to the leasing or renting of the Property or any portion thereof, except as Trustor has previously notified Beneficiary. No person has any possessory interest in the Property or right to occupy the same, except pursuant to the Leases. As of the date hereof, i) the Trustor is the owner and holder of the landlord's interest under the Leases; ii) there are no prior assignments of all or any portion of the Leases or any portion of the Rents and Profits which are presently outstanding and have priority over the assignment of lease and rent contained herein given by Trustor to Beneficiary; iii) all Rents due and payable under each Lease have been paid in full and no said Rents have been paid more than one month in advance of the due dates thereof, and iv) there are no offsets or defenses to the payment of any portion of the Rents. The representations set forth in the Paragraph are in addition to those set forth in this Deed of Trust.

**Section 1.24 Boundary Lines.** All of the Improvements which were included in determining the appraised value of the Property lie wholly within the boundaries and building restriction lines of the Property, and no improvements on adjoining property encroach upon the Property, and no easements or other encumbrances upon the Land encroach upon any of the Improvements, so as to affect the value or marketability of the Property except those which are insured against by title insurance.

**Section 1.25 Survey.** The survey of the Property delivered to Beneficiary in connection with this Deed of Trust, has been performed by a duly licensed surveyor or registered professional engineer in the jurisdiction in which the Property is stated, is certified to the Beneficiary, its successors and assigns, and the title insurance company, and is in accordance with the most current minimum standards for title surveys as determined by the American Land Title Association, with a signature and seal of a licensed engineer or surveyor affixed thereto, and does not fail to reflect any material matter affecting the Property or the title thereto.

**Section 1.26 Use of Rents and Profits.** All Rents and Profits generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to Trustor's liabilities and obligations with respect to this Deed of Trust and the other Loan Documents, and none of the Rents and Profits generated by or derived from the Property shall be diverted by Trustor and utilized for any other purposes unless all such current expenses attributable to the ownership and operation of the Property have been fully paid and satisfied. Any license agreements which generate income with respect to the Property, including cable licenses or similar arrangements, are not prepaid and the benefits thereof have been assigned for the benefit of Beneficiary.

**Section 1.27 No Broker.** No financial advisors, brokers, underwriters, placement agents, agents or finders have been dealt with by the Trustor in connection with the Loan, except for any broker whose full



## EXHIBIT "C"

commission was paid out of the proceeds of the Loan and is set forth in the written instructions from Trustor to Beneficiary regarding disbursement of the proceeds of the Loan.

Section 1.28 **Work.** [Omitted.]

Section 1.29 **Security Agreements.** There are no security agreements or financing statements affecting any of the Property other than (i) as disclosed in writing by Trustor to Beneficiary prior to the date hereof and (ii) the security agreements and financing statements created in favor of Beneficiary.

Section 1.30 **Homestead.** The Property forms no part of any property owned, used or claimed by Trustor as a residence or business homestead and is not exempt from forced sale under the laws of the State in which the Real Estate is located. Trustor hereby disclaims and renounces each and every claim to all or any portion of the Property as a homestead.

Section 1.31 **Contracts.** Trustor will comply with all of its obligations under all Contracts which are material to the operation of the Property in accordance with Trustor's current practice, and with all material obligations under all other Contracts.

Section 1.32 **Defense of Title.** If, while this Deed of Trust is in force, the title to the Property or the interest of Beneficiary therein shall be the subject, directly or indirectly, of any action at law or in equity, or be attacked directly or indirectly, or endangered, clouded or adversely affected in any manner, Trustor, at Trustor's expense, shall take all necessary and proper steps for the defense of said title or interest, including the employment of counsel reasonably approved by Beneficiary, the prosecution or defense of litigation, and the compromise or discharge of claims made against said title or interest. Notwithstanding the foregoing, in the event that Beneficiary reasonably determines that Trustor is not adequately performing its obligations under this Section, Beneficiary may, without limiting or waiving any other rights or remedies of Beneficiary hereunder, take such steps with respect thereto as Beneficiary shall deem necessary or proper; any and all costs and expenses incurred by Beneficiary in connection therewith, together with interest thereon from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

Section 1.33 **Performance of Obligations.** Trustor shall pay when due the principal of and the interest on the indebtedness secured hereby including all charges, fees and other sums required to be paid by Trustor as provided in the Loan Documents, and shall observe, perform and discharge all obligations, and conditions, and comply with all prohibitions, covenants and agreements to be observed, performed or discharged by Trustor set forth in the Loan Documents in accordance with their terms. In the event that Beneficiary determines that Trustor is not adequately performing any of its obligations under this Deed of Trust or under any of the other Loan Documents, Beneficiary may, without limiting or waiving any other rights or remedies of Beneficiary hereunder, take such steps with respect thereto as Beneficiary shall deem necessary or proper, and any and all costs and expenses reasonably incurred by Beneficiary in connection therewith, together with interest thereon from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.



## EXHIBIT "C"

Section 1.34 **Insurance.** Trustor shall, at Trustor's expense, maintain in force and effect on the Property at all times while this Deed of Trust continues in effect the following insurance:

i) Insurance against loss or damage to the Property by fire, windstorm, tornado and hail and against loss and damage by such other, further and additional risks as may be now or hereafter embraced by an "all-risk" form of insurance policy. The amount of such insurance shall be not less than one ) hundred percent ( 100%) of the full replacement (insurable) cost of the Improvements, furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Property and owned by Trustor from time to time, without reduction for depreciation. The determination of the replacement cost amount shall be adjusted annually to comply with the requirements of the insurer issuing such coverage or, at Beneficiary's election, by reference to such indices, appraisals or information as Beneficiary determines in its reasonable discretion. Full replacement cost, as used herein, means, with respect to the Improvements, the cost of replacing the Improvements without regard to deduction for depreciation, exclusive of the cost of excavations, foundations and footings below the lowest basement floor, and means, with respect to such furniture, furnishings, fixtures, equipment and other items, the cost of replacing the same, in each case, with inflation guard coverage to reflect the effect of inflation, or annual valuation. Each policy or policies shall contain a replacement cost endorsement and either an agreed amount endorsement (to avoid the operation of any co- insurance provisions) or a waiver of any co-insurance provisions, all subject to Beneficiary's approval.

ii) Comprehensive Commercial General Liability Insurance for personal injury, bodily injury, death and property damage liability in amounts not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate (both inclusive of umbrella coverage). During any construction on the Property, each contractor having a contract for construction in an amount equal to or greater than \$100,000 shall also provide the insurance required in this Subsection (b), except that the minimum required coverages shall be \$1,000,000 per occurrence and \$2,000,000 in the aggregate (both inclusive of umbrella coverage). Beneficiary hereby retains the right to periodically review the amount of said liability insurance being maintained by Trustor and to require an increase in the amount of said liability insurance should Beneficiary deem an increase to be reasonably prudent under the existing circumstances.

iii) If the Property or any part thereof is identified by the Secretary of Housing and Urban Development as being situated in an area now or subsequently designated as having special flood hazards (including, without limitation, those areas designated as Zone A or Zone V), flood insurance in an amount equal to the lesser of: (i) the minimum amount required, under the terms of coverage, to compensate for any damage or loss on a replacement basis (or the unpaid balance of the indebtedness secured hereby if replacement cost coverage is not available for the type of building insured); or (ii) the maximum insurance available under the appropriate National Flood Insurance Administration program.

iv) During the period of any construction on the Property or renovation or alteration of the Improvements, a so-called "Builder's All-Risk Completed Value" or "Course of Construction" insurance policy in non-reporting form for any Improvements under construction, renovation or alteration in an amount approved by Beneficiary and Worker's Compensation Insurance covering all persons engaged in such construction, renovation or alteration.



## EXHIBIT "C"

v) Loss of rents or loss of business income insurance in amounts sufficient to compensate Trustor for all Rents and Profits during a period of not less than twelve (12) months in which the Property may be damaged or destroyed. The amount of coverage shall be adjusted annually to reflect the Rents and Profits or income payable during the succeeding twelve (12) month period.

vi) Such other insurance on the Property or on any replacements or substitutions thereof or additions thereto as may from time to time be required by Beneficiary against other insurable hazards or casualties which at the time are commonly insured against in the case of property similarly situated including, without limitation, Sinkhole, Mine Subsidence, Earthquake and Environmental insurance, due regard being given to the height and type of buildings, their construction, location, use and occupancy.

All such insurance shall (a) be with insurers authorized to do business in the state within which the Property is located and who have and maintain a rating of at least "A" (or its equivalent) from Standard & Poors or any other nationally recognized statistical agency selected by Beneficiary, or at Beneficiary's election, a Best Rating of A-VIII or better (b) contain the complete address of the Property (or a complete legal description), (c) be for terms of at least one year, (d) contain deductibles which do not exceed \$10,000.00 or, with respect to the policy described above \$3,000, and (e) be subject to the approval of Beneficiary as to insurance companies, amounts, content, forms of policies, method by which premiums are paid and expiration dates. The all risk insurance and loss of rents or business income insurance policies required under subsections (i) and (vi) above, respectively, shall be required to cover perils of terrorism and acts of terrorism.

Trustor shall as of the date hereof deliver to Beneficiary evidence that said insurance policies have been paid current as of the date hereof and copies of such insurance policies and certificates of insurance signed by an authorized agent of the applicable insurance companies evidencing such insurance satisfactory to Beneficiary. Trustor shall renew all such insurance and deliver to Beneficiary certificates evidencing such renewals at least thirty (30) days before any such insurance shall expire. Without limiting the required endorsements to the insurance policies, Trustor further agrees that all such policies shall include a standard, non-contributory, mortgagee clause naming Trustee and Beneficiary: (a) as an additional insured under all liability insurance policies, (b) as the first mortgagee on all property insurance policies and (c) as the loss payee on all loss of rents or loss of business income insurance policies. Trustor further agrees that all such insurance policies: (1) shall provide for at least thirty (30) days' prior written notice to Beneficiary prior to any cancellation or termination thereof and prior to any modification thereof which affects the interest of Beneficiary; (2) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Beneficiary in accordance with the terms of such policy notwithstanding any act or negligence of Trustor which might otherwise result in forfeiture of such insurance; (3) shall waive all rights of subrogation against Beneficiary; and (4) in the event that the Real Estate or the Improvements constitutes a legal non-conforming use under applicable building, zoning or land use laws or ordinances, shall include an ordinance or law coverage endorsement which will contain Coverage A: "Loss Due to Operation of Law" (with a minimum liability limit equal to Replacement Cost With Agreed Value Endorsement), Coverage B: "Demolition Cost" and Coverage C: "Increased Cost of Construction" coverages. Beneficiary agrees that such insurance policies may be in the form of a blanket policy provided that, in the event that any such coverage is provided in the form of a blanket policy, Trustor hereby acknowledges and agrees that failure to pay any portion of the premium therefor which is not allocable to the Property



## EXHIBIT "C"

or by any other action not relating to the Property which would otherwise permit the issuer thereof to cancel the coverage thereof, would require the Property to be insured by a separate, single-property policy. The blanket policy must properly identify and fully protect the Property as if a separate policy were issued for 100% of Replacement Cost at the time of loss and otherwise meet all of Beneficiary's applicable insurance requirements set forth in this Section. The delivery to Beneficiary of the insurance policies or the certificates of insurance as provided above shall constitute an assignment of all proceeds payable under such insurance policies relating to the Property by Trustor to Beneficiary as further security for the indebtedness secured hereby. In the event of foreclosure of this Deed of Trust, or other transfer of title to the Property in extinguishment in whole or in part of the secured indebtedness, all right, title and interest of Trustor in and to all proceeds payable under such policies then in force concerning the Property shall thereupon vest in the purchaser at such foreclosure, or in Beneficiary or other transferee in the event of such other transfer of title. Approval of any insurance by Beneficiary shall not be a representation of the solvency of any insurer or the sufficiency of any amount of insurance. In the event Trustor fails to provide, maintain, keep in force or deliver and furnish to Beneficiary the policies of insurance required by this Deed of Trust or evidence of their renewal as required herein, Beneficiary may, but shall not be obligated to, procure such insurance and Trustor shall pay all amounts advanced by Beneficiary therefor, together with interest thereon from and after the date advanced by Beneficiary until actually repaid by Trustor, promptly upon demand by Beneficiary. Any amounts so advanced by Beneficiary, together with interest thereon, shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness secured hereby. Beneficiary shall not be responsible for nor incur any liability for the insolvency of the insurer or other failure of the insurer to perform, even though Beneficiary has caused the insurance to be placed with the insurer after failure of Trustor to furnish such insurance. Trustor shall not obtain insurance for the Property in addition to that required by Beneficiary without the prior written consent of Beneficiary, which consent will not be unreasonably withheld provided that (i) Beneficiary is a named insured on such insurance, (ii) Beneficiary receives complete copies of all policies evidencing such insurance, and (iii) such insurance and the related insurer comply with all of the applicable requirements set forth herein.

Provided, however, notwithstanding any other provision hereof, if the Property is in possession of a person pursuant to a written lease ("Lessee") and the Lessee is a self-insured governmental entity or obtains and maintains policies of insurance from insurers who meet the criteria set forth in this Section 1.4, insuring risks provided in this Section 1.4, with coverage and benefits as set forth herein, and Trustor provides Beneficiary evidence of such insurance, Trustor shall be deemed to satisfy its obligations under this Deed of Trust with respect to insurance. Any insurance provided by the Lessee shall be primary as to the lease premises, and any insurance provided by Trustor shall be contributory.

**Section 1.35 Payment of Taxes.** Trustor shall pay or cause to be paid all taxes and assessments which are or may become a lien on the Property or which are assessed against or imposed upon the Property. Notwithstanding the foregoing, Trustor may in good faith, by appropriate proceedings and upon notice to Beneficiary, contest the validity, applicability or amount of any asserted tax or assessment so long as (a) such contest is diligently pursued, (b) Beneficiary determines, in its subjective opinion, that such contest suspends the obligation to pay the tax or assessment and that nonpayment of such tax or assessment will not result in the sale, loss, forfeiture or diminution of the Property or any part thereof or any interest of Beneficiary therein, and (c) prior to the earlier of the commencement of such contest or the delinquency date of the asserted tax or assessment, Trustor deposits in the Impound Account (as hereinafter defined) an amount determined by Beneficiary to be adequate to cover the payment of such tax or assessment and a reasonable additional sum to cover possible interest, costs and



## EXHIBIT "C"

penalties; provided, however, that Trustor shall promptly cause to be paid any amount adjudged by a court of competent jurisdiction to be due, with all interest, costs and penalties thereon, promptly after such judgment becomes final; and provided further that in any event each such contest shall be concluded and the taxes, assessments, interest, costs and penalties shall be paid prior to the date any writ or order is issued under which the Property may be sold, lost or forfeited.

**Section 1.36 Casualty and Condemnation.** Trustor shall give Beneficiary prompt written notice of the occurrence of any casualty affecting, or the institution of any proceedings for eminent domain or for the condemnation of, the Property or any portion thereof (collectively, an "Insured Event"). All insurance proceeds on the Property, and all causes of action, claims, compensation, awards and recoveries for any damage, condemnation or taking of all or any part of the Property or for any damage or injury to it for any loss or diminution in value of the Property, are hereby assigned to and shall be paid to Beneficiary. Beneficiary may participate in any suits or proceedings relating to any such proceeds, causes of action, claims, compensation, awards or recoveries and Beneficiary is hereby authorized, in its own name or in Trustor's name, to adjust any loss covered by insurance or any condemnation claim or cause of action, and to settle or compromise any claim or cause of action in connection therewith, and Trustor shall from time to time deliver to Beneficiary any instruments required to permit such participation. Any reduction in the indebtedness secured hereby resulting from Beneficiary's application of any sums received by it hereunder shall take effect only when Beneficiary actually receives such sums and elects to apply such sums to the indebtedness secured hereby and, in any event, the unpaid portion of the indebtedness secured hereby shall remain in full force and effect and Trustor shall not be excused in the payment thereof. Partial payments received by Beneficiary, as described in the preceding sentence, shall be applied as set forth in the Note. If Trustor undertakes to restore or repair the Property after the occurrence of a casualty or partial taking of the Property, Trustor shall promptly and diligently, at Trustor's sole cost and expense and regardless of whether the insurance proceeds or condemnation award, as appropriate, shall be sufficient for the purpose, restore, repair, replace and rebuild the Property as nearly as possible to its value, condition and character immediately prior to such casualty or partial taking in accordance with the foregoing provisions. Trustor agrees to execute and deliver from time to time such further instruments as may be requested by Beneficiary to confirm the foregoing assignment to Beneficiary of any award, damage, insurance proceeds, payment or other compensation.

**Section 1.37 Mechanics' Liens.** Trustor shall pay when due all claims and demands of mechanics, materialmen, laborers and others for any work performed or materials delivered for the Real Estate or the Improvements; provided, however, that Trustor shall have the right to contest in good faith any such claim or demand, so long as it does so diligently, by appropriate proceedings and without prejudice to Beneficiary and provided that neither the Property nor any interest therein would be in any danger of sale, loss or forfeiture as a result of such proceeding or contest. In the event Trustor shall contest any such claim or demand, Trustor shall promptly notify Beneficiary of such contest and thereafter shall, upon Beneficiary's request, promptly provide a bond, cash deposit or other security satisfactory to Beneficiary to protect Beneficiary's interest and security should the contest be unsuccessful. If Trustor shall fail to immediately discharge or provide security against any such claim or demand as aforesaid, Beneficiary may do so and any and all expenses incurred by Beneficiary, together with interest thereon at the Default Interest Rate from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.



## EXHIBIT "C"

**Section 1.38 Assignment of Leases and Rents.** As additional and collateral security for the payment of the indebtedness secured hereby and cumulative of any and all rights and remedies herein provided for, Trustor hereby absolutely and presently assigns to Beneficiary all existing and future Leases, and all existing and future Rents and Profits. Trustor hereby grants to Beneficiary the sole, exclusive and immediate right, without taking possession of the Property, to demand, collect (by suit or otherwise), receive and give valid and sufficient receipts for any and all of said Rents and Profits, for which purpose Trustor does hereby irrevocably make, constitute and appoint Beneficiary its attorney-in-fact with full power to appoint substitutes or a trustee to accomplish such purpose (which power of attorney shall be irrevocable so long as any indebtedness secured hereby is outstanding, shall be deemed to be coupled with an interest, shall survive the voluntary or involuntary dissolution of Trustor and shall not be affected by any disability or incapacity suffered by Trustor subsequent to the date hereof). Beneficiary shall be without liability for any loss which may arise from a failure or inability to collect Rents and Profits, proceeds or other payments. However, until the occurrence of an Event of Default under this Deed of Trust, Trustor shall have a license to collect and receive the Rents and Profits when due and prepayments thereof for not more than one month prior to due date thereof. Upon the occurrence of an Event of Default, Trustor's license shall automatically terminate without notice to Trustor and Beneficiary may thereafter, without taking possession of the Property, collect the Rents and Profits itself or by an agent or receiver. From and after the termination of such license, Trustor shall be the agent of Beneficiary in collection of the Rents and Profits and all of the Rents and Profits so collected by Trustor shall be held in trust by Trustor for the sole and exclusive benefit of Beneficiary and Trustor shall, within one (1) business day after receipt of any Rents and Profits, pay the same to Beneficiary to be applied by Beneficiary as hereinafter set forth. Neither the demand for or collection of Rents and Profits by Beneficiary, nor the exercise of Beneficiary's rights as assignee of the Leases, shall constitute any assumption by Beneficiary of any obligations under any Lease or other agreement relating thereto. Beneficiary is obligated to account only for such Rents and Profits as are actually collected or received by Beneficiary. Trustor irrevocably agrees and consents that the respective payors of the Rents and Profits shall, upon demand and notice from Beneficiary of an Event of Default hereunder, pay said Rents and Profits to Beneficiary without liability to determine the actual existence of any Event of Default claimed by Beneficiary. Trustor hereby waives any right, claim or demand which Trustor may now or hereafter have against any such payor by reason of such payment of Rents and Profits to Beneficiary, and any such payment shall discharge such payor's obligation to make such payment to Trustor. All Rents and Profits collected or received by Beneficiary shall be applied against all expenses of collection, including, without limitation, attorneys' fees, against costs of operation and management of the Property and against the indebtedness secured hereby, in whatever order or priority as to any of the items so mentioned as Beneficiary directs in its sole subjective discretion and without regard to the adequacy of its security. Neither the exercise by Beneficiary of any rights under this Section nor the application of any Rents and Profits to the secured indebtedness shall cure or be deemed a waiver of any Default or Event of Default hereunder. The assignment of Leases and of Rents and Profits hereinabove granted shall continue in full force and effect during any period of foreclosure or redemption with respect to the Property.

### **Section 1.39 Leases and Licenses.**

(i) **Lease Requirements.** Each Lease executed after the date hereof affecting any of the Real Estate or the Improvements must provide that (a) such Lease is subject and subordinate to this Deed of Trust, and (b) the Tenant will attorn to, and recognize as its landlord, lessor or licensor, any person succeeding to the interest of Trustor in such Lease upon any foreclosure of this Deed of Trust or deed in lieu of foreclosure. Each such Lease shall also provide that, upon request of said successor-in-interest, the Tenant shall execute and deliver an instrument or instruments confirming its attornment as



## EXHIBIT "C"

provided for in this Section. With the exception of a lease between Borrower and the County of Tulare, no Lease shall contain any option or right of first refusal to purchase all or any portion of the Property. No Lease shall contain any right to terminate the term thereof (except in the event of the destruction of all or substantially all of the Property).

(ii) Covenants Regarding Leases. Trustor shall at all times promptly and faithfully perform, or cause to be performed, all of the covenants, conditions and agreements contained in all Leases, now or hereafter existing, on the part of the landlord, lessor or licensor thereunder to be kept and performed. Trustor shall promptly send copies to Beneficiary and any servicer of all notices of default which Trustor shall send or receive under any Lease. Trustor, at no cost or expense to Beneficiary, shall enforce, short of termination, the performance and observance of each and every condition and covenant of each of the other parties under each Lease. Trustor shall furnish to Beneficiary, within ten (10) days after a request by Beneficiary to do so, and, in any event by January 1 of each year, a current rent roll certified by Trustor as being true and correct containing the names of all Tenants, the terms of their respective Leases, the spaces occupied and the rentals or fees payable thereunder and the amount of each tenant's security deposit. Upon the request of Beneficiary, Trustor shall deliver to Beneficiary (i) a copy of each Lease; and (ii) an estoppel certificate from the tenant under each Lease (provided that Beneficiary shall not be required to deliver such certificates more frequently than twice in any calendar year).

(iii) Security Deposits. Any security deposits of tenants, whether held in cash or in any other form, may be commingled with any other funds of Trustor or any other person and, if cash, shall be deposited by Trustor at such commercial or savings bank or banks, or otherwise held in compliance with applicable law. Any bond or other instrument which Trustor is permitted to hold in lieu of cash security deposits under any applicable legal requirements shall be maintained in full force and effect in the full amount of such deposits unless replaced by cash deposits as hereinabove described and shall, in all respects, comply with any applicable legal requirements. Upon an Event of Default under this Deed of Trust, Trustor shall, immediately upon Beneficiary's request (if permitted by applicable law), deliver to Beneficiary the security deposits (and any interest previously earned thereon and not disbursed to the person(s) lawfully entitled to receive same) with respect to all or any portion of the Property, to be held by Beneficiary subject to the terms of the Leases.

(iv) Rights of Beneficiary Upon Default. Upon an Event of Default, whether before or after the whole principal sum secured hereby is declared to be immediately due or whether before or after the institution of legal proceedings to foreclose this Deed of Trust, forthwith, upon demand of Beneficiary, Trustor shall surrender to Beneficiary and Beneficiary shall be entitled to take actual possession of the Property or any part thereof personally, or by its agent or attorneys; In such event, Beneficiary shall have, and Trustor hereby gives and grants to Beneficiary, the right, power and authority to make and enter into Leases for such rents and for such periods of occupancy and upon conditions and provisions as Beneficiary may deem desirable in its sole discretion, and Trustor expressly acknowledges and agrees that the term of such Lease may extend beyond the date of any foreclosure sale at the Property; it being the intention of Trustor that in such event Beneficiary shall be deemed to be and shall be the attorney-in-fact of Trustor for the purpose of making and entering into Leases for the rents and upon the terms, conditions and provisions deemed desirable to Beneficiary in its sole discretion and with like effect as if such Leases had been made by Trustor as the owner in fee simple of the Property free and clear of any conditions or limitations established by this Deed of Trust. The power and authority hereby given and granted by Trustor to Beneficiary shall be deemed to be coupled with an interest, shall not be revocable by Trustor so long as any indebtedness secured hereby is outstanding, shall survive the voluntary or involuntary dissolution of Trustor and shall not be affected by any disability or incapacity suffered by Trustor subsequent to the date hereof. In connection with any action taken by Beneficiary pursuant to this Section, Beneficiary shall not be



## EXHIBIT "C"

liable for any loss sustained by Trustor resulting from any failure to let the Property, or any part thereof, or from any other act or omission of Beneficiary in managing the Property, nor shall Beneficiary be obligated to perform or discharge any obligation, duty or liability under any Lease or under or by reason of this instrument or the exercise of rights or remedies hereunder. Trustor shall, and does hereby, indemnify Beneficiary for, and hold Beneficiary harmless from, any and all claims, actions, demands, liabilities, loss or damage which may or might be incurred by Beneficiary under any such Lease or under this Deed of Trust or by the exercise of rights or remedies hereunder and from any and all claims and demands whatsoever which may be asserted against Beneficiary by reason of any alleged obligations or undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in any such Lease other than those finally determined to have resulted solely from the gross negligence or willful misconduct of Beneficiary. Should Beneficiary incur any such liability, the amount thereof, including, without limitation, costs, expenses and attorneys' fees, together with interest thereon at the Default Interest Rate from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately due and payable to Beneficiary by Trustor on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Nothing in this Section shall impose on Beneficiary any duty, obligation or responsibility for the control, care, management or repair of the Property, or for the carrying out of any of the terms and conditions of any such Lease, nor shall it operate to make Beneficiary responsible or liable for any waste committed on the Property by the tenants or by any other parties or for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Trustor hereby assents to, ratifies and confirms any and all actions of Beneficiary with respect to the Property taken under this Section. The foregoing rights are in addition to all other rights and remedies granted to Beneficiary pursuant to this Deed of Trust.

### Section 1.40 Alienation and Further Encumbrances.

(i) Trustor acknowledges that Beneficiary has relied upon the principals of Trustor and their experience in owning and operating properties similar to the Property in connection with the closing of the loan evidenced by the Note. Accordingly, except as specifically allowed herein below in this Section and notwithstanding anything to the contrary contained in Section 4.6 hereof, in the event that the Property or any part thereof or interest therein shall be sold, conveyed, disposed of, alienated, hypothecated, leased (except to Tenants under Leases which are approved, or deemed approved, in accordance with the provisions herein), assigned, pledged, mortgaged, further encumbered (with the exception of Trustor's Primary Loan) or otherwise transferred or Trustor shall be divested of its title to the Property or any interest therein, in any manner or way, whether voluntarily or involuntarily, without the prior written consent of Beneficiary being first obtained, which consent may be withheld in Beneficiary's sole discretion, then, the same shall constitute an Event of Default hereunder and Beneficiary shall have the right, at its option, to declare any or all of the indebtedness secured hereby, irrespective of the maturity date specified in the Note, immediately due and payable and to otherwise exercise any of its other rights and remedies contained in Article III hereof. For the purposes of this Section: (a) in the event either Trustor or any of its general partners or managing members is a corporation or trust, the sale, conveyance, transfer or disposition of more than 10% of the issued and outstanding capital stock of Trustor or any of its general partners or managing members or of the beneficial interest of such trust (or the issuance of new shares of capital stock in Trustor or any of its general partners or managing members so that immediately after such issuance the total capital stock then issued and outstanding is more than 110% of the total immediately prior to such issuance) shall be deemed to be a transfer of an interest in the Property, and (b) in the event Trustor or any general partner or managing member of Trustor is a limited or general partnership, a joint venture or a limited liability company, a change in the ownership interests in any general partner, any joint venturer or any



## EXHIBIT "C"

member, either voluntarily, involuntarily or otherwise, or the sale, conveyance, transfer, disposition, alienation, hypothecation or encumbering of all or any portion of the interest of any such general partner, joint venturer or member in Trustor or such general partner (whether in the form of a beneficial or partnership interest or in the form of a power of direction, control or management, or otherwise), shall be deemed to be a transfer of an interest in the Property. Notwithstanding the foregoing, however, (1) up to but not in excess of 49% of the aggregate limited partnership and/or non-managing member interests in Trustor or in any general partner or managing member of Trustor shall be freely transferable without the consent of Beneficiary, provided that no such transfer shall result in a change in management control of the Trustor and no such transfer shall result in the dissolution or termination of the Trustor, and (2) any involuntary transfer caused by the death of Trustor or any general partner, shareholder, joint venturer, or beneficial owner of a trust shall not be a default under this Deed of Trust so long as Trustor is reconstituted, if required, following such death and so long as those persons responsible for the management of Trustor and the Property remain unchanged as a result of such death or any replacement management is approved by Beneficiary and (3) gifts for estate planning purposes of any individual's interests in Trustor or in any of Trustor's general partners, managing members or joint venturers to the spouse or any lineal descendant of such individual, or to a trust for the benefit of any one or more of such individual, spouse or lineal descendant, shall not be an Event of Default under this Deed of Trust so long as Trustor is reconstituted, if required, following such gift and so long as those persons responsible for the management of the Property and Trustor remain unchanged following such gift or any replacement management is approved by Beneficiary.

(ii) Notwithstanding the foregoing provisions of this Section, after the first anniversary of the first Payment Date under the Note, Beneficiary shall consent to a sale, conveyance or transfer of the Property in its entirety (hereinafter, a "Sale") to any person or entity provided that each of the following terms and conditions are satisfied:

(a) No default is then continuing hereunder or under any of the other Loan Documents;

(b) Trustor gives Beneficiary written notice of the terms of such prospective Sale not less than sixty (60) days before the date on which such Sale is scheduled to close and, concurrently therewith, gives Beneficiary all reasonable information concerning the proposed transferee of the Property (hereinafter, a "Buyer") as Beneficiary would require in evaluating an initial extension of credit to a borrower. Beneficiary shall have the right, in its reasonable discretion, to approve or disapprove the proposed Buyer. In determining whether to give or withhold its approval of the proposed Buyer, Beneficiary shall consider, among other things, the Buyer's experience and track record in owning and operating facilities similar to the Property, the Buyer's entity structure, the Buyer's financial strength, the Buyer's general business standing and the Buyer's relationships and experience with contractors, vendors, tenants, lenders and other business entities;

(c) The Buyer assumes and agrees to pay the indebtedness secured hereby and to perform the covenants of Trustor under the Loan Documents, and, prior to or concurrently with the closing of such Sale, the Buyer executes, without any cost or expense to Beneficiary, such documents and agreements as Beneficiary shall reasonably require to evidence and effectuate said assumption and delivers such legal opinions as Beneficiary may require;

(d) Buyer executes, without any cost or expense to Beneficiary, new financing statements or financing statement amendments and any additional documents reasonably requested by Beneficiary;



## EXHIBIT "C"

(e) Trustor delivers to Beneficiary, without any cost or expense to Beneficiary, such endorsements to Beneficiary's Title Insurance Policy, hazard insurance endorsements or certificates and other similar materials as Beneficiary may deem necessary at the time of the Sale, all in form and substance satisfactory to Beneficiary, including, without limitation, an endorsement or endorsements to Beneficiary's Title Insurance Policy insuring the lien of this Deed of Trust, extending the effective date of such policy to the date of execution and delivery (or, if later, of recording) of the assumption agreement referenced above with no additional exceptions added to such policy and insuring that fee simple title to the Property is vested in the Buyer;

(f) The Buyer shall furnish, if the Buyer is a corporation, partnership or other entity, all documents evidencing the Buyer's capacity and good standing, and the qualification of the signers to execute the assumption of the indebtedness secured hereby, which papers shall include, but not in any way be limited to, certified copies of all documents relating to the organization and formation of the Buyer and of the entities, if any, which are partners of the Buyer. The Buyer and such constituent partners, members or shareholders of Buyer (as the case may be), as Beneficiary may require, shall be single-purpose, single-asset "bankruptcy remote" entities, whose formation documents shall be approved by counsel to Beneficiary. Unanimous consent of the board of directors shall be required for, among other things, any merger, consolidation, dissolution, bankruptcy or insolvency of any such constituent partner, member or shareholder of Buyer (as the case may be), or of the Buyer;

**Section 1.41 Payment of Utilities, Assessments, Charges, Etc.** Trustor shall pay when due all utility charges which are incurred by Trustor or which may become a charge or lien against any portion of the Property for gas, electricity, water and sewer services furnished to the Real Estate and/or the Improvements and all other assessments or charges of a similar nature, or assessments payable pursuant to any restrictive covenants, whether public or private, affecting the Real Estate and/or the Improvements or any portion thereof, whether or not such assessments or charges are or may become liens thereon.

**Section 1.42 Access Privileges and Inspections.** Beneficiary and the agents, representatives and employees of Beneficiary shall, subject to the rights of tenants, have full and free access to the Real Estate and the Improvements and any other location where books and records concerning the Property are kept at all reasonable times for the purposes of inspecting the Property and of examining, copying and making extracts from the books and records of Trustor relating to the Property. Trustor shall lend assistance to all such agents, representatives and employees of Beneficiary.

**Section 1.43 Waste; Alteration of the Property.** Trustor shall not commit, suffer or permit any waste on the Property nor take any actions that might invalidate any insurance carried on the Property. Trustor shall maintain the Property in good condition and repair. No part of the Improvements may be removed, demolished or materially altered, without the prior written consent of Beneficiary. Without the prior written consent of Beneficiary, Trustor shall not commence construction of any improvements on the Real Estate other than improvements required for the maintenance or repair of the Property and tenant improvements required under leases approved by Beneficiary.

**Section 1.44 Further Documentation.** Trustor shall, on the request of Beneficiary in its reasonable discretion and at the expense of Trustor, promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust or in any of the other Loan Documents and promptly execute, acknowledge, deliver and record or file such further instruments and do such further act as may be necessary, desirable or proper to carry out more effectively the purposes of this Deed of Trust



## EXHIBIT "C"

and the other Loan Documents or as may be deemed advisable by Beneficiary to protect, continue or preserve the liens and security interests hereunder including, without limitation, security instruments, financing statements and continuation statements.

**Section 1.45 Advances to Protect Property.** Without limiting or waiving any other rights and remedies of Beneficiary hereunder, if Beneficiary determines that Trustor is not adequately performing or has failed to perform any of its obligations, covenants or agreements contained in this Deed of Trust or in any of the other Loan Documents and such inadequacy or failure is not cured within any applicable grace or cure period, or if any action or proceeding of any kind (including, but not limited to, any bankruptcy, insolvency, arrangement, reorganization or other debtor relief proceeding) is commenced which might affect Beneficiary's interest in the Property or Beneficiary's right to enforce its security, then Beneficiary may, at its option, with or without notice to Trustor, make any appearances, disburse or advance any sums and take any actions as may be necessary or desirable to protect or enforce the security of this Deed of Trust or to remedy the failure of Trustor to perform its covenants and agreements (without, however, waiving any default of Trustor). Trustor agrees to pay on demand all expenses of Beneficiary reasonably incurred with respect to the foregoing (including, but not limited to, fees and disbursements of counsel), together with interest thereon at the Default Interest Rate from and after the date on which Beneficiary incurs such expenses until reimbursement thereof by Trustor. Any such expenses so incurred by Beneficiary, together with interest thereon as provided above, shall be additional indebtedness of Trustor secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The necessity for any such actions and of the amounts to be paid shall be determined by Beneficiary in its sole and absolute discretion. Beneficiary is hereby empowered to enter and to authorize others to enter upon the Property or any part thereof for the purpose of performing or observing any such defaulted term, covenant or condition without thereby becoming liable to Trustor or any person in possession holding under Trustor. Trustor hereby acknowledges and agrees that the remedies set forth in this Section shall be exercisable by Beneficiary, and any and all payments made or costs or expenses incurred by Beneficiary in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by Trustor with interest thereon, notwithstanding the fact that such remedies were exercised and such payments made and costs incurred by Beneficiary after the filing by Trustor of a voluntary case or the filing against Trustor of an involuntary case pursuant to or within the meaning of the Bankruptcy Reform Act of 1978, as amended (the "Act"), Title 11 U.S.C., or after any similar action pursuant to any other debtor relief law (whether statutory, common law, case law or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable to Trustor, Beneficiary, any guarantor or indemnitor, the secured indebtedness or any of the Loan Documents. This indemnity shall survive payment in full of the indebtedness secured hereby. This Section shall not be construed to require Beneficiary to incur any expenses, make any appearances or take any actions.

**Section 1.46 Security Interest.** This Deed of Trust is also intended to encumber and create a security interest in, and Trustor hereby grants to Beneficiary a security interest in, all fixtures, chattels, accounts, equipment, inventory, contract rights, and other personal property included within the Property that are owned by Trustor, all renewals, replacements of any of the aforementioned items, or articles in substitution therefor or in addition thereto or the proceeds thereof (said property is hereinafter referred to collectively as the "Collateral"), whether or not the same shall be attached to the Real Estate or the Improvements in any manner. It is hereby agreed that to the extent permitted by law, all of the foregoing property is to be deemed and held to be a part of and affixed to the Real Estate and the Improvements. The foregoing security interest shall also cover Trustor's leasehold interest in any of the foregoing property which is leased by Trustor. Notwithstanding the foregoing,



## EXHIBIT "C"

all of the foregoing property shall be owned by Trustor and no leasing or installment sales or other financing with exception to Trustor's Primary Loan or title retention agreement in connection therewith shall be permitted without the prior written approval of Beneficiary. Trustor shall promptly replace all of the Collateral subject to the lien or security interest of this Deed of Trust when worn out or obsolete with Collateral comparable to the worn out or obsolete Collateral when new and will not, without the prior written consent of Beneficiary, remove from the Real Estate or the Improvements any of the Collateral subject to the lien or security interest of this Deed of Trust except such as is replaced by an article of equal suitability and value as above provided, owned by Trustor free and clear of any lien or security interest except that created by this Deed of Trust and the other Loan Documents and except as otherwise expressly permitted by the terms of this Deed of Trust. All of the Collateral shall be kept at the location of the Real Estate except as otherwise required by the terms of the Loan Documents. Trustor shall not use any of the Collateral in violation of any applicable statute, ordinance or insurance policy.

**Section 1.47 Security Agreement.** This Deed of Trust constitutes both a real property mortgage and a "security agreement" between Trustor and Beneficiary with respect to the Collateral in which Beneficiary is granted a security interest hereunder, and, cumulative of all other rights and remedies of Beneficiary hereunder, Beneficiary shall have all of the rights and remedies of a secured party under any applicable Uniform Commercial Code. Trustor hereby agrees to execute and deliver on demand such security agreements, financing statements, continuation statements or other instruments as Beneficiary may request or require in order to impose, perfect or continue the perfection of the lien or security interest created hereby. Trustor agrees to furnish Beneficiary with notice of any permitted change in the name, identity, corporate structure, residence, or principal place of business or mailing address of Trustor within ten (10) days of the effective date of any such change. Expenses of retaking, holding, preparing for sale, selling or the like (including, without limitation, Beneficiary's reasonable attorneys' fees and legal expenses), together with interest thereon from the date incurred by Beneficiary until actually paid by Trustor, shall be paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. If notice is required by law, Beneficiary shall give Trustor at least ten (10) days' prior written notice of the time and place of any public sale of such property or of the time of or after which any private sale or any other intended disposition thereof is to be made, and if such notice is sent to Trustor, as the same is provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notice to Trustor. No such notice is necessary for any such property which is perishable, threatens to decline speedily in value or is of a type customarily sold on a recognized market. Any sale made pursuant to the provisions of this Section 1.22 shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the foreclosure sale as provided in Section 3.1(e) hereof upon giving the same notice with respect to the sale of the Property hereunder as is required under said Section 3.1(e). Furthermore, to the extent permitted by law, in conjunction with, in addition to or in substitution for the rights and remedies available to Beneficiary pursuant to any applicable Uniform Commercial Code:

(i) In the event of a foreclosure sale, the Property may, at the option of Beneficiary, be sold as a whole;

(ii) It shall not be necessary that Beneficiary take possession of the aforementioned Collateral, or any part thereof, prior to the time that any sale pursuant to the provisions of this Section is conducted and it shall not be necessary that said Collateral, or any part thereof, be present at the location of such sale; and



## EXHIBIT "C"

(iii) Beneficiary may appoint or delegate any one or more persons as agent to perform any act or acts necessary or incident to any sale held by Beneficiary, including the sending of notices and the conduct of the sale, but in the name and on behalf of Beneficiary. In addition, a carbon, photographic or other reproduction of this Deed of Trust and/or any financing statement relating hereto shall be sufficient for filing and/or recording as a financing statement. The filing of any other financing statement relating to any personal property rights or interests described herein shall not be construed to diminish any right or priority hereunder. Trustor agrees to execute and deliver to Beneficiary any financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Deed of Trust in such form as Beneficiary may require to perfect a security interest with respect to said items. Trustor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Beneficiary may reasonably require. At the option of the Beneficiary, if an Event of Default occurs and the Beneficiary directs the Trustee to institute a sale of the real estate secured by this Deed of Trust, the collateral may be sold by the Trustee together with and in the same sale as the real estate. All of the collateral shall be kept at the location of the Property except as otherwise required by the terms of the Loan Documents.

**Section 1.48 Easements and Rights-of-Way.** Trustor shall not grant any easement or right-of-way with respect to all or any portion of the Real Estate or the Improvements without the prior written consent of Beneficiary. The purchaser at any foreclosure sale hereunder may, at its discretion, disaffirm any easement or right-of-way granted in violation of any of the provisions of this Deed of Trust and may take immediate possession of the Property free from, and despite the terms of, such grant of easement or right-of-way. If Beneficiary consents to the grant of an easement or right-of-way, Beneficiary agrees to grant such consent without charge to Trustor other than reasonable expenses, including, without limitation, reasonable attorneys' fees, incurred by Beneficiary in the review of Trustor's request and, if applicable, in the preparation of documents relating to the subordination of this Deed of Trust to such easement or right-of-way.

### Section 1.49 Compliance with Laws.

(i) Trustor shall at all times comply with all statutes, ordinances, regulations and other governmental or quasi-governmental requirements and private covenants now or hereafter relating to the ownership, construction, use or operation of the Property, including, but not limited to, those concerning employment and compensation of persons engaged in operation and maintenance of the Property and any environmental or ecological requirements, even if such compliance shall require structural changes to the Property; provided, however, that Trustor may, upon providing Beneficiary with security satisfactory to Beneficiary, proceed diligently and in good faith to contest the validity or applicability of any such statute, ordinance, regulation or requirement so long as during such contest the Property shall not be subject to any lien, charge, fine or other liability and shall not be in danger of being forfeited, lost or closed. Trustor shall not use or occupy, or allow the use or occupancy of, the Property in any manner which violates any lease of or any other agreement applicable to the Property or any applicable law, rule, regulation or order or which constitutes a public or private nuisance or which makes void, voidable or cancelable, or increases the premium of, any insurance then in force with respect thereto.

(ii) Trustor agrees that the Property shall at all times comply to the extent applicable with the requirements of the Americans with Disabilities Act of 1990, the Fair Housing Amendments Act of 1988 and all other state and local laws and ordinances related to handicapped access and all rules, regulations, and orders issued pursuant thereto including, without limitation, the Americans with



## EXHIBIT "C"

Disabilities Act Accessibility Guidelines for Buildings and Facilities. Trustor agrees to give prompt notice to Beneficiary of the receipt by Trustor of any complaints related to violations of any Access Laws and of the commencement of any proceedings or investigations which relate to compliance with applicable Access Laws.

**Section 1.50 Additional Taxes.** In the event of the enactment after this date of any law of the state where the Property is located or of any other governmental entity deducting from the value of the Property for the purpose of taxation any lien or security interest thereon, or imposing upon Beneficiary the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Trustor, or changing in any way the laws relating to the taxation of mortgages or security agreements or debts secured by mortgages or security agreements or the interest of the mortgagee or secured party in the property covered thereby, or the manner of collection of such taxes, so as to adversely affect this Deed of Trust or the indebtedness secured hereby or Beneficiary, then, and in any such event, Trustor, upon demand by Beneficiary, shall pay such taxes, assessments, charges or liens, or reimburse Beneficiary therefor; provided, however, that if in the opinion of counsel for Beneficiary (a) it might be unlawful to require Trustor to make such payment, or (b) the making of such payment might result in the imposition of interest beyond the maximum amount permitted by law, then and in either such event, Beneficiary may elect, by notice in writing given to Trustor, to declare all of the indebtedness secured hereby to be and become due and payable in full, thirty (30) days from the giving of such notice.

**Section 1.51 SUBMISSION TO JURISDICTION.**

TRUSTOR, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (a) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF CALIFORNIA OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THE NOTE, THIS DEED OF TRUST OR ANY OTHER OF THE LOAN DOCUMENTS, (b) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION SITTING IN TULARE COUNTY, CALIFORNIA, (c) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND, (d) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT IT WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM (BUT NOTHING HEREIN SHALL AFFECT THE RIGHT OF BENEFICIARY TO BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM). TRUSTOR FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO TRUSTOR AT THE ADDRESS FOR NOTICES DESCRIBED HEREIN, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VALID AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

**Section 1.52 Management.** The management of the Property shall be by either: (a) Trustor or an entity affiliated with Trustor approved by Beneficiary for so long as Trustor or said affiliated entity is managing the Property in a first class manner; or (b) a professional property management company approved by Beneficiary. Beneficiary hereby approves Paynter Realty & Investments, Inc. as manager of the Property. Such management by an affiliated entity or a professional property management company shall be pursuant to a written agreement approved by Beneficiary. In no event shall any manager be removed or replaced or the terms of any management agreement modified or amended



## EXHIBIT "C"

without the prior written consent of Beneficiary. In the event of default hereunder or under any management contract then in effect, which default is not cured within any applicable grace or cure period, Beneficiary shall have the right to terminate, or to direct Trustor to terminate, such management contract upon thirty (30) days' notice and to retain, or to direct Trustor to retain, a new management agent approved by Beneficiary. All Rents and Profits generated by or derived from the Property shall first be utilized solely for current expenses directly attributable to the ownership and operation of the Property, including, without limitation, current expenses relating to Trustor's liabilities and obligations with respect to this Deed of Trust and the other Loan Documents, and none of the Rents and Profits generated by or derived from the Property shall be diverted by Trustor and utilized for any other purposes unless all such current expenses attributable to the ownership and operation of the Property have been fully paid and satisfied. For purposes of this Section, the debt service coverage ratio shall mean the ratio of net operating income from the Property to required debt service payments under the Note; and net operating income shall, for this purpose, be determined in the same manner as utilized for the underwriting of the Loan at origination.

### Section 1.53 Hazardous Materials and Environmental Concerns.

(i) Trustor hereby represents to Beneficiary that, as of the date hereof: (a) the Property is not, and to the best of Trustor's actual knowledge, information and belief, without inquiry or investigation, has not been in direct or indirect violation of any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination, remediation or human health and safety (including the regulation or remediation of Hazardous Substances as defined below) (collectively, "Environmental Laws"), all as amended; (b) no hazardous, toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, petroleum products, radon, lead-based paint, flammable explosives, radioactive materials, infectious substances or raw materials which may include hazardous constituents) or any other substances or materials which are included under or regulated by Environmental Laws (collectively, "Hazardous Substances") are located on or have been handled, manufactured, generated, stored, processed, transported to or from, or disposed of on or Released or discharged from the Property (including underground contamination) except for those substances used by Trustor in the ordinary course of its business and in compliance with all Environmental Laws; (c) the Property is not subject to any private or governmental lien or judicial, administrative or other notice or action relating to Hazardous Substances or noncompliance with Environmental Laws, nor is Trustor aware of any basis for such lien, notice or action; (d) there are no underground storage tanks or other underground storage receptacles (whether active or abandoned) for Hazardous Substances on the Property; (e) Trustor has received no notice of, and to the best of Trustor's knowledge and belief, after due inquiry and investigation, there does not exist any, investigation, action, proceeding or claim by any agency, authority or unit of government or by any third party which could result in any liability, penalty, sanction or judgment under any Environmental Laws with respect to any condition, use or operation of the Property, nor does Trustor know of any basis for such investigation, action, proceeding or claim; (f) Trustor has received no notice that, and to the best of Trustor's knowledge and belief after due inquiry and investigation, there has been no claim by any party that, any use, operation or condition of the Property has caused any nuisance, trespass or any other liability or adverse condition on any other property, nor does Trustor know of any basis for such notice or claim; and (g) there are no present environmental conditions or events or, to the best of Trustor's knowledge, after due inquiry and investigation, past environmental conditions or events on or near the Property that could be reasonably anticipated to materially adversely affect the value of the Property.



## EXHIBIT "C"

(ii) Trustor shall keep or cause the Property to be kept free from Hazardous Substances (except those substances used by Trustor in the ordinary course of its business and in compliance with all Environmental Laws) and in compliance with all Environmental Laws, shall not install or use any underground storage tanks, shall expressly prohibit the use, generation, handling, storage, production, processing and disposal of Hazardous Substances by all tenants, (except those substances used by tenants in the ordinary course of their activities and in compliance with all Environmental Laws), invitees and trespassers, and, without limiting the generality of the foregoing, during the term of this Deed of Trust, shall not install in the Improvements or permit to be installed in the Improvements asbestos or any substance containing asbestos.

(iii) Trustor shall promptly notify Beneficiary if Trustor shall become aware of (a) any Hazardous Substances at, on, under, affecting or threatening to affect the Property (except those substances used by Trustor or tenants in the ordinary course of their business or activities, respectively, and in compliance with all Environmental Laws), (b) any lien, action or notice affecting or threatening to affect the Property or Trustor resulting from any violation or alleged violation of Environmental Law, (c) any investigation, inquiry or proceeding concerning Trustor on the Property pursuant to any Environmental Law or otherwise relating to Hazardous Substances, or (d) any occurrence, condition or state of facts which would render any representation or warranty in this Section incorrect in any respect if made at the time of such discovery. Further, immediately upon receipt of the same, Trustor shall deliver to Beneficiary copies of any and all orders, notices, permits, applications, reports, and other communications, documents and instruments pertaining to the actual, alleged or potential non-compliance with any Environmental Laws in connection with the Property or presence or existence of any Hazardous Substances at, on, about, under, within, near or in connection with the Property (except those substances used in the ordinary course of its business and in compliance with all Environmental Laws). Trustor shall, promptly and when and as required, at Trustor's sole cost and expense, take all actions as shall be necessary or advisable for compliance with the terms of this Section or for the remediation of any and all portions of the Property or other affected property, including, without limitation, all investigative, monitoring, removal, containment, remedial and response actions in accordance with all applicable Environmental Laws (and in all events in a manner satisfactory to Beneficiary), and shall further pay or cause to be paid, at no expense to Beneficiary, all remediation, response, administrative and enforcement costs of applicable governmental agencies which may be asserted against the Property. In the event Trustor fails to do so (a) Beneficiary may, but shall not be obligated to, undertake remediation at the Property or other affected property necessary to bring the Property into conformance with the terms of Environmental Laws, and (b) Trustor hereby grants to Beneficiary and its agents and employees access to the Property and a license to do all things Beneficiary shall deem necessary to bring the Property into conformance with Environmental Laws. Any and all costs and expenses reasonably incurred by Beneficiary in connection therewith, together with interest thereon at the Default Interest Rate from the date incurred by Beneficiary until actually paid by Trustor, shall be immediately paid by Trustor on demand and shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. Trustor covenants and agrees, at Trustor's sole cost and expense, to indemnify, defend (at trial and appellate levels, and with attorneys, consultants and experts acceptable to Beneficiary), and hold Beneficiary harmless from and against any and all liens, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, suits, proceedings, costs, disbursements or expenses of any kind or of any nature whatsoever (including, without limitation, reasonable attorneys', consultants' and experts' fees and disbursements actually incurred in investigating, defending, settling or prosecuting any claim, litigation or proceeding) which may at any time be imposed upon, incurred by or asserted or awarded against Beneficiary or the Property, and arising directly or indirectly from or out of: (a) the presence, Release or threat of Release of any Hazardous Substances on, in, under, affecting or threatening to affect all or any portion of the



## EXHIBIT "C"

Property or any surrounding areas, regardless of whether or not caused by or within the control of Trustor; (b) the violation of any Environmental Laws relating to, affecting or threatening to affect the Property, whether or not caused by or within the control of Trustor; (c) the failure by Trustor to comply fully with the terms and conditions of this Section 1.30; (d) the breach of any representation or warranty contained in this Section; or (e) the enforcement of this Section, including, without limitation, the cost of assessment, containment and/or removal of any and all Hazardous Substances on and/or from all or any portion of the Property or any surrounding areas, the cost of any actions taken in response to the presence, Release or threat of Release of any Hazardous Substances on, in, under or affecting any portion of the Property or any surrounding areas to prevent or minimize such release or threat of release so that it does not migrate or otherwise cause or threaten danger to present or future public health, safety, welfare or the environment, and costs incurred to comply with the Environmental Laws in connection with all or any portion of the Property or any surrounding areas. The indemnity set forth in this Section shall also include any diminution in the value of the security afforded by the Property or any future reduction in the sales price of the Property by reason of any matter set forth in this Section. Beneficiary's rights under this Section shall survive payment in full of the indebtedness secured hereby and shall be in addition to all other rights of Beneficiary under this Deed of Trust, the Note and the other Loan Documents.

(iv) Without limiting the foregoing, Beneficiary and its authorized representatives may, during normal business hours and at its own expense, inspect the Property and Trustor's records related thereto for the purpose of determining compliance with Environmental Laws and the terms and conditions of this Section.

(v) As used herein, the term "Release" shall include, without limitation, any intentional or unintentional placing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, discarding or abandoning of any Hazardous Substance, other than in the normal course of business or activities or its tenants, and in compliance with all Environmental Laws.

### **Section 1.54 Indemnification; Subrogation.**

(i) Trustor shall indemnify, defend and hold Beneficiary harmless against: (a) any and all claims for brokerage, leasing, finder's or similar fees which may be made relating to the Property or the secured indebtedness, (b) any and all liability, obligations, losses, damages, penalties, claims, actions, suits, liens, charges, encumbrances, costs and expenses (including Beneficiary's attorneys' fees, together with appellate counsel fees, if any) of whatever kind or nature which may be asserted against, imposed on or incurred by Beneficiary under any lease or occupancy agreement for any loss arising from a failure or inability to collect Rents and Profits or in connection with the secured indebtedness, this Deed of Trust, the Property, or any part thereof, or the exercise by Beneficiary of any rights or remedies granted to it under this Deed of Trust, and any default under this Deed of Trust, (c) any liens (whether judgments, mechanics', materialmen's or otherwise), charges and encumbrances filed against the Property, and (d) any claims and demands for damages or injury, including claims for property damage, personal injury or wrongful death, arising out of or in connection with any accident or fire or other casualty on the Real Estate or the Improvements or any nuisance or trespass made or suffered thereon, including, in any case, attorney's fees, costs and expenses as aforesaid, whether at pretrial, trial or appellate level for any civil, criminal or administrative proceedings. Should Beneficiary incur any liability under this Deed of Trust or any of the other Loan Documents, the amount thereof, including, without limitation, costs, expenses and reasonable attorneys' fees, together with interest thereon from the date incurred by Beneficiary until actually paid by Trustor, shall be



## EXHIBIT "C"

immediately due and payable to Beneficiary by Trustor on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. However, nothing herein shall be construed to obligate Trustor to indemnify, defend and hold harmless Beneficiary from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs and expenses enacted against, imposed on or incurred by Beneficiary by reason of Beneficiary's acts or omissions. This indemnity shall survive payment in full of the indebtedness secured hereby.

(ii) A waiver of subrogation shall be obtained by Trustor from its insurance carrier and, consequently, Trustor waives any and all right to claim or recover against Beneficiary, its officers, employees, agents and representatives, for loss of or damage to Trustor, the Property, Trustor's property or the property of others under Trustor's control from any cause insured against or required to be insured against by the provisions of this Deed of Trust.

**Section 1.55 Litigation.** Trustor will give prompt written notice to Beneficiary of any litigation or governmental proceedings pending or threatened (in writing) against Trustor.

### ARTICLE II EVENTS OF DEFAULT

**Section 2.1 Events of Default.** The indebtedness secured hereby shall become immediately due and payable at the option of Beneficiary upon the happening of any one or more of the following events of default (each, an "Event of Default"):

(i) Trustor fails to make any payment under the Note when due.

(ii) Trustor fails to punctually perform any covenant, agreement, obligation, term or condition hereof which requires payment of any money to Beneficiary (except those regarding payments to be made under the Note).

(iii) Trustor fails to provide insurance as required hereof or fails to perform any covenant, agreement obligation, term or condition set forth in this Deed of Trust.

(iv) Trustor fails to perform any other covenant, agreement, obligation, term or condition set forth herein other than those otherwise described in this Section and, to the extent such failure or default is susceptible of being cured, the continuance of such failure or default for thirty (30) days after written notice thereof from Beneficiary to Trustor; provided, however, that if such default is susceptible of cure but such cure cannot be accomplished with reasonable diligence within said period of time, and if Trustor commences to cure such default promptly after receipt of notice thereof from Beneficiary, and thereafter prosecutes the curing of such default with reasonable diligence, such period of time shall be extended for such period of time as may be necessary to cure such default with reasonable diligence, but not to exceed an additional sixty (60) days.

(v) Any representation or warranty made herein, in or in connection with any application or commitment relating to the loan evidenced by the Note, or in any of the other Loan Documents to Beneficiary by Trustor, by any principal or general partner in Trustor or by any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby is determined by Beneficiary to have been false or misleading in any material respect at the time made.



## EXHIBIT "C"

(vi) There shall be a sale, conveyance, disposition, alienation, hypothecation, leasing, assignment, pledge, mortgage, granting of a security interest in or other transfer or further encumbrancing of the Property except for Trustor's Primary Loan, Trustor or its owners, or any portion thereof or any interest therein, in violation of this Deed of Trust.

(vii) A default occurs under any of the other Loan Documents which has not been cured within any applicable grace or cure period therein provided.

(viii) Trustor, any principal, general partner or managing member (as applicable) in Trustor or any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby becomes insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors, shall file a petition in bankruptcy, shall voluntarily be adjudicated insolvent or bankrupt or shall admit in writing the inability to pay debts as they mature, shall petition or apply to any tribunal for or shall consent to or shall not contest the appointment of a receiver, trustee, custodian or similar officer for Trustor, for any such principal, general partner or managing member (as applicable) of Trustor or for any such indemnitor or guarantor or for a substantial part of the assets of Trustor, of any such principal or general partner of Trustor or of any such indemnitor or guarantor, or shall commence any case, proceeding or other action under any bankruptcy, reorganization, arrangement, readjustment or debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect.

(ix) A petition ("Petition") is filed or any case, proceeding or other action is commenced against Trustor, against any principal, general partner or managing member of Trustor or against any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby seeking to have an order for relief entered against it as debtor or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or other relief under any law relating to bankruptcy, insolvency, arrangement, reorganization, receivership or other debtor relief under any law or statute of any jurisdiction, whether now or hereafter in effect, or a court of competent jurisdiction enters an order for relief against Trustor, against any principal or general partner of Trustor or against any indemnitor or guarantor under any indemnity or guaranty executed in connection with the loan secured hereby, as debtor, or an order, judgment or decree is entered appointing, with or without the consent of Trustor, of any such principal or general partner of Trustor or of any such indemnitor or guarantor, a receiver, trustee, custodian or similar officer for Trustor, for any such principal or general partner of Trustor or for any such indemnitor or guarantor, or for any substantial part of any of the properties of Trustor, of any such principal, general partner or managing member of Trustor or of any such indemnitor or guarantor, and if any such event shall occur, such petition, case, proceeding, action, order, judgment or decree shall not be dismissed within sixty (60) days after being commenced.

(x) Trustor solicits or aids the solicitation of the filing of any Petition against Trustor including, without limitation: (a) providing information regarding the identity of creditors or the nature of creditors' claims to any third party unless compelled to do so by order of a court of competent jurisdiction or by regulation promulgated, by a governmental agency, or (b) paying the legal fees or expenses of any creditor or of interest holder in Trustor with respect to any matter whatsoever.

(xi) The Property or any part thereof shall be taken on execution or other process of law in any action against Trustor.

(xii) Trustor abandons all or a portion of the Property.



## EXHIBIT "C"

(xiii) The holder of any lien or security interest on the Property (without implying the consent of Beneficiary to the existence or creation of any such lien or security interest), whether superior or subordinate to this Deed of Trust or any of the other Loan Documents, declares a default and such default is not cured within any applicable grace or cure period set forth in the applicable document or such holder institutes foreclosure or other proceedings for the enforcement of its remedies thereunder.

(xiv) The Property, or any part thereof, is subjected to actual or threatened waste or to removal, demolition or material alteration so that the value of the Property is materially diminished thereby and Beneficiary determines (in its subjective determination) that it is not adequately protected from any loss, damage or risk associated therewith.

(xv) Any dissolution, termination, partial or complete liquidation, merger or consolidation of Trustor, any of its principals, members, or general partners.

### ARTICLE III REMEDIES

**Section 3.1 Remedies Available.** If there shall occur a default under this Deed of Trust, and such default has not been cured within any applicable grace or cure period, then this Deed of Trust is subject to foreclosure as provided by law and Beneficiary may, at its option and by or through a trustee, nominee, assignee or otherwise, to the fullest extent permitted by law, exercise any or all of the following rights, remedies and recourses, either successively or concurrently.

(i) Acceleration. Accelerate the maturity date of the Note and declare any or all of the indebtedness secured hereby to be immediately due and payable without any presentment, demand, protest, notice or action of any kind whatever (each of which is hereby expressly waived by Trustor), whereupon the same shall become immediately due and payable. Upon any such acceleration, payment of such accelerated amount shall constitute a prepayment of the principal balance of the Note and any applicable prepayment fee provided for in the Note shall then be immediately due and payable.

(ii) Entry on the Property. Without in any way curing or waiving any default of Trustor, either in person, by agent or by court-appointed receiver, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security, enter upon and take possession of the Property, or any part thereof, in its own name, without force or with such force as is permitted by law and without notice or process or with such notice or process as is required by law unless such notice and process is waivable, in which case Trustor hereby waives such notice and process, and do any and all acts and perform any and all work which may be desirable or necessary in Beneficiary's judgment to complete any unfinished construction on the Real Estate, to preserve and/or enhance the value, marketability or rentability of the Property, to increase the income therefrom, to manage and operate the Property or to protect the security hereof and all sums expended by Beneficiary therefor, together with interest thereon at the Default Interest Rate (as defined in the Note), shall be immediately due and payable to Beneficiary by Trustor on demand and shall be secured hereby and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

(iii) Collect Rents and Profits. With or without taking possession of the Property, sue for or otherwise collect the Rents and Profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, all in such order as Beneficiary in its discretion may determine.



## EXHIBIT "C"

(iv) Appointment of Receiver. Upon, or at any time prior or after, initiating the exercise of any power of sale, instituting any judicial foreclosure or instituting any other foreclosure of the liens and security interests provided for herein or any other legal proceedings hereunder, make application, ex-parte, to a court of competent jurisdiction for appointment of a receiver for all or any part of the Property, as a matter of strict right and without notice to Trustor and without regard to the adequacy of the Property for the repayment of the indebtedness secured hereby or the solvency of Trustor or any person or persons liable for the payment of the indebtedness secured hereby, and Trustor does hereby irrevocably consent to such appointment, waives any and all notices of and defenses to such appointment and agrees not to oppose any application therefor by Beneficiary, but nothing herein is to be construed to deprive Beneficiary of any other right, remedy or privilege Beneficiary may now have under the law to have a receiver appointed, provided, however, that the appointment of such receiver, trustee or other appointee by virtue of any court order, statute or regulation shall not impair or in any manner prejudice the rights of Beneficiary to receive payment of the Rents and Profits pursuant to other terms and provisions of this Deed of Trust or the Assignment. Any such receiver shall have all of the usual powers and duties of receivers in similar cases, including, without limitation, the full power to hold, develop, rent, lease, manage, maintain, operate and otherwise use or permit the use of the Property upon such terms and conditions as said receiver may deem to be prudent and reasonable under the circumstances as more fully set forth in Section 3.3 below. Such receivership shall, at the option of Beneficiary, continue until full payment of all of the indebtedness secured hereby or until title to the Property shall have passed by foreclosure sale under this Deed of Trust or deed in lieu of foreclosure.

(v) Foreclosure. Immediately commence an action to foreclose this Deed of Trust or to specifically enforce its provisions or any of the indebtedness secured hereby, pursuant to the statutes in such case made and provided, and sell the Property or cause the Property to be sold in accordance with the requirements and procedures provided by said statutes in a single parcel or in several parcels at the option of Beneficiary.

(a) Should Beneficiary have elected to accelerate the indebtedness secured hereby, Beneficiary may initiate foreclosure of the Property by requesting the Trustee to effectuate a non-judicial foreclosure sale.

(b) Should Beneficiary have not elected to accelerate the indebtedness secured hereby, Beneficiary may nonetheless proceed with foreclosure in satisfaction of such default, either through the courts or by directing the Trustee to proceed as if under a full foreclosure, conducting sale as hereinbefore provided, but without declaring the entire indebtedness secured by this Deed of Trust due, and provided that if said sale is made because of such default, such sale may be made subject to the unmatured part of the secured indebtedness. Such sale, if so made, shall not in any manner affect the unmatured part of the debt secured by this Deed of Trust, but as to such unmatured part, this Deed of Trust shall remain in full force as though no sale had been made. Several sales may be made without exhausting the right of sale with respect to any unmatured part of the secured indebtedness, it being the purpose and intent hereof to provide for a foreclosure and the sale of the Property for any matured portion of said secured indebtedness without exhausting the power of foreclosure.

(c) In the event foreclosure proceedings are instituted by Beneficiary, all expenses incident to such proceedings, including, but not limited to, attorneys' fees and costs, shall be paid by Trustor and secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note. The secured indebtedness and all other obligations secured by this Deed of Trust, including, without limitation, interest at the Default Interest Rate (as



## EXHIBIT "C"

defined in the Note), any prepayment charge, fee or premium required to be paid under the Note in order to prepay principal (to the extent permitted by applicable law), reasonable attorneys' fees and any other amounts due and unpaid to Beneficiary under the Loan Documents, may be bid by Beneficiary in the event of a foreclosure sale hereunder.

(vi) **Judicial Remedies.** Proceed by suit or suits, at law or in equity, instituted by Beneficiary, or Trustee, upon written request of Beneficiary, to enforce the payment of the indebtedness secured hereby or the other obligations of Trustor hereunder or pursuant to the Loan Documents, to foreclose the liens and security interests of this Deed of Trust as against all or any part of the Property, and to have all or any part of the Property sold under the judgment or decree of a court of competent jurisdiction. In the event of a judicial sale pursuant to a foreclosure decree, it is understood and agreed that Beneficiary or its assigns may become the purchaser of the Property. This remedy shall be cumulative of any other non-judicial remedies available to the Beneficiary with respect to the Loan Documents. Proceeding with the request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available non-judicial remedy of the Beneficiary.

(vii) **Other.** Exercise any other right or remedy available hereunder, under any of the other Loan Documents or at law or in equity.

**Section 3.2 Application of Proceeds.** To the fullest extent permitted by law, the proceeds of any sale under this Deed of Trust shall be applied to the extent funds are so available to the following items in such order as Beneficiary in its discretion may determine:

(i) To payment of the costs, expenses and fees of taking possession of the Property, and of holding, operating, maintaining, using, leasing, repairing, improving, marketing and selling the same and of otherwise enforcing Beneficiary's right and remedies hereunder and under the other Loan Documents, including, but not limited to, receivers' fees, court costs, attorneys', accountants', appraisers', managers' and other professional fees, title charges and transfer taxes.

(ii) To payment of all sums expended by Beneficiary under the terms of any of the Loan Documents and not yet repaid; together with interest on such sums at the Default Interest Rate.

(iii) To payment of the secured indebtedness and all other obligations secured by this Deed of Trust, including, without limitation, interest at the Default Interest Rate and, to the extent permitted by applicable law, any prepayment fee, charge or premium required to be paid under the Note in order to prepay principal, in any order that Beneficiary chooses in its sole discretion.

(iv) The remainder, if any, of such funds shall be disbursed to Trustor or to the person or persons legally entitled thereto.

**Section 3.3 Right and Authority of Receiver or Beneficiary in the Event of Default; Power of Attorney.** Upon the occurrence of a default hereunder, which default is not cured within any applicable grace or cure period, and entry upon the Property pursuant to Section 3.1(ii) hereof or appointment of a receiver pursuant to Section 3.1(iv) hereof, and under such terms and conditions as may be prudent and reasonable under the circumstances in Beneficiary's or the receiver's sole discretion, all at Trustor's expense, Beneficiary or said receiver, or such other persons or entities as they shall hire, direct or engage, as the case may be, may do or permit one or more of the following, successively or concurrently: (a) enter upon and take possession and control of any



## EXHIBIT "C"

and all of the Property; (b) take and maintain possession of all documents, books, records, papers and accounts relating to the Property; (c) exclude Trustor and its agents, servants and employees wholly from the Property; (d) manage and operate the Property; (e) preserve and maintain the Property; (f) make repairs and alterations to the Property; (g) complete any construction or repair of the Improvements, with such changes, additions or modifications of the plans and specifications or intended disposition and use of the Improvements as Beneficiary may in its sole discretion deem appropriate or desirable to place the Property in such condition as will, in Beneficiary's sole discretion, make it or any part thereof readily marketable or rentable; (h) conduct a marketing or leasing program with respect to the Property, or employ a marketing or leasing agent or agents to do so, directed to the leasing or sale of the Property under such terms and conditions as Beneficiary may in its sole discretion deem appropriate or desirable; (i) employ such contractors, subcontractors, materialmen, architects, engineers, consultants, managers, brokers, marketing agents, or other employees, agents, independent contractors or professionals, as Beneficiary may in its sole discretion deem appropriate or desirable to implement and effectuate the rights and powers herein granted; (j) execute and deliver, in the name of Beneficiary, such documents and instruments as are necessary or appropriate to consummate authorized transactions; (k) enter into such leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Beneficiary may in its sole discretion deem appropriate or desirable; (l) collect and receive the Rents and Profits from the Property; (m) eject tenants or repossess personal property, as provided by law, for breaches of the conditions of their leases or other agreements; (n) sue for unpaid Rents and Profits, payments, income or proceeds in the name of Trustor or Beneficiary; (o) maintain actions in forcible entry and detainer, ejectment for possession and actions in distress for rent; (p) compromise or give acquittance for Rents and Profits, payments, income or proceeds that may become due; (q) delegate or assign any and all rights and powers given to Beneficiary by this Deed of Trust; and (r) do any acts which Beneficiary in its sole discretion deems appropriate or desirable to protect the security hereof and use such measures, legal or equitable, as Beneficiary may in its sole discretion deem appropriate or desirable to implement and effectuate the provisions of this Deed of Trust. This Deed of Trust shall constitute a direction to and full authority to any lessee, or other third party who has heretofore dealt or contracted or may hereafter deal or contract with Trustor or Beneficiary, at the request of Beneficiary, to pay all amounts owing under any lease, contract, concession, license or other agreement to Beneficiary without proof of the default relied upon. Any such lessee or third party is hereby irrevocably authorized to rely upon and comply with (and shall be fully protected by Trustor in so doing) any request, notice or demand by Beneficiary for the payment to Beneficiary of any Rents and Profits or other sums which may be or thereafter become due under its lease, contract, concession, license or other agreement, or for the performance of any undertakings under any such lease, contract, concession, license or other agreement, and shall have no right or duty to inquire whether any default under this Deed of Trust or under any of the other Loan Documents has actually occurred or is then existing. Any money advanced by Beneficiary in connection with any action taken under this Section 3.3, together with interest thereon from the date of making such advancement by Beneficiary until actually paid by Trustor, shall be a demand obligation owing by Trustor to Beneficiary and shall be secured by this Deed of Trust and by every other instrument securing the secured indebtedness.

**Section 3.4 Occupancy After Foreclosure.** In the event there is a foreclosure sale hereunder and at the time of such sale, Trustor or Trustor's representatives, successors or assigns, or any other persons claiming any interest in the Property by, through or under Trustor (except tenants of space in the Improvements subject to leases entered into prior to the date hereof), are occupying or using the Property, or any part thereof, then, to the extent not prohibited by applicable law, each and all shall, at the option of Beneficiary or the purchaser at such sale, as the case may be, immediately become



## EXHIBIT "C"

the tenant of the purchaser at such sale, which tenancy shall be a tenancy from day-to-day, terminable at the will of either landlord or tenant, at a reasonable rental per day based upon the value of the Property occupied or used, such rental to be due daily to the purchaser. Further, to the extent permitted by applicable law, in the event the tenant fails to surrender possession of the Property upon the termination of such tenancy, the purchaser shall be entitled to institute and maintain an action for unlawful detainer of the Property in the appropriate court of the county in which the Real Estate is located.

**Section 3.5 Notice to Account Debtors.** Beneficiary may, at any time after a default hereunder, which default is not cured within any applicable grace or cure period, notify the account debtors and obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness to Trustor included in the Property to pay Beneficiary directly. Trustor shall at any time or from time to time upon the request of Beneficiary provide to Beneficiary a current list of all such account debtors and obligors and their addresses.

**Section 3.6 Cumulative Remedies.** All remedies contained in this Deed of Trust are cumulative and Beneficiary shall also have all other remedies provided at law and in equity or in any other Loan Documents. Such remedies may be pursued separately, successively or concurrently at the sole subjective direction of Beneficiary and may be exercised in any order and as often as occasion therefor shall arise. No act of Beneficiary shall be construed as an election to proceed under any particular provisions of this Deed of Trust to the exclusion of any other provision of this Deed of Trust or as an election of remedies to the exclusion of any other remedy which may then or thereafter be available to Beneficiary. No delay or failure by Beneficiary to exercise any right or remedy under this Deed of Trust shall be construed to be a waiver of that right or remedy or of any default hereunder. Beneficiary may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

**Section 3.7 Payment of Expenses.** Trustor shall pay on demand all of Beneficiary's expenses reasonably incurred in any efforts to enforce any terms of this Deed of Trust, whether or not any lawsuit is filed and whether or not foreclosure is commenced but not completed, including, but not limited to, reasonable legal fees and disbursements, foreclosure costs and title charges, together with interest thereon from and after the date incurred by Beneficiary until actually paid by Trustor, and the same shall be secured by this Deed of Trust and by all of the other Loan Documents securing all or any part of the indebtedness evidenced by the Note.

## ARTICLE IV CONCERNING THE TRUSTEE

**Section 4.1 No Required Action.** Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in his opinion, such action would be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Loan Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and



## EXHIBIT "C"

Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Beneficiary.

**Section 4.2 Certain Rights.** With the approval of Beneficiary, Trustee shall have the right to take any and all of the following actions: (a) to select, employ, and consult with counsel (who may be, but need not be, counsel for Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (b) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (c) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee (and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith), and (d) any and all other lawful action that Beneficiary may instruct Trustee to take to protect or enforce Beneficiary's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Trustor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

**Section 4.3 Retention of Money.** All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law), and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

**Section 4.4 Successor Trustees.** Trustee may resign by the giving of notice of such resignation in writing or verbally to Beneficiary. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Beneficiary shall prefer to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of the aforementioned Trustee, Beneficiary shall have full power to appoint a substitute trustee (or, if preferred, multiple substitute trustees) in succession who shall succeed (and if multiple substitute trustees are appointed, each of such multiple substitute trustees shall succeed) to all the estates, rights, powers, and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Beneficiary, and if such Beneficiary be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be



## EXHIBIT "C"

conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Trustor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or his successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustees is requested or required under or pursuant to this Deed of Trust or applicable law.

**Section 4.5 Perfection of Appointment.** Should any deed, conveyance, or instrument of any nature be required from Trustor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Trustor.

**Section 4.6 Succession Instruments.** Any substitute Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of the substitute Trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute Trustee so appointed in the Trustee's place.

**Section 4.7 No Representation by Trustee.** By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee (on its own behalf or on behalf of Beneficiary) pursuant to the Loan Documents, including, without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee, either on its own behalf or on behalf of Beneficiary.

## ARTICLE V

### MISCELLANEOUS TERMS AND CONDITIONS

**Section 5.1 Time of Essence.** Time is of the essence with respect to all provisions of this Deed of Trust.

**Section 5.2 Release of Deed of Trust.** If and when Trustor has paid all of the secured indebtedness as the same becomes due and payable, or there is a Defeasance regarding the lien of this Deed of Trust in accordance with, and in satisfaction of, the provisions of this Deed of Trust, then, and in such event only, all rights under this Deed of Trust shall terminate except for those provisions hereof which by their terms survive, and the Property shall become wholly clear of the liens, security interests, conveyances and assignments evidenced hereby, which shall be



## EXHIBIT "C"

released by Beneficiary in due form at Trustor's cost. Trustor shall be responsible for the recordation of such release and payment of any recordation costs associated therewith.

**Section 5.3 Certain Rights of Beneficiary.** Without affecting Trustor's liability for the payment of any of the indebtedness secured hereby, Beneficiary may from time to time: (a) release any person liable for the payment of the indebtedness secured hereby; (b) extend or modify the terms of payment of the indebtedness secured hereby; (c) accept additional real or personal property of any kind as security or alter, substitute or release any property securing the indebtedness secured hereby; (d) recover any part of the Property; (e) consent in writing to the making of any subdivision map or plat thereof; (f) join in granting any easement therein; or (g) join in any extension agreement of this Deed of Trust or any agreement subordinating the lien hereof.

**Section 5.4 Notices.** All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of the same in person to the intended addressee, or by depositing the same with Federal Express or another reputable private courier service for next business day delivery, or by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, in any event addressed to the intended addressee at its address set forth on the first page of this Deed of Trust or at such other address as may be designated by such party as herein provided. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier service, or two (2) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least fifteen (15) days' prior written notice thereof in accordance with the provisions hereof, the parties hereto shall have the right from time to time to change their respective addresses and each shall have the right to specify as its address any other address within the United States of America.

**Section 5.5 Successors and Assigns.** The terms, provisions, indemnities, covenants and conditions hereof shall be binding upon Trustor and the successors and assigns of Trustor, including all successors in interest and to all or any part of the Property, and shall inure to the benefit of Beneficiary, and its successors and assigns and shall constitute covenants running with the land. If Trustor consists of more than one person or entity, each will be jointly and severally liable to perform the obligations of Trustor.

**Section 5.6 Severability.** A determination that any provision of this Deed of Trust is unenforceable or invalid shall not affect the enforceability or validity of any other provision.

**Section 5.7 General Interpretative Principles.** Within this Deed of Trust, words of any gender shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, and vice versa, unless the context otherwise requires.

**Section 5.8 Waiver; Discontinuance of Proceedings.** Beneficiary may waive any single default by Trustor hereunder without waiving any other prior or subsequent default, and may remedy any default by Trustor hereunder without waiving the default remedied. Neither the failure or delay by Beneficiary in exercising, any right, power or remedy upon any default by Trustor hereunder shall be construed as a waiver of such default or as a waiver of the right to exercise any such right, power or remedy at a later date. No single or partial exercise by Beneficiary of any right, power or remedy hereunder shall exhaust the same or shall preclude any other or further exercise thereof, and every such right, power or remedy hereunder may be exercised at any time and from time to time. No modification or waiver of any provision hereof nor consent to any departure by Trustor therefrom shall in any event be effective unless the same shall be in writing and signed by Beneficiary, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose given. No notice to nor demand on Trustor in any case shall of itself entitle Trustor to any other or further notice or demand in similar or other circumstances. Acceptance by Beneficiary of any payment in an amount less



## EXHIBIT "C"

than the amount then due on any of the secured indebtedness shall be deemed an acceptance on account only and shall not in any way affect the existence of a default hereunder.

**Section 5.9 Section Headings.** The headings of the sections and paragraphs of this Deed of Trust are for convenience of reference only, are not to be considered a part hereof and shall not limit or otherwise affect any of the terms hereof.

**Section 5.10 Governing Law.** This Deed of Trust will be governed by and construed in accordance with the laws of the State in which the Property is located, provided that to the extent that any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling.

**Section 5.11 Counting of Days.** The term "days" when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or holiday officially recognized by the state within which the Real Estate is located, the period shall be deemed to end on the next succeeding business day. The term "business day" or "Business Day" when used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in New York, New York are authorized by law to be closed.

**Section 5.12 Application of the Proceeds of the Note.** To the extent that proceeds of the Note are used to pay indebtedness secured by any outstanding lien, security interest, charge or prior encumbrance against the Property, such proceeds have been advanced by Beneficiary at Trustor's request and Beneficiary shall be subrogated to any and all rights, security interests and liens owned by any owner or holder of such outstanding liens, security interests, charges or encumbrances, irrespective of whether said liens, security interests, charges or encumbrances are released.

**Section 5.13 Unsecured Portion of Indebtedness.** If any part of the secured indebtedness cannot be lawfully secured by this Deed of Trust or if any part of the Property cannot be lawfully subject to the lien and security interest hereof to the full extent of such indebtedness, then all payments made shall be applied on said indebtedness first in discharge of that portion thereof which is unsecured by this Deed of Trust.

**Section 5.14 Cross Default.** A default hereunder which has not been cured within any applicable grace or cure period shall be a default under each of the other Loan Documents.

**Section 5.15 Construction of this Document.** This document may be construed as a mortgage, security deed, deed of trust, chattel mortgage, conveyance, assignment, security agreement, pledge, financing statement, hypothecation or contract, or any one or more of the foregoing, in order to fully effectuate the liens and security interests created hereby and the purposes and agreements herein set forth.

**Section 5.16 No Merger.** It is the desire and intention of the parties hereto that this Deed of Trust and the lien hereof do not merge in fee simple title to the Property.

**Section 5.17 Beneficiary May File Proofs of Claim.** In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other proceedings affecting Trustor or the principals or general partners in Trustor, or their respective creditors or property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have the claims of Beneficiary allowed in such proceedings for the entire secured indebtedness at the date of the institution of such proceedings and for any additional amount which may become due and payable by Trustor hereunder after such date.

**Section 5.18 After-Acquired Property.** All property acquired by Trustor after the date of this Deed of Trust which by the terms of this Deed of Trust shall be subject to the lien and the security interest created hereby, shall immediately upon the acquisition thereof by Trustor and without further mortgage, conveyance or assignment become subject to the lien and security interest created by this Deed of Trust.



## EXHIBIT "C"

**Section 5.19 No Representation.** By accepting delivery of any item required to be observed, performed or fulfilled or to be given to Beneficiary pursuant to the Loan Documents, including, but not limited to, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal or insurance policy, Beneficiary shall not be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness or legal effect of the same, or of any term, provision or condition thereof, and such acceptance of delivery thereof shall not be or constitute any warranty, consent or affirmation with respect thereto by Beneficiary.

**Section 5.20 Personal Liability.** Notwithstanding anything to the contrary contained in this Deed of Trust, the liability of Trustor and its general partners for the indebtedness secured hereby and for the performance of the other agreements, covenants and obligations contained herein and in the Loan Documents shall be limited as set forth in Section 1.05 of the Note; provided, however, that nothing herein shall be deemed to be a waiver of any right which Beneficiary may have under Sections 506(a), 506(b), 1111(b) or any other provisions of the U.S. Bankruptcy Code to file a claim for the full amount of the indebtedness secured hereby or to require that all collateral shall continue to secure all indebtedness owing to Beneficiary in accordance with the Note, this Deed of Trust and the other Loan Documents.

**Section 5.21 Recording and Filing.** Trustor will cause the Loan Documents and all amendments and supplements thereto and substitutions therefor to be recorded, filed, re-recorded and re-filed in such manner and in such places as Beneficiary shall reasonably request, and will pay on demand all such recording, filing, re-recording and re-filing taxes, fees and other charges.

**Section 5.22 Entire Agreement and Modifications.** This Deed of Trust and the other Loan Documents contain the entire agreements between the parties and supersede any prior agreements (oral or written), and may not be amended, revised, waived, discharged, released or terminated orally but only by a written instrument or instruments executed by the party against which enforcement of the amendment, revision, waiver, discharge, release or termination is asserted.

**Section 5.23 Further Stipulations.** The additional covenants, agreements and provisions set forth in Exhibit B attached hereto, if any, shall be a part of this Deed of Trust and shall, in the event of any conflict between such further stipulations and any of the other provisions of this Deed of Trust, be deemed to control.

**Section 5.24 Relationship of the Parties.** The relationship between Trustor and Beneficiary is that of a borrower and a lender only and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party.

**Section 5.25 Fixture Filing.** This Deed of Trust shall be effective from the date of its recording as a financing statement filed as a fixture filing with respect to all goods constituting part of the Property which are or are to become fixtures.

IN WITNESS WHEREOF, Trustor, intending to be legally bound hereby, has duly executed this Deed of Trust on \_\_\_\_\_, 20\_\_ to be effective as of \_\_\_\_\_, 20\_\_.

CORNERSTONE MAIN PARTNERS, L.P.,

a California Limited Partnership

\_\_\_\_\_  
By: David H. Paynter, General Partner



**EXHIBIT "C"**

State of California     )

)

County of                 )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)



**EXHIBIT "C"**

**EXHIBIT "A"**

That portion of the Northwest quarter of the Northwest quarter, Section 36, Township 21 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California, more particularly described as follows:

Lots 17, 18, 19, and 20 in Block 54 of the City of Porterville, in the City of Porterville, County of Tulare, State of California, according to the map thereof recorded in Book 3, Page 18 of Maps, Tulare County Records.

A handwritten signature in blue ink, consisting of several loops and a final vertical stroke, located in the bottom right corner of the page.

PROMISSORY NOTE  
SECURED BY DEED OF TRUST

\$2,720,000.00

December 3, 2018

THIS PROMISSORY NOTE (this "Note") is made as of December 3, 2018 by CORNERSTONE MAIN PARTNERS, L.P., a California limited partnership ("Borrower"), having an address at 17671 Irvine Boulevard, Suite 204, Tustin, CA 92680, to and in favor of CITY OF PORTERVILLE, a municipal corporation, its successors and assigns ("Lender"), having an address at 291 North Main Street, Porterville, CA 93257.

FOR VALUE RECEIVED, Borrower, unconditionally promises to pay to the order of Lender, without any counterclaim, setoff or deduction whatsoever, on the Maturity Date (as hereinafter defined), at the office of Lender, or at such other place as Lender may designate to Borrower in writing from time to time, the principal sum of TWO MILLION SEVEN HUNDRED TWENTY THOUSAND DOLLARS (\$2,720,000.00), together with interest on so much thereof as is from time to time outstanding and unpaid, from the date of the advance of the principal evidenced hereby, payable in lawful money of the United States of America, which shall at the time of payment be legal tender in payment of all debts and dues, public and private, as set forth in Section 1.01 of this Note.

ARTICLE I

TERMS AND CONDITIONS

1.01 Payment of Principal and Interest. Interest shall be computed hereunder based on a 365-day year and paid for the actual number of days elapsed for any whole or partial month in which interest is being calculated. Such principal and interest shall be payable at a compound interest rate of two and four-tenths percent (2.4%) amortized over a 240 month (20 year). Interest-only payments shall be made monthly, with the first payment due on December 1, 2019. A schedule of payments is attached hereto as Exhibit "A." Repayment of the principal (and any remaining unpaid interest) shall be made in full no later than November 30, 2038 at which time the entire outstanding principal balance hereof, together with all accrued but unpaid interest thereon, shall be due and payable in full. Each such installment shall be applied first to the payment of accrued interest and then to reduction of principal.

1.02 Prepayment. This Note may be prepaid at any time without penalty.

1.03 Security. The indebtedness evidenced by this Note and the obligations created hereby are secured by, among other things, (a) that certain Deed of Trust, Security Agreement, and Fixture Filing with Assignment of Rents, (the "Security Instrument"), dated of even date herewith made by Borrower in favor of Lender, encumbering certain property located in Tulare County, California, together with any and all renewals, modifications, amendments, restatements, consolidations, substitutions, replacements, and extensions and modifications thereof, are herein referred to collectively as the "Loan Documents." The whole of the principal sum of this Note, together with all interest accrued and unpaid thereon and all other sums due under the Loan Documents is herein referred to as the "Debt." All of the terms and provisions of the Loan Documents are incorporated herein by reference. Some of the Loan Documents are to be filed for record on or about the date hereof in the appropriate public records.

1.04 Default



(a) It is hereby expressly agreed that should any default occur in the payment of principal or interest as stipulated above and such payment is not made when due, or should any other default occur under any of the Loan Documents which is not cured within any applicable grace or cure period therein, including without limitation, any sale, transfer, conveyance or other violation of the terms of the Security Instrument, then a default shall exist hereunder, and in such event the indebtedness evidenced hereby, including all sums advanced or accrued hereunder or under any other Loan Document, and all unpaid interest accrued thereon, shall, at the option of Lender and without notice to Borrower, at once become due and payable and may be collected forthwith, whether or not there has been a prior demand for payment and regardless of the stipulated date of maturity.

(b) The remedies of Lender in this Note or in the other Loan Documents, or at law or in equity, shall be cumulative and concurrent, and may be pursued singly, successively or together in Lender's discretion. Time is of the essence with respect to all matters concerning or relating to this Note. Borrower agrees to pay on demand all expenses and costs of enforcement, administration and collection incurred or paid, including but not limited to reasonable attorney fees and disbursements of Lender.

**1.05 Exculpation.** Notwithstanding anything in the Loan Documents to the contrary, but subject to the qualifications set forth below, Lender agrees that (i) Borrower shall be liable upon the indebtedness evidenced hereby and for the other obligations arising under the Loan Documents to the full extent (but only to the extent) of the security therefor, the same being all properties (whether real or personal), rights, estates and interests now or at any time hereafter securing the payment of this Note and/or the other obligations of Borrower under the Loan Documents (collectively, the "Security Property"); (ii) if default occurs in the timely and proper payment of all or any part of such indebtedness evidenced hereby or in the timely and proper performance of the other obligations of Borrower under the Loan Documents, any judicial proceedings brought by Lender against Borrower shall be limited to the preservation, enforcement and foreclosure, or any thereof, of the liens, security titles, estates, assignments, rights and security interests now or at any time hereafter securing the payment of this Note and/or the other obligations of Borrower under the Loan Documents, and confirmation of any sale under power of sale, and no attachment, execution or other writ of process shall be sought, issued or levied upon any assets, properties or funds of Borrower or its general or limited partners other than the Security Property except with respect to the liability described below in this section, and (iii) in the event of a foreclosure of such liens, security titles, estates, assignments, rights or security interests securing the payment of this Note and/or the other obligations of Borrower under the Loan Documents, whether by judicial proceedings or exercise of power of sale, no judgment for any deficiency upon the indebtedness evidenced hereby shall be sought or obtained by Lender against Borrower.

**1.06 Cost Reimbursement.** If this Note is not paid when due, or if an event of default occurs, Borrower agrees to pay all costs and expenses (including attorneys' fees) incurred by Lender as a result thereof, including, without limitation, all costs and expenses (including attorneys' fees) incurred in (i) any proceeding for collection of the debt evidenced hereby, (ii) any foreclosure or exercise of the power of sale under the Security Instrument, (iii) protecting or sustaining the lien of the Security Instrument, or (iv) any litigation or Controversy arising from or connected with this Note or the Security Instrument, including any action to protect or enhance Lender's rights in the event 'Borrower becomes subject to a proceeding under applicable bankruptcy law (including filing, or responding to, as appropriate, a motion to obtain relief from the automatic stay under applicable bankruptcy law, to obtain adequate protection and to use cash collateral). The attorneys' fees and other costs which Lender shall be entitled to recover from Borrower shall include all those incurred by Lender.



## ARTICLE II

### GENERAL CONDITIONS

**2.01 No Waiver; Amendment.** No failure to accelerate the debt evidenced hereby by reason of default hereunder, acceptance of a partial or past due payment, or indulgences granted from time to time shall be construed (i) as a novation of this Note or as a reinstatement of the indebtedness evidenced hereby or as a waiver of such right of acceleration or of the right of Lender thereafter to insist upon strict compliance with the terms of this Note, or (ii) to prevent the exercise of such right of acceleration or any other right granted hereunder or by any applicable laws; and Borrower hereby expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing. No extension of the time for the payment of this Note or any installment due hereunder, made by agreement with any person now or hereafter liable for the payment of this Note shall operate to release; discharge, modify, change or affect the original liability of Borrower under this Note, either in whole or in part unless Lender agrees otherwise in writing. This Note may not be changed orally, but only by a definitive written agreement signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

**2.02 Waivers.** Presentment for payment, demand, protest and notice of demand, protest and nonpayment and all other notices are hereby waived by Borrower. Borrower hereby further waives and renounces, to the fullest extent permitted by law, all rights to the benefits of any statute of limitations and any moratorium, reinstatement, marshalling, forbearance, valuation, stay, extension, redemption, appraisement, exemption and homestead now or hereafter provided by the Constitution and laws of the United States of America and of each state thereof, both as to itself and in and to all of its property, real and personal, against the enforcement and collection of the obligations evidenced by this Note or the other Loan Documents.

**2.03 Use of Funds.** Borrower hereby warrants, represents and covenants that no funds disbursed hereunder shall be used for purposes not related to the Security Property.

**2.04 Unconditional Payment.** Borrower is and shall be obligated to pay principal, interest and any and all other amounts which become payable hereunder or under the other Loan Documents absolutely and unconditionally and without any abatement, postponement, diminution or deduction and without any reduction for counterclaim or setoff.

**2.05 Further Assurances.** Borrower shall execute and acknowledge (or cause to be executed and acknowledged) and deliver to Lender all documents, and take all actions, reasonably required by Lender from time to time to confirm the rights created under this Note and the other Loan Documents, to protect and further the validity, priority and enforceability of this Note and the other Loan Documents, to subject to the Loan Documents any property of Borrower intended by the terms of any one or more of the Loan Documents to be encumbered by the Loan Documents, or otherwise carry out the purposes of the Loan Documents and the transactions contemplated thereunder; provided, however, that no such further actions, assurances and confirmations shall increase, modify or change Borrower's obligations under this Note or under the other Loan Documents.

**2.06 Submission to Jurisdiction.** BORROWER, TO THE FULL EXTENT PERMITTED BY LAW, HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, (A) SUBMITS TO PERSONAL JURISDICTION IN THE STATE OF CALIFORNIA OVER ANY SUIT, ACTION OR PROCEEDING BY ANY PERSON ARISING FROM OR RELATING TO THIS NOTE, (B) AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF



COMPETENT JURISDICTION SITTING IN EITHER THE CITY OR THE COUNTY WHERE THE PROPERTY IS LOCATED, (C) SUBMITS TO THE JURISDICTION OF SUCH COURTS, AND (D) TO THE FULLEST EXTENT PERMITTED BY LAW, AGREES THAT BORROWER WILL NOT BRING ANY ACTION, SUIT OR PROCEEDING IN ANY OTHER FORUM AND BORROWER FURTHER CONSENTS AND AGREES TO SERVICE OF ANY SUMMONS, COMPLAINT OR OTHER LEGAL PROCESS IN ANY SUCH SUIT, ACTION OR PROCEEDING BY REGISTERED OR CERTIFIED U.S. MAIL, POSTAGE PREPAID, TO BORROWER AT THE ADDRESS.FOR NOTICES DESCRIBED ON THE FIRST PAGE HEREOF, AND CONSENTS AND AGREES THAT SUCH SERVICE SHALL CONSTITUTE IN EVERY RESPECT VAUD AND EFFECTIVE SERVICE (BUT NOTHING HEREIN SHALL AFFECT THE VALIDITY OR EFFECTIVENESS OF PROCESS SERVED IN ANY OTHER MANNER PERMITTED BY LAW).

2.07 Miscellaneous. This Note shall be interpreted, construed and enforced according to the laws of the State of California and the applicable laws of the United States of America. The terms and provisions hereof shall be binding upon and inure to the benefit of Borrower and Lender and their respective heirs, executors, legal representatives, successors, successors-in-title and assigns, whether by voluntary action of the parties or by operation of law. As used herein, the terms "Borrower" and "Lender" shall be deemed to include their respective successors, successors-in-title and assigns, whether by voluntary action of the parties or by operation of law. All personal pronouns used herein, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Titles of articles and sections are for convenience only and in no way define, limit, amplify or describe the scope or intent of any provisions hereof. Capitalized terms used in this Note and not otherwise defined herein shall have the meaning ascribed to them in the Security Instrument or in the other Loan Documents. Time is of the essence with respect to all provisions of this Note, the Security Instrument and the other Loan Documents. This Note and the other Loan Documents contain the entire agreements between the parties hereto relating to the subject matter hereof and thereof and all prior agreements relative hereto and thereto which are not contained herein or therein are terminated.

IN WITNESS WHEREOF, Borrower, intending to be legally bound hereby, has duly executed this Note as of the day and year first written above.

CORNERSTONE MAIN PARTNERS, L.P.

A California Limited Partnership

By: 

David H. Paynter, General Partner

**EXHIBIT "A"****LOAN AGREEMENT  
CORNERSTONE MAIN PARTNERS, L.P.**

|                                      |                 |
|--------------------------------------|-----------------|
| Principal                            | \$ 2,720,000.00 |
| Interest rate                        | 2.40%           |
| Term                                 | 240 months      |
| Funding Date                         | 12/7/18         |
| First Payment Due                    | 12/1/19         |
| Full Payment of Principal + Interest | 11/30/38        |

| <u>Date</u> | <u>Days</u> | <u>Month</u> | <u>Principal<br/>Payment</u> | <u>Interest<br/>Payment</u> | <u>Accrued<br/>Interest</u> | <u>Balance</u> |
|-------------|-------------|--------------|------------------------------|-----------------------------|-----------------------------|----------------|
| 12/7/18     |             |              |                              |                             |                             | 2,720,000.00   |
| 1/1/19      | 25          | 1            | -                            | -                           | 4,471.23                    | 2,724,471.23   |
| 2/1/19      | 31          | 2            | -                            | -                           | 5,553.44                    | 2,730,024.67   |
| 3/1/19      | 28          | 3            | -                            | -                           | 5,026.24                    | 2,735,050.91   |
| 4/1/19      | 31          | 4            | -                            | -                           | 5,575.01                    | 2,740,625.92   |
| 5/1/19      | 30          | 5            | -                            | -                           | 5,406.17                    | 2,746,032.09   |
| 6/1/19      | 31          | 6            | -                            | -                           | 5,597.39                    | 2,751,629.48   |
| 7/1/19      | 30          | 7            | -                            | -                           | 5,427.87                    | 2,757,057.35   |
| 8/1/19      | 31          | 8            | -                            | -                           | 5,619.86                    | 2,762,677.21   |
| 9/1/19      | 31          | 9            | -                            | -                           | 5,631.32                    | 2,768,308.53   |
| 10/1/19     | 30          | 10           | -                            | -                           | 5,460.77                    | 2,768,308.53   |
| 11/1/19     | 31          | 11           | -                            | -                           | 5,642.80                    | 2,768,308.53   |
| 12/1/19     | 30          | 12           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/20      | 31          | 13           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/20      | 31          | 14           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/20      | 29          | 15           |                              | 5,278.75                    |                             | 2,768,308.53   |
| 4/1/20      | 31          | 16           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/20      | 30          | 17           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/20      | 31          | 18           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/20      | 30          | 19           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/20      | 31          | 20           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/20      | 31          | 21           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/20     | 30          | 22           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/20     | 31          | 23           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/20     | 30          | 24           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/21      | 31          | 25           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/21      | 31          | 26           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/21      | 28          | 27           |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/21      | 31          | 28           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/21      | 30          | 29           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/21      | 31          | 30           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/21      | 30          | 31           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/21      | 31          | 32           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/21      | 31          | 33           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/21     | 30          | 34           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/21     | 31          | 35           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/21     | 30          | 36           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/22      | 31          | 37           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/22      | 31          | 38           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/22      | 28          | 39           |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/22      | 31          | 40           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/22      | 30          | 41           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/22      | 31          | 42           |                              | 5,642.80                    |                             | 2,768,308.53   |



# EXHIBIT "A"

| <u>Date</u> | <u>Days</u> | <u>Month</u> | <u>Principal<br/>Payment</u> | <u>Interest<br/>Payment</u> | <u>Accrued<br/>Interest</u> | <u>Balance</u> |
|-------------|-------------|--------------|------------------------------|-----------------------------|-----------------------------|----------------|
| 7/1/22      | 30          | 43           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/22      | 31          | 44           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/22      | 31          | 45           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/22     | 30          | 46           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/22     | 31          | 47           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/22     | 30          | 48           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/23      | 31          | 49           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/23      | 31          | 50           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/23      | 28          | 51           |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/23      | 31          | 52           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/23      | 30          | 53           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/23      | 31          | 54           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/23      | 30          | 55           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/23      | 31          | 56           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/23      | 31          | 57           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/23     | 30          | 58           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/23     | 31          | 59           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/23     | 30          | 60           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/24      | 31          | 61           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/24      | 31          | 62           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/24      | 29          | 63           |                              | 5,278.75                    |                             | 2,768,308.53   |
| 4/1/24      | 31          | 64           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/24      | 30          | 65           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/24      | 31          | 66           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/24      | 30          | 67           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/24      | 31          | 68           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/24      | 31          | 69           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/24     | 30          | 70           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/24     | 31          | 71           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/24     | 30          | 72           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/25      | 31          | 73           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/25      | 31          | 74           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/25      | 28          | 75           |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/25      | 31          | 76           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/25      | 30          | 77           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/25      | 31          | 78           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/25      | 30          | 79           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/25      | 31          | 80           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/25      | 31          | 81           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/25     | 30          | 82           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/25     | 31          | 83           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/25     | 30          | 84           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/26      | 31          | 85           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/26      | 31          | 86           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/26      | 28          | 87           |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/26      | 31          | 88           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/26      | 30          | 89           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/26      | 31          | 90           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/26      | 30          | 91           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/26      | 31          | 92           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/26      | 31          | 93           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/26     | 30          | 94           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/26     | 31          | 95           |                              | 5,642.80                    |                             | 2,768,308.53   |



# EXHIBIT "A"

| <u>Date</u> | <u>Days</u> | <u>Month</u> | <u>Principal<br/>Payment</u> | <u>Interest<br/>Payment</u> | <u>Accrued<br/>Interest</u> | <u>Balance</u> |
|-------------|-------------|--------------|------------------------------|-----------------------------|-----------------------------|----------------|
| 12/1/26     | 30          | 96           |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/27      | 31          | 97           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/27      | 31          | 98           |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/27      | 28          | 99           |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/27      | 31          | 100          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/27      | 30          | 101          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/27      | 31          | 102          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/27      | 30          | 103          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/27      | 31          | 104          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/27      | 31          | 105          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/27     | 30          | 106          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/27     | 31          | 107          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/27     | 30          | 108          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/28      | 31          | 109          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/28      | 31          | 110          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/28      | 29          | 111          |                              | 5,278.75                    |                             | 2,768,308.53   |
| 4/1/28      | 31          | 112          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/28      | 30          | 113          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/28      | 31          | 114          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/28      | 30          | 115          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/28      | 31          | 116          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/28      | 31          | 117          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/28     | 30          | 118          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/28     | 31          | 119          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/28     | 30          | 120          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/29      | 31          | 121          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/29      | 31          | 122          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/29      | 28          | 123          |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/29      | 31          | 124          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/29      | 30          | 125          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/29      | 31          | 126          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/29      | 30          | 127          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/29      | 31          | 128          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/29      | 31          | 129          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/29     | 30          | 130          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/29     | 31          | 131          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/29     | 30          | 132          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/30      | 31          | 133          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/30      | 31          | 134          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/30      | 28          | 135          |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/30      | 31          | 136          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/30      | 30          | 137          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/30      | 31          | 138          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/30      | 30          | 139          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/30      | 31          | 140          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/30      | 31          | 141          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/30     | 30          | 142          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/30     | 31          | 143          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/30     | 30          | 144          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/31      | 31          | 145          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/31      | 31          | 146          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/31      | 28          | 147          |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/31      | 31          | 148          |                              | 5,642.80                    |                             | 2,768,308.53   |

# EXHIBIT "A"

| <u>Date</u> | <u>Days</u> | <u>Month</u> | <u>Principal<br/>Payment</u> | <u>Interest<br/>Payment</u> | <u>Accrued<br/>Interest</u> | <u>Balance</u> |
|-------------|-------------|--------------|------------------------------|-----------------------------|-----------------------------|----------------|
| 5/1/31      | 30          | 149          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/31      | 31          | 150          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/31      | 30          | 151          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/31      | 31          | 152          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/31      | 31          | 153          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/31     | 30          | 154          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/31     | 31          | 155          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/31     | 30          | 156          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/32      | 31          | 157          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/32      | 31          | 158          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/32      | 29          | 159          |                              | 5,278.75                    |                             | 2,768,308.53   |
| 4/1/32      | 31          | 160          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/32      | 30          | 161          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/32      | 31          | 162          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/32      | 30          | 163          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/32      | 31          | 164          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/32      | 31          | 165          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/32     | 30          | 166          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/32     | 31          | 167          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/32     | 30          | 168          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/33      | 31          | 169          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/33      | 31          | 170          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/33      | 28          | 171          |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/33      | 31          | 172          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/33      | 30          | 173          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/33      | 31          | 174          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/33      | 30          | 175          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/33      | 31          | 176          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/33      | 31          | 177          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/33     | 30          | 178          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/33     | 31          | 179          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/33     | 30          | 180          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/34      | 31          | 181          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/34      | 31          | 182          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/34      | 28          | 183          |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/34      | 31          | 184          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/34      | 30          | 185          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/34      | 31          | 186          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/34      | 30          | 187          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/34      | 31          | 188          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/34      | 31          | 189          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/34     | 30          | 190          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/34     | 31          | 191          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/34     | 30          | 192          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/35      | 31          | 193          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/35      | 31          | 194          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/35      | 28          | 195          |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/35      | 31          | 196          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/35      | 30          | 197          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/35      | 31          | 198          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/35      | 30          | 199          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/35      | 31          | 200          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/35      | 31          | 201          |                              | 5,642.80                    |                             | 2,768,308.53   |



# EXHIBIT "A"

| <u>Date</u> | <u>Days</u> | <u>Month</u> | <u>Principal<br/>Payment</u> | <u>Interest<br/>Payment</u> | <u>Accrued<br/>Interest</u> | <u>Balance</u> |
|-------------|-------------|--------------|------------------------------|-----------------------------|-----------------------------|----------------|
| 10/1/35     | 30          | 202          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/35     | 31          | 203          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/35     | 30          | 204          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/36      | 31          | 205          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/36      | 31          | 206          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/36      | 29          | 207          |                              | 5,278.75                    |                             | 2,768,308.53   |
| 4/1/36      | 31          | 208          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/36      | 30          | 209          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/36      | 31          | 210          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/36      | 30          | 211          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/36      | 31          | 212          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/36      | 31          | 213          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/36     | 30          | 214          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/36     | 31          | 215          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/36     | 30          | 216          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/37      | 31          | 217          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/37      | 31          | 218          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/37      | 28          | 219          |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/37      | 31          | 220          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/37      | 30          | 221          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/37      | 31          | 222          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/37      | 30          | 223          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/37      | 31          | 224          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/37      | 31          | 225          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/37     | 30          | 226          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/37     | 31          | 227          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 12/1/37     | 30          | 228          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 1/1/38      | 31          | 229          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 2/1/38      | 31          | 230          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 3/1/38      | 28          | 231          |                              | 5,096.72                    |                             | 2,768,308.53   |
| 4/1/38      | 31          | 232          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 5/1/38      | 30          | 233          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 6/1/38      | 31          | 234          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 7/1/38      | 30          | 235          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 8/1/38      | 31          | 236          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 9/1/38      | 31          | 237          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 10/1/38     | 30          | 238          |                              | 5,460.77                    |                             | 2,768,308.53   |
| 11/1/38     | 31          | 239          |                              | 5,642.80                    |                             | 2,768,308.53   |
| 11/30/38    | 29          | 240          | 2,768,308.53                 | 5,278.75                    |                             | -              |
|             |             |              |                              | 1,268,537.50                | 59,412.10                   | 2,768,308.53   |



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Consideration to Apply for Funding from the Federal Transit Administration's (FTA's) Low or No Emission Grant Program, Appropriation of Local Financial Commitment, and Transit Fleet Management Plan

**SOURCE:** Public Works

**COMMENT:** Section 5339(c) of Title 49, United States Code, as amended by the Fixing America's Surface Transportation (FAST) Act, authorizes the Federal Transit Administration (FTA) to award grants for low or no emission buses through a competitive process.

The FTA's Low or No Emission competitive program provides funding to state and local governmental authorities for the purchase or lease of zero-emission and low-emission transit buses as well as acquisition, construction, and leasing of required supporting facilities.

On March 18, 2019, the FTA released a notice of funding for up to \$85 million in competitive grant funds through the Low or No Emission (Low-No) Bus Program. All eligible expenses under the Low-No program are attributable to compliance with the Clean Air Act. Therefore, under the provision the maximum Federal participation in the costs of leasing or acquiring a transit bus financed under the Low-No Program is 85 percent of the total transit bus cost. Further, the maximum Federal participation in the cost of leasing or acquiring low or no emission bus-related equipment or facilities is 90 percent of the net project cost of the equipment or facilities that are attributed to compliance with the Clean Air Act. The FTA may prioritize projects proposed with a higher local share and if grant funds can be obligated within 12 months of selection.

FTA requires that all capital procurements meet FTA's Buy America requirements, which require that all iron, steel, or manufactured products be produced in the United States. These requirements help create and protect manufacturing jobs in the U.S.. The Low-No Program will have significant economic impact on meeting the objectives of the Buy America law. Federal transit law amended the Buy America requirements to provide for a phased increase in the domestic content of rolling stock. For FY 2019, the cost of components and sub components produced in the U.S. must be more than 65 percent of the cost of all components. For FY 2020 and beyond, the cost of components and sub components produced in the U.S. must be more than 70 percent of the cost of all components. There is no change to the requirement that final assembly of rolling stock must occur in the United States. Altoona bus testing must be completed prior to the disbursement of FTA funds.



On May 15, 2018, Council authorized staff to submit a FY 2018 project application for nine (9) zero-emission transit buses and supporting charging station equipment, at a total cost of \$4.5 million.

On June 5, 2018, Council authorized, by way of Resolution, a local match commitment of \$1 million in Local Transportation Funding (LTF).

In FY 2018, the FTA received applications for 151 projects, 52 projects were funded at a total of \$84.45 million. The City's application was not selected for funding.

Staff is again seeking authorization, by way of a Resolution, to prepare and submit a project application for the FY 2019 Low-No program. This year's project application would be for up to 35 zero-emission vans/shuttle buses for the implementation of microtransit, weekday flex service, paratransit (Dial-A-Ride) service, and CalVan's vanpool program.

If authorized to submit a grant proposal, staff would be partnering with CALSTART, which the City is a member, to prepare the City's grant proposal. CALSTART, a national non-profit experienced in drafting award-winning proposals for this program, would prepare the grant proposal at no cost to the City. In return, if the City's project is awarded, CALSTART will be named as a project partner who will administer and manage the project. The cost of CALSTART's services will be itemized in the grant proposal budget.

Total project funding is estimated at \$7.3 million. Local match funding totals \$4.7 million (\$3,500,000 Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project, \$600,000 Measure R, \$600,000 LTF). Federal funding requested is estimated at \$2.6 million, a 36% funding request of the total project cost. Like last year, staff is seeking authorization, by way of the attached Draft Resolution, a local financial commitment of \$600,000 in local transportation funding. If a local financial commitment is required after the project is selected for funding, this will potentially affect streets and roads improvement projects. LTF funds can be budgeted over the next two (2) fiscal years to commit to this project if necessary.

Finally, a new requirement of the Low-No program is that all proposed projects must be part of the intended recipient's long-term integrated fleet management plan. Staff has prepared the attached draft Transit Fleet Management Plan for Council's approval.

**RECOMMENDATION:**

That the City Council:

1. Approve the Draft Resolution authorizing staff to submit an application for funding to the Federal Transit Administration's FY 2019 Low or No Emission Grant Program;
2. Approve the Draft Resolution appropriating a local financial commitment, not to exceed \$600,000, for the FY 2019 Low or

No Emission Grant Program; and  
3. Approve the draft Transit Fleet Management Plan.

ATTACHMENTS:

1. Draft Resolution - Authorization
2. Draft Resolution - Appropriation
3. 2019 Fleet Management Plan

Appropriated/Funded:

Review By:

Department Director:

Mike Reed, Acting Public Works Director

Final Approver: John Lollis, City Manager

**RESOLUTION NO. \_\_\_\_ - 2019**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF PORTERVILLE AUTHORIZING STAFF TO ACT ON BEHALF  
OF THE CITY FOR THE PURPOSE OF OBTAINING FEDERAL FINANCIAL  
ASSISTANCE UNDER FTA SECTION 5339(C) (LOW OR NO EMISSION GRANT  
PROGRAM) WITH THE FEDERAL TRANSIT ADMINISTRATION**

**WHEREAS**, Section 5339(c) of Title 49, United States Code, as amended by the Fixing America's Surface Transportation Act, authorizes the Federal Transit Administration (FTA) to award grants for low or now emission buses through a competitive process; and

**WHEREAS**, the FTA announced the opportunity to apply for \$85,000,000 in competitive grants under the fiscal year 2019 Low or No Emission Grant Program; and

**WHEREAS**, the City of Porterville is committed to replacing its aging transit fleet with zero emission buses to reduce greenhouse gas and air pollutant emissions; and

**WHEREAS**, the City of Porterville desires to apply for said financial assistance from the Low or No Emission Grant Program.

**NOW THEREFORE, BE IT RESOLVED AND ORDERED** that the City Council of the City of Porterville does hereby Authorize John Lollis, City Manager, to file and execute applications on behalf of the City of Porterville with the FTA to aid in the financing of zero emission bus projects pursuant to the Low or No Emission Grant Program.

That Richard Tree, Transit Manager, is authorized to prepare and submit applications on behalf of the City of Porterville, and provide additional information as the FTA may require in connection with the application for the Low or No Emission Grant Program.

**PASSED AND ADOPTED** by the City Council of the City of Porterville, State of California, at a regular meeting of said Council held on May 7, 2019.

\_\_\_\_\_  
Martha A. Flores, Mayor

ATTEST:  
John D. Lollis, City Clerk

By: \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk

**RESOLUTION NO. \_\_\_\_ - 2019**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF PORTERVILLE AUTHORIZING THE LOCAL COST SHARE FOR THE  
PURPOSE OF OBTAINING FEDERAL FINANCIAL ASSISTANCE UNDER FTA  
SECTION 5339(C) (LOW OR NO EMISSION GRANT PROGRAM) WITH THE  
FEDERAL TRANSIT ADMINISTRATION**

**WHEREAS**, Section 5339(c) of Title 49, United States Code, as amended by the Fixing America's Surface Transportation Act, authorizes the Federal Transit Administration (FTA) to award grants for low or now emission buses through a competitive process; and

**WHEREAS**, the FTA announced the opportunity to apply for \$85,000,000 in competitive grants under the fiscal year 2019 Low or No Emission Grant Program; and

**WHEREAS**, grants and cooperative agreements for Federal Financial assistance will impose certain obligations upon the City of Porterville and may require the City of Porterville to provide the non-Federal share of transportation-related expenses supported with Federal financial assistance; and

**WHEREAS**, the City of Porterville is committed to replacing its aging transit fleet with zero emission buses to reduce greenhouse gas and air pollutant emissions; and

**WHEREAS**, the City of Porterville desires to apply for said financial assistance from the Low or No Emission Grant Program.

**NOW THEREFORE, BE IT RESOLVED AND ORDERED** that the City Council of the City of Porterville does hereby Authorize the local financial commitment for the project, if selected, in the total amount not to exceed \$600,000.

**PASSED AND ADOPTED** by the City Council of the City of Porterville, State of California, at a regular meeting of said Council held on May 7, 2019.

\_\_\_\_\_  
Martha A. Flores, Mayor

ATTEST:  
John D. Lollis, City Clerk

By: \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk





# FLEET MANAGEMENT PLAN



A Division of City of Porterville  
Public Works Department  
15 E. Thurman Ave., Suite A  
Porterville, CA 93257  
(559) 782-7448

# 1. Introduction

## 1.1 Introduction to Porterville Transit

Porterville Transit, a division of the City of Porterville's Public Works Department, is the principal multi-modal agency responsible for planning, implementing and operating transportation services in the City of Porterville and unincorporated areas including Strathmore, East Porterville, and the Tule River Indian Reservation. It is governed by the City Council of the City of Porterville. Porterville Transit has the primary responsibility for the transportation system in Porterville, providing the Agency with the unique ability to plan, design, construct, operate and manage (with key partnership from other agencies) the transit, paratransit, bicycle, and pedestrian in Porterville.

Porterville Transit currently operates nine fixed routes, transporting 660,000 passengers annually. Porterville Transit is committed to zero-emission vehicles, with a fleet featuring:

- Battery Electric Transit Buses;
- Compressed Natural Gas Transit Buses;
- Modern Passenger Information Systems; and
- A range of paratransit services.

As part of its mission, Porterville Transit strives to provide a convenient, reliable, accessible and safe transportation system that meets the needs of all transportation users within the Porterville Urbanized Area and Tule River Indian Reservation.

## 1.2 Purpose of the Porterville Transit Fleet Management Plan

The 2019 Porterville Transit Fleet Management Plan maps out a systematic approach to the ongoing management and planning for rehabilitation and replacement of the Porterville Transit fleet of transit vehicles through 2030. In particular, the objectives of this Plan are as follows:

- Plan for replacement of the existing fleet, including all rubber-tired vehicles in the next 5 years;
- Plan for the conversion of the existing fleet to battery-electric;
- Plan for energy storage and renewable generation;
- Inform long-term storage and maintenance facility needs;
- Identify opportunities to partner with agencies on procurements where possible to reduce unit costs and create a shared demand for future parts;
- Spread procurements more evenly to ensure major maintenance investments are not needed all at the same time;
- Build in the flexibility to accommodate growth and capital projects expected through 2030.

This Plan incorporates the 2018 Short Range Transit Plan recommendations. Planned improvements include microtransit, flex route service, and increased frequency. The Fleet

Management Plan translates these recommendations into a service plan and associated vehicle demand projections. The Fleet Management Plan also addresses transit facility needs.

### 1.3 Transit Fleet Management Plan Methodology

The Transit Fleet Management Plan is based on the most recent Short Range Transit Plan utilizing the most recent economic, land use, and population projections for the years 2020 and 2040. The Tulare County Association of Governments (TCAG) develops these projections and the Tulare County Transportation Authority utilizes travel demand models to develop forecasts for future trip origins, destinations, and travel choices. Porterville Transit then develops the service plan for each route necessary to meet this forecasted ridership demand, while maintaining the Agency's maximum load standard. The Transit Fleet Management Plan documents the plan to replace and expand the transit vehicle sub-fleets necessary to meet the associated service plans. The replacement of vehicles is governed by the useful life guidelines developed by the Federal Transit Administration, as shown in Table 1. Vehicles cannot be retired or replaced prior to reaching their useful life without sufficient justification of extenuating circumstances, or repayment of a portion of the remaining vehicle value to FTA. Whenever possible, vehicle expansion procurements are timed with vehicle replacement procurements to take advantage of economies of scale and joint procurement opportunities.

**Table 1: Vehicle Useful Life Guidelines**

**FTA C 5010.1E**

**TAM ULB Cheat Sheet 2016**

| <b>Vehicle Type</b>        | <b>FTA Guidelines (years)</b> | <b>FTA Guidelines (miles)</b> |
|----------------------------|-------------------------------|-------------------------------|
| Automobile                 | 8                             | 100,000                       |
| Bus                        | 14                            | 500,000                       |
| Cutaway Bus                | 10                            | 350,000                       |
| Minibus                    | 10                            | 200,000                       |
| Minivan                    | 8                             | 100,000                       |
| Van                        | 8                             | 100,000                       |
| Other rubber tire vehicles | 14                            | 500,000                       |

### 1.4 Actions in Developing the Transit Fleet Management Plan

The Transit Fleet Management Plan has been extensively reviewed by Long and Short Range Planning, Transit Service Planning, Transit Vehicle Procurement, Innovative Clean Transit Rule, the Transit Manager and the City Council.

## 2. Vehicle Replacement and Expansion

The development of the Transit Fleet Management Plan relies on Porterville Transit ridership forecasts, Short Range Transit Plan recommendations, policies regarding transit service, and the professional judgment of Porterville Transit administration.

The 2018 Short Range Transit Plan ridership forecasts are used to determine the vehicle type, planned headway, and location where the passenger load is the greatest for each route during the AM and PM peak hours. The capacity at each maximum load point is calculated based on vehicle type assumptions in the ridership forecasts. The Porterville Transit service policies require the passenger load not exceed 85 percent of the peak hour capacity at any point along any route. Adjustments to headways for each route were made where necessary to ensure this standard was met. This approach provides greater operational efficiency with minimal disruption to the user experience. Physical constraints along each route, such as turning radii, street widths, and grade changes were also considered when determining the size of vehicle used to provide service.

## 2.1 Fixed Route

Porterville Transit's current fixed route public transit service is carried out by a fleet of 18 compressed nature gas (CNG) powered heavy-duty buses, and 10 battery-electric powered heavy-duty buses. Porterville Transit as a recipient of federal funds for the procurement of its fleet must therefore comply with FTA regulations in its maintenance and replacement. Useful life guidelines is stated above in Table 1.

The City of Porterville's Field Services Division maintains both time and mileage based on preventative maintenance programs for its fixed route fleet in accordance with the City of Porterville Fleet Maintenance Guide. Porterville Transit currently does not operate 50 or more fixed route revenue vehicles and therefore does not require to maintain a spare ratio within 20 percent of the peak service requirement in compliance with FTA Circular 9030.1D. Further, FTA's recent release of a rule for transit agencies to achieve "state of good repair" Porterville Transit has prepared a Transit Asset Management (TAM) Plan under a separate document. Its purpose is to present a strategic approach to set objective standards for measuring the condition of capital assets and establish performance measures for state of good repair, under which all FTA grantees are required to set targets.

**Table 2: Fixed Route Fleet Inventory**

| Quantity | Size  | Manufacturer | First Year of Service | Last Year of Service | FTA Minimum Useful Life | Useful Life | FTA Funded |
|----------|-------|--------------|-----------------------|----------------------|-------------------------|-------------|------------|
| 4        | 32-ft | El Dorado    | 2007                  | 2021                 | 14                      | 14          | Yes        |
| 1        | 32-ft | El Dorado    | 2010                  | 2024                 | 14                      | 14          | Yes        |
| 1        | 32-ft | El Dorado    | 2010                  | 2024                 | 14                      | 14          | No         |
| 1        | 32-ft | El Dorado    | 2013                  | 2027                 | 14                      | 14          | Yes        |
| 1        | 32-ft | El Dorado    | 2013                  | 2027                 | 14                      | 14          | No         |
| 2        | 32-ft | El Dorado    | 2015                  | 2029                 | 14                      | 14          | Yes        |
| 10       | 40-ft | GreenPower   | 2019                  | 2033                 | 14                      | 14          | No         |



## 2.2 Paratransit

Porterville Transit's current paratransit service is carried out by a fleet of 3 compressed nature gas (CNG) powered cutaway buses, and 4 gasoline powered minivans. Porterville Transit as a recipient of federal funds for the procurement of its fleet must therefore comply with FTA regulations in its maintenance and replacement. Useful life guidelines is stated above in Table 1.

Porterville Transit does not have a formal spare paratransit fleet; all vehicles are assigned to revenue service.

**Table 3: Paratransit Fleet Inventory**

| Quantity | Size    | Manufacturer | First Year of Service | Last Year of Service | FTA Minimum Useful Life | Useful Life | FTA Funded |
|----------|---------|--------------|-----------------------|----------------------|-------------------------|-------------|------------|
| 2        | Minivan | Chevrolet    | 2007                  | 2015                 | 8                       | 8           | Yes        |
| 2        | Minivan | Chevrolet    | 2008                  | 2016                 | 8                       | 8           | Yes        |
| 3        | Cutaway | El Dorado    | 2013                  | 2023                 | 10                      | 10          | Yes        |

## 2.3 Non-Revenue Vehicles

Porterville Transit has a fleet of 2 non-revenue vehicles for driver relief, supervision, maintenance, and administrative staff usage. Porterville Transit as a recipient of federal funds for the procurement of its fleet must therefore comply with FTA regulations in its maintenance and replacement. Useful life guidelines is stated above in Table 1.

**Table 4: Non-Revenue Fleet Inventory**

| Quantity | Size | Manufacturer | First Year of Service | Last Year of Service | FTA Minimum Useful Life | Useful Life | FTA Funded |
|----------|------|--------------|-----------------------|----------------------|-------------------------|-------------|------------|
| 2        | Van  | Ford         | 2009                  | 2017                 | 8                       | 8           | No         |

## 3. Objectives and Assumptions

The following will serve as guidelines in the implementation of this plan:

- Fleet Size: Porterville Transit will pursue funding to support plans for procurement of bus replacements and planned fleet expansion in accordance of the 2018 Short Range Transit Plan.
- The minimum useful life of Porterville Transit fixed route fleet is 14 years.
- The minimum useful life of Porterville Transit paratransit fleet is 10 years.
- Bus manufacturer's procurement lead times will support delivery of buses to meet operating schedules.
- The Innovative Clean Transit Rule will guide battery-electric fleet conversion.

- It is the goal of the City of Porterville City Council to convert its fleet to battery-electric as quickly as possible

#### 4. Analysis of Anticipated Service Needs

Additional local, state or federal funds beyond current received levels will be required to implement Porterville Transit's anticipated service needs. While not guaranteed, access to additional funds is a realistic objective. The most likely source will be from awards for transportation projects identified in programming plans developed through TCAG's Regional Transportation Plan (RTP). The RTP is a long term blueprint of the region's transportation system. Funds are awarded to those agencies whose projects facilitate Tulare County's regional goals for traffic mitigation and emission reduction. The selection of projects is primarily based on a competitive process that determines the funds to be received by each agency for projects deemed to have the highest priority.

Therefore, pending successful award of funds, Porterville Transit's planned capital improvement program will be consistent with the above objectives and assumptions, and the recommendations for expansion of existing service described in the 2018 Short Range Transit Plan as follows:

- Four shuttle buses to service implementation of microtransit.
- Four cutaway or shuttle buses to service implementation of weekday flex service.
- Five 40-ft expansion buses to increase service frequency to 30 minutes.
- Four 35-ft expansion buses to provide service to Strathmore.
- Four 35-ft expansion buses to provide service to Bakersfield.
- 100% Battery-electric vehicle procurements is required.

##### 4.1 Fixed Route

The bus configuration will be determined by assessing how and where the buses will be used, e.g. projected passenger loads, comfort, areas to be served, street and road designs, stop frequency and other related factors that can affect Porterville Transit's on-time performance and passenger and driver safety. The size of buses in each replacement or expansion vehicle procurement cycle will include recommendations from analyses conducted by the Transit Administration and consultants. For example, service planned for dense neighborhoods or narrow streets, or with minimal at-capacity passenger loads should be limited to 35-ft buses. Service planned for routes traveling longer distances or with consistent at-capacity passenger loads (39 seated passengers) will likely require 40-ft buses. Fixed Route Vehicle Acquisition is outlined in Table 5.

##### 4.2 Paratransit

Porterville Transit currently utilizes two types of vehicles for its paratransit service; cutaways and minivans. Cutaways feature a bus body mounted on top of a heavy-duty truck chassis whereas

the minivans are smaller light-duty passenger vans. Both configurations meet all ADA accessibility requirements. The 23-ft cutaways allow passengers flexibility in seating options. The advantages of the minivans are their relatively small size that allows maneuvering in tight spaces, capacity to carry three ambulatory and one wheelchair passengers.

The vehicle's range is critical because the FTA requires Porterville Transit to provide equivalent paratransit service in support of its 49-square mile fixed route service area. In as much as the average battery-electric vehicle range is less than 150 miles and may require more than one charging per day or additional vehicles to provide the same level of service.

Paratransit Vehicle Acquisition is outlined in Table 6.

### **4.3 Tribal Transit**

Since 2012, Porterville Transit has provided fixed route and paratransit service to and within the Tule River Indian Reservation. Fixed route service consists of one route (Route 9), operating on 60 minute headways. In partnership with the Tule River Indian Reservation, Route 9 and paratransit service is fare-free.

The Tule River Indian Reservation receives FTA Section 5311 Tribal Transit Funds to support its Tribal Transit Program. The Tule River Indian Reservation and the City of Porterville have an Agreement that the City of Porterville will operate its Tribal Transit service.

Due to limited Tribal Transit Funding, the City of Porterville will continue to support the Program by utilizing Porterville Transit vehicles, as needed.

Tribal Transit Vehicle Acquisition is outlined in Table 7

### **4.4 CalVan Vanpool**

Since 2016, Porterville Transit has partnered with the California Vanpool Authority (CalVans) to offer vanpool service to Porterville residents. Historically, CalVans has administered the vanpool program, and procured and maintained the vanpool vehicles. The City of Porterville provides a financial incentive of \$400 per month to each vanpool to encourage participation.

The City of Porterville desires to increase its support of the program by seeking funding to convert the vanpool fleet, located in Porterville, to battery-electric.

CalVan Vehicle Acquisition is outlined in Table 8

### **4.5 Non-Revenue Fleet**

Replacement of Porterville Transit's non-revenue fleet will be based on an on-going analysis of hybrid and electric vehicles available in the market place. The Transit Manager shall conduct the analysis to determine and select the most cost-effective vehicles to support ongoing administration, supervisory, and driver relief needs.

Non-Revenue Vehicle Acquisition is outlined in Table 9

Table 5: Fixed Route Vehicle Acquisition

|                 | Manufacturer | Year In Service | Type | Qty | 2020        | 2021        | 2022        | 2023        | 2024        | 2025 | 2026 | 2027        | 2028 | 2029        | 2030 | 2031 | 2032 | 2033        |
|-----------------|--------------|-----------------|------|-----|-------------|-------------|-------------|-------------|-------------|------|------|-------------|------|-------------|------|------|------|-------------|
| Existing Fleet  | El Dorado    | 2007            | CNG  | 4   |             | 4           |             |             |             |      |      |             |      |             |      |      |      |             |
|                 | El Dorado    | 2010            | CNG  | 2   |             |             |             |             | 2           |      |      |             |      |             |      |      |      |             |
|                 | El Dorado    | 2013            | CNG  | 2   |             |             |             |             |             |      |      | 2           |      |             |      |      |      |             |
|                 | El Dorado    | 2015            | CNG  | 2   |             |             |             |             |             |      |      |             |      | 2           |      |      |      |             |
|                 | GreenPower   | 2019            | BEV  | 10  |             |             |             |             |             |      |      |             |      |             |      |      |      | 10          |
|                 |              |                 |      |     |             |             |             |             |             |      |      |             |      |             |      |      |      |             |
| Expansion Fleet | TBD          | 2020            | BEV  | 4   | 4           |             |             |             |             |      |      |             |      |             |      |      |      |             |
|                 | TBD          | 2021            | BEV  | 5   |             | 5           |             |             |             |      |      |             |      |             |      |      |      |             |
|                 | TBD          | 2022            | BEV  | 4   |             |             | 4           |             |             |      |      |             |      |             |      |      |      |             |
|                 | TBD          | 2023            | BEV  | 4   |             |             |             | 4           |             |      |      |             |      |             |      |      |      |             |
|                 |              |                 |      |     |             |             |             |             |             |      |      |             |      |             |      |      |      |             |
| Total           |              |                 |      |     | 4           | 9           | 4           | 4           | 2           | 0    | 0    | 2           | 0    | 2           | 0    | 0    | 0    | 10          |
| Cost            |              |                 |      |     | \$2,000,000 | \$4,500,000 | \$2,000,000 | \$2,000,000 | \$1,800,000 |      |      | \$1,800,000 |      | \$1,800,000 |      |      |      | \$8,000,000 |



Table 6: Paratransit Vehicle Acquisition

|                 | Manufacturer | Year In Service | Type | Qty | 2020      | 2021      | 2022      | 2023      | 2024 | 2025 | 2026 | 2027 | 2028      | 2029      | 2030      | 2031      | 2032 | 2033 |
|-----------------|--------------|-----------------|------|-----|-----------|-----------|-----------|-----------|------|------|------|------|-----------|-----------|-----------|-----------|------|------|
| Existing Fleet  | Chevrolet    | 2007            | GAS  | 2   | 2         |           |           |           |      |      |      |      | 2         |           |           |           |      |      |
|                 | Chevrolet    | 2008            | GAS  | 2   |           | 2         |           |           |      |      |      |      |           | 2         |           |           |      |      |
|                 | El Dorado    | 2013            | CNG  | 2   |           |           |           | 2         |      |      |      |      |           |           |           | 2         |      |      |
|                 |              |                 |      |     |           |           |           |           |      |      |      |      |           |           |           |           |      |      |
| Expansion Fleet | TBD          | 2022            | BEV  | 2   |           |           | 2         |           |      |      |      |      |           |           | 2         |           |      |      |
|                 |              |                 |      |     |           |           |           |           |      |      |      |      |           |           |           |           |      |      |
| Total           |              |                 |      |     | 2         | 2         | 2         | 2         | 0    | 0    | 0    | 0    | 2         | 2         | 2         | 2         | 0    | 0    |
| Cost            |              |                 |      |     | \$300,000 | \$300,000 | \$300,000 | \$300,000 |      |      |      |      | \$300,000 | \$300,000 | \$300,000 | \$300,000 |      |      |

Table 7: Tribal Transit Vehicle Acquisition

|                 | Manufacturer | Year In Service | Type | Qty | 2020      | 2021 | 2022      | 2023 | 2024 | 2025 | 2026 | 2027 | 2028      | 2029      | 2030      | 2031 | 2032 | 2033 |
|-----------------|--------------|-----------------|------|-----|-----------|------|-----------|------|------|------|------|------|-----------|-----------|-----------|------|------|------|
| Existing Fleet  | Chevrolet    | 2007            | GAS  | 2   | 2         |      |           |      |      |      |      |      | 2         |           |           |      |      |      |
|                 | Goshen       | 2019            | GAS  | 1   |           |      |           |      |      |      |      |      |           | 1         |           |      |      |      |
|                 |              |                 |      |     |           |      |           |      |      |      |      |      |           |           |           |      |      |      |
| Expansion Fleet |              |                 |      |     |           |      |           |      |      |      |      |      |           |           |           |      |      |      |
|                 | TBD          | 2022            | BEV  | 2   |           |      | 2         |      |      |      |      |      |           |           | 2         |      |      |      |
|                 | TBD          | 2020            | Gas  | 1   | 1         |      |           |      |      |      |      |      |           |           | 1         |      |      |      |
|                 |              |                 |      |     |           |      |           |      |      |      |      |      |           |           |           |      |      |      |
| Total           |              |                 |      |     | 2         | 0    | 2         | 0    | 0    | 0    | 0    | 0    | 0         | 1         | 2         | 0    | 0    | 0    |
| Cost            |              |                 |      |     | \$380,000 |      | \$300,000 |      |      |      |      |      | \$300,000 | \$150,000 | \$380,000 |      |      |      |

Table 8: Vanpool Vehicle Acquisition

|                | Manufacturer | Year In Service | Type | Qty | 2020        | 2021      | 2022 | 2023 | 2024 | 2025 | 2026 | 2027 | 2028        | 2029      | 2030 | 2031 | 2032 | 2033 |
|----------------|--------------|-----------------|------|-----|-------------|-----------|------|------|------|------|------|------|-------------|-----------|------|------|------|------|
| Existing Fleet | GMC          | 2003            | GAS  | 1   | 1           |           |      |      |      |      |      |      | 1           |           |      |      |      |      |
|                | GMC          | 2004            | GAS  | 2   | 2           |           |      |      |      |      |      |      | 2           |           |      |      |      |      |
|                | GMC          | 2005            | GAS  | 1   | 1           |           |      |      |      |      |      |      | 1           |           |      |      |      |      |
|                | GMC          | 2006            | GAS  | 1   | 1           |           |      |      |      |      |      |      | 1           |           |      |      |      |      |
|                | GMC          | 2009            | GAS  | 1   | 1           |           |      |      |      |      |      |      | 1           |           |      |      |      |      |
|                | Toyota       | 2011            | GAS  | 4   | 4           |           |      |      |      |      |      |      | 4           |           |      |      |      |      |
|                | Toyota       | 2014            | GAS  | 1   | 1           |           |      |      |      |      |      |      | 1           |           |      |      |      |      |
|                | Dodge        | 2016            | DSL  | 1   | 1           |           |      |      |      |      |      |      | 1           |           |      |      |      |      |
|                | Toyota       | 2017            | GAS  | 2   |             | 2         |      |      |      |      |      |      |             | 2         |      |      |      |      |
|                |              |                 |      |     |             |           |      |      |      |      |      |      |             |           |      |      |      |      |
| Total          |              |                 |      |     | 12          | 2         | 0    | 0    | 0    | 0    | 0    | 0    | 12          | 2         | 0    | 0    | 0    | 0    |
| Cost           |              |                 |      |     | \$1,800,000 | \$300,000 |      |      |      |      |      |      | \$1,800,000 | \$300,000 |      |      |      |      |

Table 9: Non-Revenue Vehicle Acquisition

|                 | Manufacturer | Year In Service | Type | Qty | 2020      | 2021 | 2022      | 2023 | 2024      | 2025 | 2026      | 2027 | 2028      | 2029 | 2030      | 2031 | 2032      | 2033 |
|-----------------|--------------|-----------------|------|-----|-----------|------|-----------|------|-----------|------|-----------|------|-----------|------|-----------|------|-----------|------|
| Existing Fleet  |              |                 |      |     |           |      |           |      |           |      |           |      |           |      |           |      |           |      |
|                 | Chevrolet    | 2009            | GAS  | 2   | 2         |      |           |      |           |      |           |      | 2         |      |           |      |           |      |
|                 |              |                 |      |     |           |      |           |      |           |      |           |      |           |      |           |      |           |      |
| Expansion Fleet |              |                 |      |     |           |      |           |      |           |      |           |      |           |      |           |      |           |      |
|                 | TBD          | 2022            | BEV  | 2   |           |      | 2         |      |           |      |           |      |           |      | 2         |      |           |      |
|                 | TBD          | 2024            | BEV  | 2   |           |      |           |      | 2         |      |           |      |           |      |           |      | 2         |      |
|                 | TBD          | 2026            | TBD  | 2   |           |      |           |      |           |      | 2         |      |           |      |           |      |           |      |
|                 |              |                 |      |     |           |      |           |      |           |      |           |      |           |      |           |      |           |      |
| Total           |              |                 |      |     | 2         | 0    | 2         | 0    | 2         | 0    | 2         | 0    | 2         | 0    | 2         | 0    | 2         | 0    |
| Cost            |              |                 |      |     | \$300,000 |      | \$300,000 |      | \$300,000 |      | \$300,000 |      | \$300,000 |      | \$300,000 |      | \$300,000 |      |



## 5. Coordination of Fleet Investment Needs

- New Bus Procurements: The Transit and Field Services Divisions and Finance Department will coordinate the procurement and availability of new buses in on-going support of approved capital program budgets, service plans and bus manufacturer's delivery lead time.
- ITS: Buses will be available to support installation of new technologies such as Intelligent Passenger Information Systems.
- Zero-Emission: Procurement for battery-electric zero-emission vehicles is the top priority.

## 6. Conclusion

This plan provides a brief understanding of Porterville Transit's proposed Fleet Management program. The plan will be updated periodically to support the Agency's annual budget process and to incorporate operational changes.



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Consider a Resolution of Support for the State's Safe and Affordable Drinking Water Fund Proposal

**SOURCE:** City Manager's Office

**COMMENT:** At its meeting on April 16, 2019, the City Council approved Council Member Peñaloza's request that the Council consider a Resolution of Support for the State's Safe and Affordable Drinking Water Fund Proposal, which is prescribed in SB 200 (Monning) and AB 217 (Garcia), as a Scheduled Matter at its next regularly scheduled meeting.

On June 6, 2017, the City Council approved a Letter of Support for SB 623 (Monning), which was proposed legislation that would establish the Safe and Affordable Drinking Water Fund in the State Treasury. The bill successfully passed through the Senate, which was then designated as a 2-year bill in the Assembly, and then ultimately died in the Assembly in 2018. SB 620 (Monning) is essentially SB 623 (Monning), with companion AB 217 (Garcia) as the Assembly version. SB 620 was passed through both the Senate Environmental Quality and Natural Resources and Water Senate Committees and is now before the Senate Appropriations Committee, and AB 217 (Garcia) has passed through the Assembly Environmental Safety and Toxic Materials Committee and is now before the Assembly Appropriations Committee.

Although the Safe and Affordable Drinking Water Fund has been generally supported due to seeking to address the prevalence of safe drinking water challenges affecting up to 1 million California residents in mostly disadvantaged communities, a controversial component of the legislation has been the proposed tax of \$0.95/month to each residential water meter service to provide the estimated \$110 million in annual funds for the program.

**RECOMMENDATION:** That the City Council consider the Draft Resolution of Support for the State's Safe and Affordable Drinking Water Fund Proposal.

**ATTACHMENTS:**

1. Draft Resolution of Support - Safe and Affordable Drinking Fund
2. Example Resolution of Support for Safe and Affordable Drinking Water Fund Proposal
3. SB 200 (Monning) Bill Text
4. AB 217 (Garcia) Bill Text

5. June 6, 2017 City Council Letter of Support - SB 623 (Monning)
6. SB 623 (Monning) Bill Text

Appropriated/Funded:

Review By:

Department Director:

Final Approver: John Lollis, City Manager

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE, IN SUPPORT OF THE SAFE AND AFFORDABLE DRINKING WATER FUND PROPOSAL – INCLUDING GOVERNOR NEWSOM’S BUDGET TRAILER BILL PROPOSAL, SB 200 (MONNING), AND AB 217 (GARCIA) – WHICH WOULD ESTABLISH A NEW STATE SAFE AND AFFORDABLE DRINKING WATER FUND TO SUPPORT SHORT- AND LONG-TERM DRINKING WATER SOLUTIONS AND PROGRAMS, SUCH AS TO SUPPORT OPERATIONS AND MAINTENANCE FUNDING FOR DRINKING WATER TREATMENT AND ADDRESS OTHER CRITICAL DRINKING WATER NEEDS

WHEREAS, all Californians have a human right to safe and affordable drinking water for drinking, cooking and sanitation purposes; and

WHEREAS, drinking water safety and affordability issues affect California communities across the state; and

WHEREAS, the City of Porterville recognizes the adverse health risks associated with lack of safe and affordable drinking water to its constituents, with children and the elderly being particularly at risk; and

WHEREAS, for years, the State Water Resources Control Board and other policymakers have called for the creation of a sustainable funding source to support safe and affordable drinking water programs, including to ensure public water systems can afford to operate and maintain drinking water treatment systems to address contaminated drinking water; and

WHEREAS, the lack of a reliable funding source for operations and maintenance drinking water treatment costs has meant many communities are either unable to afford the cost of drinking water treatment, or are forced to pass on burdensome drinking water costs to constituents who may then struggle to be able to afford their drinking water;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Porterville in affirming its support for a new Safe and Affordable Drinking Water Fund – including Governor Newsom’s budget trailer bill proposal, SB 200 (Monning) and AB 217 (Garcia) – that would provide both short- and long-term programs and solutions for



safe and affordable drinking water, including to help subsidize the high cost of operations and maintenance drinking water treatment costs.

This Resolution shall take effect from and after the date of its passage and adoption by this Council.

PASSED, APPROVED, AND ADOPTED this 7<sup>th</sup> day of May, 2019.

---

Martha A. Flores, Mayor

ATTEST:

John D. Lollis, City Clerk

By: \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION OF THE \_\_\_\_\_ IN SUPPORT OF THE SAFE AND AFFORDABLE DRINKING WATER FUND PROPOSAL -- INCLUDING GOVERNOR NEWSOM'S BUDGET TRAILER BILL PROPOSAL, SB 200 (MONNING), AND AB 217 (GARCIA) -- WHICH WOULD ESTABLISH A NEW STATE SAFE AND AFFORDABLE DRINKING WATER FUND TO SUPPORT SHORT AND LONG-TERM DRINKING WATER SOLUTIONS AND PROGRAMS, SUCH AS TO SUPPORT OPERATIONS AND MAINTENANCE FUNDING FOR DRINKING WATER TREATMENT AND ADDRESS OTHER CRITICAL DRINKING WATER NEEDS.**

WHEREAS, all Californians have a human right to safe and affordable drinking water for drinking, cooking and sanitation purposes; and

WHEREAS, drinking water safety and affordability issues affect California communities across the state; and

WHEREAS, the \_\_\_\_\_ recognizes the adverse health risks associated with lack of safe and affordable drinking water to its constituents, with children and the elderly being particularly at risk; and

WHEREAS, for years, the State Water Resources Control Board and other policymakers have called for the creation of a sustainable funding source to support safe and affordable drinking water programs, including to ensure public water systems can afford to operate and maintain drinking water treatment systems to address contaminated drinking water; and

WHEREAS, the lack of a reliable funding source for operations and maintenance drinking water treatment costs has meant many communities are either unable to afford the cost of drinking water treatment, or are forced to pass on burdensome drinking water costs to constituents who may then struggle to be able to afford their drinking water;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the \_\_\_\_\_ as follows:

1. The \_\_\_\_\_ affirms its support for a new Safe and Affordable Drinking Water Fund -- including Governor Newsom's budget trailer bill proposal, SB 200 and AB 217 -- that would provide both short term and long term programs and solutions for safe and affordable drinking water, including to help subsidize the high cost of operations and maintenance drinking water treatment costs.

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the \_\_\_\_\_ at a regular meeting thereof held on the \_\_\_\_ day of \_\_\_\_, 2019, by the following

AYES:

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAIN:

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, Clerk

By: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

I, \_\_\_\_\_, Clerk/Secretary of the \_\_\_\_\_, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Resolution passed and adopted by the \_\_\_\_\_ on the date and by the vote indicated herein.

AMENDED IN SENATE MARCH 11, 2019

**SENATE BILL**

**No. 200**

---

**Introduced by Senator Monning**

(Principal coauthor: Assembly Member Eduardo Garcia)

January 31, 2019

---

An act to add Chapter 4.6 (commencing with Section 116765) to Part 12 of Division 104 of the Health and Safety Code, relating to ~~water~~; *water, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 200, as amended, Monning. Safe and Affordable Drinking Water Fund.

Existing law, the California Safe Drinking Water Act, requires the State Water Resources Control Board to administer provisions relating to the regulation of drinking water to protect public health. Existing law declares it to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

This bill would establish the Safe and Affordable Drinking Water Fund in the State Treasury and would provide that moneys in the fund are ~~available, upon appropriation by the Legislature, continuously appropriated to the board~~ board. *The bill would require the board to administer the fund to provide a stable source of funding to secure access to safe drinking water for all Californians, while also ensuring the long-term sustainability of drinking water service and infrastructure. The bill would authorize the board to provide for the deposit into the fund of federal contributions, voluntary contributions, gifts, grants, and bequests. The bill would require the board to expend moneys in the fund for grants, loans, contracts, or services to assist eligible applicants*



with projects relating to the provision of safe and affordable drinking water. The bill would require the board, working with a multistakeholder advisory group, to adopt a fund implementation plan and policy handbook with priorities and guidelines for expenditures of the fund. The bill would require the board annually to prepare and make available a report of expenditures from the fund. The bill would require the board to adopt annually, after a public hearing, an assessment of funding need that estimates the anticipated funding needed for the next fiscal year to achieve the purposes of the fund. The bill would require, by January 1, 2021, the board, in consultation with local health officers and other relevant stakeholders, to make available a map of aquifers that are used or likely to be used as a source of drinking water that are at high risk of containing contaminants and to make available a map of residential areas that are at high risk of containing contaminants at the tap that exceed health standards. For purposes of the map, the bill would require local health officers and other relevant local agencies to provide all results of, and data associated with, water quality testing performed by certified laboratories to the board, as specified. By imposing additional duties on local health officers and local agencies, the bill would impose a state-mandated local program. By creating a new continuously appropriated fund, this bill would make an appropriation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: ~~no~~-yes. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Chapter 4.6 (commencing with Section 116765)
- 2 is added to Part 12 of Division 104 of the Health and Safety Code,
- 3 to read:

CHAPTER 4.6. *SAFE AND AFFORDABLE DRINKING WATER*

Article 1. *Legislative Findings and Declarations*

116765. *The Legislature finds and declares all of the following:*

(a) *Section 106.3 of the Water Code declares that it is the policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.*

(b) *For all public water systems, the operation and maintenance costs to supply, treat, and distribute potable water that complies with federal and state drinking water standards on a routine and consistent basis may be significant.*

(c) *All community water systems are currently required to set, establish, and charge a schedule of rates and fees that are sufficient to recover the operation and maintenance costs required to supply, treat, and distribute potable water that complies with federal and state drinking water standards on a routine and consistent basis.*

(d) *Hundreds of community water systems in the state cannot charge rates and fees that are affordable and sufficient to recover the full operation and maintenance costs required to supply, treat, and distribute potable water that complies with federal and state drinking water standards on a routine and consistent basis due to a combination of low income levels of customers, high treatment costs for contaminated water sources, and a lack of economies of scale that result in high unit costs for water service. Many schools that serve as their own regulated public water systems and have contaminated water sources cannot afford the full operation and maintenance costs required to provide water that meets federal and state drinking water standards.*

(e) *Nearly all state or federal drinking water project funding sources prohibit the use of that funding for long-term operation and maintenance costs, and as a result, those systems that cannot afford required operation and maintenance costs are unable to access funding for capital projects to meet federal and state drinking water standards.*

(f) *As a result, hundreds of thousands of Californians, particularly those living in small disadvantaged communities, may be exposed to unsafe drinking water in their homes and schools,*

1 which impacts human health, household costs, and community  
2 economic development.

3 (g) A significant number of California residents rely on state  
4 small water systems and domestic wells to provide their drinking  
5 water.

6 (h) The state small water systems and individual domestic wells  
7 face a serious threat of contamination because they often draw  
8 their water from shallow groundwater sources and have fewer or  
9 no chemical monitoring requirements.

10 (i) To ensure that the right of every Californian to safe, clean,  
11 affordable, and accessible water adequate for human consumption,  
12 cooking, and sanitary purposes is protected, it is in the interest of  
13 the State of California to identify where Californians are at high  
14 risk of lacking reliable access to safe drinking water or are known  
15 to lack reliable access to safe drinking water, whether they rely  
16 on a public water system, state small water system, or domestic  
17 well for their potable water supply.

18 (j) Long-term sustainability of drinking water infrastructure  
19 and service provision is necessary to secure safe drinking water  
20 for all Californians and therefore it is in the interest of the state  
21 to discourage the proliferation of new, unsustainable public water  
22 systems and state small water systems, to prevent waste, and to  
23 encourage consolidation and service extension when feasible.

24 (k) It is in the interest of all Californians to establish a fund  
25 with a stable source of revenue to provide financial support,  
26 particularly for operation and maintenance, necessary to secure  
27 access to safe drinking water for all Californians, while also  
28 ensuring the long term sustainability of drinking water service  
29 and infrastructure.

30

## 31 Article 2. Definitions

32

33 116766. For the purposes of this chapter:

34 (a) “Administrator” has the same meaning as defined in Section  
35 116686.

36 (b) “Board” means the State Water Resources Control Board.

37 (c) “Community water system” has the same meaning as defined  
38 in Section 116275.

39 (d) “Disadvantaged community” has the same meaning as  
40 defined in Section 116275.

(e) “Domestic well” means a groundwater well used to supply water for the domestic needs of an individual residence or water systems that are not public water systems and that have no more than four service connections.

(f) “Eligible applicant” means a public water system, including, but not limited to, a mutual water company; a public utility; a public agency, including, but not limited to, a local educational agency that owns or operates a public water system; a nonprofit organization; a federally recognized Indian tribe; a state Indian tribe listed on the Native American Heritage Commission’s California Tribal Consultation List; an administrator; or a groundwater sustainability agency.

(g) “Fund” means the Safe and Affordable Drinking Water Fund established pursuant to Section 116767.

(h) “Fund implementation plan” means the fund implementation plan adopted pursuant to Section 116769.

(i) “Groundwater sustainability agency” has the same meaning as defined in Section 10721 of the Water Code.

(j) “Low-income household” means a household with an income that is less than 80 percent of the statewide median household income.

(k) “Public water system” has the same meaning as defined in Section 116275.

(l) “Replacement water” includes, but is not limited to, bottled water, vended water, point-of-use, or point-of-entry treatment units.

(m) “Safe drinking water” has the same meaning as defined in Section 116681.

(n) “Service connection” has the same meaning as defined in Section 116275.

(o) “State small water system” has the same meaning as defined in Section 116275.

(p) “Vended water” has the same meaning as defined in Section 111070.

### Article 3. Safe and Affordable Drinking Water Fund

116767. The Safe and Affordable Drinking Water Fund is hereby established in the State Treasury. Notwithstanding Section 13340 of the Government Code, all moneys in the fund are



1 continuously appropriated to the board without regard to fiscal  
2 years, in accordance with this chapter. Moneys in the fund at the  
3 close of the fiscal year shall remain in the fund and shall not revert  
4 to the General Fund. Moneys in the fund shall not be available for  
5 appropriation or borrowed for use for any purpose not established  
6 in this chapter unless that use of the moneys receives an affirmative  
7 vote of two-thirds of the membership in each house of the  
8 Legislature.

9 116768. (a) The board shall administer the fund for the  
10 purposes of this chapter to provide a source of funding to secure  
11 access to safe drinking water for all Californians, while also  
12 ensuring the long-term sustainability of drinking water service  
13 and infrastructure. The board shall prioritize the use of this funding  
14 to assist disadvantaged communities served by a public water  
15 system and low-income households served by a state small water  
16 system or a domestic well. The board shall consider and prioritize,  
17 where appropriate, the use of funding for consolidation or  
18 extension of service or both. In order to maximize the use of other  
19 funding sources for capital construction projects when available,  
20 the board shall prioritize use of this funding for costs other than  
21 those related to capital construction costs, except for capital  
22 construction costs associated with consolidation and service  
23 extension to reduce the ongoing unit cost of service and to increase  
24 sustainability of drinking water infrastructure and service delivery.  
25 Beginning January 1, 2021, an expenditure from the fund shall be  
26 consistent with the annual fund implementation plan.

27 (b) In accordance with subdivision (a), the board shall expend  
28 moneys in the fund for grants, loans, contracts, or services to assist  
29 eligible applicants with any of the following:

30 (1) The provision of replacement water, as needed, to ensure  
31 immediate protection of health and safety as a short-term solution.

32 (2) The development, implementation, and sustainability of  
33 long-term drinking water solutions, including, but not limited to,  
34 technical assistance, planning, construction, repair, and operation  
35 and maintenance costs associated with replacing, blending, or  
36 treating contaminated drinking water, or with fixing failing water  
37 systems, pipes, or fixtures; operation and maintenance costs  
38 associated with consolidated water systems, extended drinking  
39 water services, or reliance on a substituted drinking water source;  
40 creating and maintaining natural means and green infrastructure

1 solutions that contribute to sustainable drinking water;  
2 consolidating water systems; extending drinking water services  
3 to other public water systems, domestic wells, or state small water  
4 systems; and the satisfaction of outstanding long-term debt  
5 obligations of public water systems where the board determines  
6 that a system's lack of access to capital markets renders this  
7 solution the most cost-effective for removing a financial barrier  
8 to the system's sustainable, long-term provision of drinking water.  
9 Technical assistance and planning costs may include, but are not  
10 limited to, analyses to identify, and efforts to further, opportunities  
11 to reduce the unit cost of providing drinking water through  
12 organizational and operational efficiency improvements, system  
13 consolidation and service extension, implementation of new  
14 technology, and other options and approaches to reduce costs.

15 (3) Identifying and providing outreach to Californians who are  
16 eligible to receive assistance from the fund.

17 (4) Testing the drinking water quality of domestic wells serving  
18 low-income households, prioritizing those in high-risk areas  
19 identified pursuant to Article 4 (commencing with Section 116770).

20 (5) The provision of administrative and managerial services  
21 under Section 116686.

22 (c) Notwithstanding Section 11019 of the Government Code,  
23 the board may make advance payments as necessary to implement  
24 the purposes of this chapter.

25 (d) The board may expend moneys from the fund for reasonable  
26 costs associated with administration of this section. Beginning  
27 July 1, 2023, the board may expend no more than 5 percent of the  
28 annual revenues of the fund for reasonable costs associated with  
29 administration of this section.

30 (e) The board may undertake any of the following actions to  
31 implement the fund:

32 (1) Provide for the deposit of both of the following moneys into  
33 the fund:

34 (A) Federal contributions.

35 (B) Voluntary contributions, gifts, grants, or bequests.

36 (2) Enter into agreements for contributions to the fund from the  
37 federal government, local or state agencies, and private  
38 corporations or nonprofit organizations.

39 (3) Provide for appropriate audit, accounting, and fiscal  
40 management services, plans, and reports relative to the fund.

1     (4) Direct portions of the fund to a subset of eligible applicants  
2 as required or appropriate based on funding source and consistent  
3 with the annual fund implementation plan.

4     (5) Direct moneys deposited into the fund described in  
5 subparagraph (B) of paragraph (1) towards a specific project,  
6 program, or study.

7     (6) Take additional action as may be appropriate for adequate  
8 administration and operation of the fund.

9     (f) In administering the fund, the board shall make reasonable  
10 efforts to ensure both of the following:

11     (1) That funds are used to secure the long-term sustainability  
12 of drinking water service and infrastructure, including, but not  
13 limited to, requiring adequate technical, managerial, and financial  
14 capacity of eligible applicants as part of funding agreement  
15 outcomes. Funding shall be prioritized to implement consolidations  
16 and service extensions when feasible, and administrative and  
17 managerial contracts or grants entered into pursuant to Section  
18 116686 where applicable. Funds shall not be used to delay,  
19 prevent, or avoid the consolidation or extension of service to public  
20 water systems where it is feasible and the least-cost alternative.  
21 The board may set appropriate requirements as a condition of  
22 funding, including, but not limited to, a system technical,  
23 managerial, or financial capacity audit, improvements to reduce  
24 costs and increase efficiencies, an evaluation of alternative  
25 treatment technologies, and a consolidation or service extension  
26 feasibility study. As a condition of funding, the board may require  
27 a domestic well with nitrate contamination where ongoing septic  
28 system failure may be causing or contributing to contamination  
29 of a drinking water source to conduct an investigation and project  
30 to address the septic system failure if adequate funding sources  
31 are identified and accessible.

32     (2) That funds are not used to subsidize large-scale nonpotable  
33 use.

34     (g) At least once every 10 years, the board shall conduct a public  
35 review and assessment of the fund to determine all of the following:

36     (1) The effectiveness of the fund in securing access to safe  
37 drinking water for all Californians, while also ensuring the  
38 long-term sustainability of drinking water service and  
39 infrastructure.

1     (2) If the moneys deposited into the fund have been appropriately  
2 expended.

3     (3) What other actions are necessary to carry out the purposes  
4 of this chapter.

5     (h) Neither the board nor any employee of the board may be  
6 held liable for any act that is necessary to carry out the purposes  
7 of this chapter. The board or any authorized person shall not be  
8 deemed to have incurred or to be required to incur any obligation  
9 to provide additional funding or undertake additional action solely  
10 as a result of having undertaken an action pursuant to this chapter.

11     116769. By July 1 of each year, the board shall do all of the  
12 following:

13     (a) Prepare and make available a report of expenditures from  
14 the fund.

15     (b) Adopt, after a public hearing, an assessment of funding need,  
16 based on available data, that includes all of the following:

17     (1) Identification of systems and populations potentially in need  
18 of assistance, including, but not limited to, all of the following:

19     (A) A list of systems that consistently fail to provide an adequate  
20 supply of safe drinking water. The list shall include, but is not  
21 limited to, all of the following:

22     (i) Any public water system that consistently fails to provide an  
23 adequate supply of safe drinking water.

24     (ii) Any community water system that serves a disadvantaged  
25 community that must charge fees that exceed the affordability  
26 threshold established by the board in order to supply, treat, and  
27 distribute potable water that complies with federal and state  
28 drinking water standards.

29     (iii) Any state small water system that consistently fails to  
30 provide an adequate supply of safe drinking water.

31     (B) A list of programs that assist, or that will assist, households  
32 supplied by a domestic well that consistently fails to provide an  
33 adequate supply of safe drinking water. This list shall include the  
34 number and approximate location of households served by each  
35 program without identifying exact addresses or other personal  
36 information.

37     (C) A list of public water systems and state small water systems  
38 that may be at risk of failing to provide an adequate supply of safe  
39 drinking water.



1 (D) An estimate of the number of households that are served by  
2 domestic wells or state small water systems in high-risk areas  
3 identified pursuant to Article 4 (commencing with Section 116770).  
4 The estimate shall identify approximate locations of households,  
5 without identifying exact addresses or other personal information,  
6 in order to identify potential target areas for outreach and  
7 assistance programs.

8 (E) A list of programs that assist, or that will assist, households  
9 and schools whose tap water contains contaminants, such as lead  
10 or other secondary contaminants, at levels that exceed  
11 recommended standards. This list shall include the number and  
12 approximate location of households served by each program  
13 without identifying exact addresses or other personal information.

14 (2) An analysis of anticipated funding, per contaminant, needed  
15 for known projects, services, or programs by eligible applicants,  
16 consistent with the fund implementation plan, including any funding  
17 needed for existing long-term funding commitments from the fund.  
18 The board shall identify and consider other existing funding  
19 sources able to support any projects, services, or programs  
20 identified, including, but not limited to, local funding capacity,  
21 state or federal funding sources for capital projects, funding from  
22 responsible parties, and specialized funding sources contributing  
23 to the fund.

24 (3) An estimate of the funding needed for the next fiscal year  
25 based on the amount available in the fund, anticipated funding  
26 needs, other existing funding sources, and other relevant data and  
27 information.

28 (c) (1) Adopt, after a public hearing, a fund implementation  
29 plan and policy handbook with priorities and guidelines for  
30 expenditures of the fund.

31 (2) The board shall work with a multistakeholder advisory group  
32 to establish priorities and guidelines for the fund implementation  
33 plan and policy handbook. The multistakeholder advisory group  
34 shall be open to participation by all of the following:

35 (A) Representatives of entities paying into the fund.

36 (B) Public water systems.

37 (C) Technical assistance providers.

38 (D) Local agencies.

39 (E) Nongovernmental organizations.

(F) Residents served by community water systems in disadvantaged communities, state small water systems, and domestic wells.

(G) The public.

(3) The adoption of a fund implementation plan and policy handbook and the implementation of the fund pursuant to the policy handbook are not subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

116769.5. The board may expend moneys from the fund for reasonable costs associated with the administration of Section 116769 and Article 4 (commencing with Section 116770). Beginning July 1, 2023, the board shall not expend more than 3 percent of the annual revenue of the fund for the reasonable costs of administering Section 116769 and Article 4 (commencing with Section 116770).

#### Article 4. Information on High-risk Areas

116770. (a) (1) By January 1, 2021, the board, in consultation with local health officers and other relevant stakeholders, shall use available data to make available a map of aquifers that are at high risk of containing contaminants and that exceed primary federal and state drinking water standards that are used or likely to be used as a source of drinking water for a state small water system or a domestic well. The board shall update the map at least annually based on any newly available data.

(2) The board shall make the map of high-risk areas, as well as the data used to make the map, publicly accessible on its internet website in a manner that does not identify exact addresses or other personal information and that complies with the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The board shall notify local health officers and county planning agencies of high-risk areas within their jurisdictions.

(b) (1) By January 1, 2021, a local health officer or other relevant local agency shall provide to the board all results of, and data associated with, water quality testing performed by certified laboratories for a state small water system or domestic well that

1 was collected after January 1, 2014, and that is in the possession  
2 of the local health officer or other relevant local agency.

3 (2) By January 1, 2022, and by January 1 of each year  
4 thereafter, all results of, and data associated with, water quality  
5 testing performed by a certified laboratory for a state small water  
6 system or domestic well that is submitted to a local health officer  
7 or other relevant local agency shall also be submitted directly to  
8 the board in electronic format.

9 (c) By January 1, 2021, the board, in consultation with local  
10 health officers and other relevant stakeholders, shall use available  
11 data to make available a map of residential areas that are at high  
12 risk of containing contaminants at the tap that exceed health  
13 standards, including, but not limited to, lead and secondary  
14 contaminants. The board shall update the map at least annually  
15 based on any newly available data.

16 (d) A map of high-risk areas developed pursuant to this article  
17 is not subject to the Administrative Procedure Act (Chapter 3.5  
18 (commencing with Section 11340) of Part 1 of Division 3 of Title  
19 2 of the Government Code).

20 SEC. 2. If the Commission on State Mandates determines that  
21 this act contains costs mandated by the state, reimbursement to  
22 local agencies and school districts for those costs shall be made  
23 pursuant to Part 7 (commencing with Section 17500) of Division  
24 4 of Title 2 of the Government Code.

25 ~~SECTION 1. Chapter 4.6 (commencing with Section 116765)~~  
26 ~~is added to Part 12 of Division 104 of the Health and Safety Code;~~  
27 ~~to read:~~

28  
29 ~~CHAPTER 4.6. SAFE AND AFFORDABLE DRINKING WATER~~  
30

31 ~~116765. The Legislature finds and declares all of the following:~~

32 ~~(a) Section 106.3 of the Water Code declares that it is the policy~~  
33 ~~of the state that every human being has the right to safe, clean,~~  
34 ~~affordable, and accessible water adequate for human consumption,~~  
35 ~~cooking, and sanitary purposes.~~

36 ~~(b) For all public water systems, the operation and maintenance~~  
37 ~~costs to supply, treat, and distribute potable water that complies~~  
38 ~~with federal and state drinking water standards on a routine and~~  
39 ~~consistent basis may be significant.~~

1 ~~(c) All public water systems are currently required to set,~~  
2 ~~establish, and charge a schedule of rates and fees that are sufficient~~  
3 ~~to recover the operation and maintenance costs required to supply,~~  
4 ~~treat, and distribute potable water that complies with federal and~~  
5 ~~state drinking water standards on a routine and consistent basis.~~

6 ~~(d) Hundreds of public water systems in the state cannot charge~~  
7 ~~rates and fees that are affordable and sufficient to recover the full~~  
8 ~~operation and maintenance costs required to supply, treat, and~~  
9 ~~distribute potable water that complies with federal and state~~  
10 ~~drinking water standards on a routine and consistent basis due to~~  
11 ~~a combination of low-income levels of customers, high treatment~~  
12 ~~costs for contaminated water sources, and a lack of economies of~~  
13 ~~scale that result in high unit costs for water service. Many schools~~  
14 ~~that serve as their own regulated public water systems and have~~  
15 ~~contaminated water sources cannot afford the full operation and~~  
16 ~~maintenance costs required to provide water that meets federal~~  
17 ~~and state drinking water standards.~~

18 ~~(e) Nearly all state or federal drinking water project funding~~  
19 ~~sources prohibit the use of that funding for operation and~~  
20 ~~maintenance costs, and as a result, those systems that cannot afford~~  
21 ~~required operation and maintenance costs are unable to access~~  
22 ~~funding for capital projects to meet federal and state drinking water~~  
23 ~~standards.~~

24 ~~(f) As a result, close to one million Californians, particularly~~  
25 ~~those living in small disadvantaged communities, may be exposed~~  
26 ~~to unsafe drinking water in their homes and schools, which impacts~~  
27 ~~human health, household costs, and community economic~~  
28 ~~development.~~

29 ~~(g) A significant number of California residents rely on state~~  
30 ~~small water systems and domestic wells to provide their drinking~~  
31 ~~water.~~

32 ~~(h) State small water systems and individual domestic wells~~  
33 ~~face a serious threat of contamination because they often draw~~  
34 ~~their water from shallow groundwater sources and have fewer or~~  
35 ~~no chemical monitoring requirements.~~

36 ~~(i) State small water systems and domestic wells are not~~  
37 ~~currently subject to any comprehensive federal or state~~  
38 ~~requirements for chemical water quality monitoring. Many local~~  
39 ~~agencies do not require any monitoring beyond what is required~~



1 by state law and there are wide discrepancies among local  
2 jurisdictions in well monitoring programs.

3 (j) To ensure that the right of every Californian to safe, clean,  
4 affordable, and accessible water adequate for human consumption,  
5 cooking, and sanitary purposes is protected, it is in the interest of  
6 the State of California to identify where Californians are at high  
7 risk of lacking reliable access to safe drinking water or are known  
8 to lack reliable access to safe drinking water, whether they rely on  
9 a public water system, state small water system, or domestic well  
10 for their potable water supply.

11 (k) Long-term sustainability of drinking water infrastructure  
12 and service provision is necessary to secure safe drinking water  
13 for all Californians and therefore it is in the interest of the state to  
14 discourage the proliferation of new, unsustainable public water  
15 systems and state small water systems, to prevent waste, and to  
16 encourage consolidation and service extension when feasible.

17 (l) It is in the interest of all Californians to establish a fund with  
18 a stable source of revenue to provide financial support, particularly  
19 for operation and maintenance, necessary to secure access to safe  
20 drinking water for all Californians, while also ensuring the  
21 long-term sustainability of drinking water service and  
22 infrastructure.

23 116766. The Safe and Affordable Drinking Water Fund is  
24 hereby established in the State Treasury. Moneys in the fund shall  
25 be available to the State Water Resources Control Board, upon  
26 appropriation by the Legislature, for the purposes of this chapter  
27 to provide a stable source of funding to secure access to safe  
28 drinking water for all Californians, while also ensuring the  
29 long-term sustainability of drinking water service and  
30 infrastructure.

AMENDED IN ASSEMBLY MARCH 19, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 217**

---

**Introduced by Assembly Member Eduardo Garcia**  
**(~~Coauthor: Assembly Member Bloom~~)**  
**(Coauthors: Assembly Members Bloom, Carrillo, Chiu, Gipson,**  
**Holden, Robert Rivas, Mark Stone, and Wicks)**  
**(Coauthor: Senator Monning)**

January 16, 2019

---

*An act to add Article 10.5 (commencing with Section 595) to Chapter 3 of Part 1 of Division 1 of, to add Article 6.5 (commencing with Section 14615) to Chapter 5 of Division 7 of, and to add Article 14.5 (commencing with Section 62215) to Chapter 2 of Part 3 of Division 21 of, the Food and Agricultural Code, and to add Chapter 4.6 (commencing with Section 116765) to Part 12 of Division 104 of, to add Chapter 4.7 (commencing with Section 116774) to Part 12 of Division 104 of, and to repeal Article 5 (commencing with Section 116771) of Chapter 4.6 of Part 12 of Division 104 of, the Health and Safety Code, relating to ~~water~~, water, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 217, as amended, Eduardo Garcia. ~~Safe and Affordable Drinking Water Fund. Safe Drinking Water for All Act.~~

~~Existing~~

(1) Existing law, the California Safe Drinking Water Act, requires the State Water Resources Control Board to administer provisions relating to the regulation of drinking water to protect public health. Existing law declares it to be the established policy of the state that

every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

This bill would enact the *Safe Drinking Water for All Act* and would establish the Safe and Affordable Drinking Water Fund in the State Treasury and would provide that moneys in the fund are ~~available, upon appropriation by the Legislature,~~ *continuously appropriated* to the board to provide a ~~stable~~ source of funding to secure access to safe drinking water for all Californians, while also ensuring the long-term sustainability of drinking water service and infrastructure. *The bill would authorize the board to provide for the deposit into the fund of federal contributions, voluntary contributions, gifts, grants, and bequests. The bill would require the board to expend moneys in the fund for grants, loans, contracts, or services to assist eligible applicants with certain projects. The bill would require the board, working with a multistakeholder advisory group, to adopt a fund implementation plan and policy handbook with priorities and guidelines for expenditures of the fund. The bill would require the board annually to prepare and make available a report of expenditures from the fund. The bill would require the board to adopt annually, after a public hearing, an assessment of funding need that estimates the anticipated funding needed for the next fiscal year to achieve the purposes of the fund. The bill would authorize the board to distribute the funds through its drinking water regional offices in an unspecified manner and would prohibit the board from distributing more than 20% of the annual expenditures from the fund in this manner. By creating a new continuously appropriated fund, this bill would make an appropriation.*

*This bill would require the board to adopt a schedule of fees, as prescribed, not to exceed an unspecified amount. The bill would require these fees to be deposited into the fund. The bill would require the Legislative Analyst to report to the Legislature and the board if the Legislative Analyst determines, on or before January 1, 2023, that at least \$3,000,000,000 has been made available in an interest bearing account in the State Treasury with a goal of at least \$100,000,000 in interest revenues per year available for the purposes of the Safe and Affordable Drinking Water Fund. The bill would make this reporting requirement and the requirement for the board to adopt fees inoperative upon the Legislative Analyst submitting the report, and would repeal them as of January 1, of the year following that determination.*

*The bill would establish the Safe and Affordable Drinking Water Trust Fund and would require moneys held in the trust fund to be*

*invested by the Treasurer, in consultation with the Director of Finance and the controller, as specified. The bill would transfer the investment income derived from the trust fund on January 1 of each year to the Safe and Affordable Drinking Water Fund. The bill would state that a transfer of \$200,000,000 is to be made by the Legislature each year for 5 years for the purpose of establishing a \$1,000,000,000 trust account to derive interest revenues to fund the Safe and Affordable Drinking Water Fund.*

*The bill would require, by January 1, 2021, the board, in consultation with local health officers and other relevant stakeholders, to make available a map of aquifers that are used or likely to be used as a source of drinking water that are at high risk of containing contaminants. For purposes of the map, the bill would require local health officers and other relevant local agencies to provide all results of, and data associated with, water quality testing performed by certified laboratories to the board, as specified. By imposing additional duties on local health officers and local agencies, the bill would impose a state-mandated local program.*

*(2) Existing law requires every person who manufactures or distributes fertilizing materials to be licensed by the Secretary of Food and Agriculture and to pay a license fee that does not exceed \$300. Existing law requires every lot, parcel, or package of fertilizing material to have a label attached to it, as required by the secretary. Existing law requires a licensee who sells or distributes bulk fertilizing materials to pay to the secretary an assessment not to exceed \$0.002 per dollar of sales for all sales of fertilizing materials, as prescribed, for the purposes of the administration and enforcement of provisions relating to fertilizing materials. In addition to that assessment, existing law authorizes the secretary to impose an assessment in an amount not to exceed \$0.001 per dollar of sales for all sales of fertilizing materials for the purpose of providing funding for research and education regarding the use of fertilizing materials. Existing law specifies that a violation of the fertilizing material laws or the regulations adopted pursuant to those laws is a misdemeanor.*

*This bill would require a licensee whose name appears on the label of bulk or packaged fertilizing materials to pay to the secretary a fertilizer safe drinking water fee of \$0.006 per \$1.00 of sales for all sales of fertilizing materials. The bill would require these moneys to be deposited into the Safe and Affordable Drinking Water Fund. The bill would authorize the secretary to adopt regulations relating to the*

administration and enforcement of these provisions. Because a violation of these provisions or regulations adopted pursuant to these provisions would be a crime, the bill would impose a state-mandated local program.

(3) Existing law regulates the production, handling, and marketing of milk and dairy products and requires every milk handler subject to that regulatory scheme to pay specified assessments and fees to the Secretary of Food and Agriculture to cover the costs of regulating milk. Existing law governing milk defines “handler” as any person who, either directly or indirectly, receives, purchases, or otherwise acquires ownership, possession, or control of market milk from a producer, a producer-handler, or another handler for the purpose of manufacture, processing, sale, or other handling. Existing law defines “market milk” as milk conforming to specified standards and “manufacturing milk” as milk that does not conform to the requirements of market milk. Existing law provides that a violation of that regulatory scheme or a regulation adopted pursuant to that regulatory scheme is a misdemeanor.

This bill would require, beginning January 1, 2022, each handler to deduct from payments made to producers for market and manufacturing milk the sum of \$0.01355 per hundredweight of milk as a dairy safe drinking water fee. The bill would require the secretary to deposit these moneys into the Safe and Affordable Drinking Water Fund. The bill would authorize the secretary to take specified enforcement actions and would require the secretary to adopt regulations for the administration and enforcement of these provisions. Because a violation of these provisions or regulations adopted pursuant to these provisions would be a crime, the bill would impose a state-mandated local program.

(4) Existing law requires the Secretary of Food and Agriculture to enforce provisions governing livestock operations. Existing law generally provides that a violation of a provision of the Food and Agricultural Code is a misdemeanor.

This bill would require each producer owning a nondairy confined animal facility, as defined, beginning the 2021 calendar year to pay annually to the secretary a safe drinking water fee of \$1,000 for the first facility and \$750 per each facility thereafter owned by the same producer, not to exceed \$12,000. The bill would require these moneys to be deposited into the Safe and Affordable Drinking Water Fund. Because a violation of these provisions would be a crime, the bill would impose a state-mandated local program.



(5) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.*

*With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.*

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: ~~no~~yes. Fiscal committee: yes. State-mandated local program: ~~no~~yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. *This act shall be known, and may be cited, as the*  
2 *Safe Drinking Water for All Act.*

3     SEC. 2. *Article 10.5 (commencing with Section 595) is added*  
4 *to Chapter 3 of Part 1 of Division 1 of the Food and Agricultural*  
5 *Code, to read:*

6  
7     Article 10.5. *Safe Drinking Water Fee for Nondairy Confined*  
8                     *Animal Facilities*  
9

10     595. *For purposes of this article, the following definitions*  
11 *apply:*

12     (a) *“Fee” means the safe drinking water fee for nondairy*  
13 *confined animal facilities.*

14     (b) *“Fund” means the Safe and Affordable Drinking Water*  
15 *Fund established by Section 116767 of the Health and Safety Code.*

16     (c) (1) *“Nondairy confined animal facilities” means bovine*  
17 *operations, poultry operations, swine operations, and other*  
18 *livestock operations, excluding dairies, where all of the following*  
19 *apply:*

20         (A) *Operations are designed to corral, pen, or otherwise enclose*  
21 *or hold domestic livestock.*

22         (B) *Feeding is exclusively by means other than grazing.*

23         (C) *Facilities are subject to annual fees for confined animal*  
24 *facilities adopted in accordance with Section 13260 of the Water*  
25 *Code.*

(2) “Nondairy confined animal facilities” does not include facilities subject to Article 14.5 (commencing with Section 62215) of Chapter 2 of Part 3 of Division 21.

596. (a) Beginning in the 2021 calendar year, each producer owning a nondairy confined animal facility shall pay annually to the secretary a safe drinking water fee. The amount of the fee paid annually to the secretary shall equal one thousand dollars (\$1,000) for a producer that owns a single nondairy confined animal facility. For a producer that owns more than one nondairy confined animal facility, the amount of the fee paid annually to the secretary shall equal one thousand dollars (\$1,000) for the first facility and seven hundred fifty dollars (\$750) per each facility thereafter owned by the same producer.

(b) Notwithstanding subdivision (a), the amount of the fee paid annually to the secretary by a producer that owns more than one nondairy confined animal facility shall not exceed twelve thousand dollars (\$12,000) per year.

(c) The secretary may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this article.

597. The secretary shall deposit all moneys received under this article into the fund.

SEC. 3. Article 6.5 (commencing with Section 14615) is added to Chapter 5 of Division 7 of the Food and Agricultural Code, to read:

#### Article 6.5. Fertilizer Safe Drinking Water Fee

14615. (a) It is the intent of the Legislature to require licensees of bulk fertilizing materials, and to authorize licensees of packaged fertilizing materials, to pass the fertilizer safe drinking water fee described in Section 14616 on to the end user of the fertilizer.

(b) For purposes of this article, the following definitions apply:

(1) “Bulk fertilizing material” has the same meaning as applies to “bulk material” in Section 14517.

(2) “Fertilizing material” has the same meaning as defined in Section 14533.

(3) “Fund” means the Safe and Affordable Drinking Water Fund established by Section 116767 of the Health and Safety Code.

(4) “Packaged” has the same meaning as defined in Section 14551.

14616. In addition to the assessments provided in Section 14611, a licensee whose name appears on the label of bulk or packaged fertilizing materials shall pay to the secretary a fertilizer safe drinking water fee of six mills (\$0.006) per dollar of sales for all sales of fertilizing materials.

14617. (a) (1) A licensee whose name appears on the label who sells or distributes bulk fertilizing materials shall charge an unlicensed purchaser the fertilizer safe drinking water fee as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the purchaser. This fee shall be included on the bill of sale as a separate line item.

(2) (A) A licensee whose name appears on the label of packaged fertilizing materials may include the fertilizer safe drinking water fee as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the purchaser or may include the charge with the assessment collected pursuant to Section 14611 as a separate line item on the bill of sale and identified as the California Regulatory and Safe Drinking Water Assessment.

(B) Notwithstanding paragraph (1), a licensee whose name appears on the label who sells or distributes bulk fertilizing material may include the fertilizer safe drinking water fee with the assessment collected pursuant to Section 14611 as a separate line item on the bill of sale and identified as the California Regulatory and Safe Drinking Water Assessment.

(b) The secretary may prescribe, adopt, and enforce regulations relating to the administration and enforcement of this article.

(c) (1) Except as provided in paragraph (2), the secretary may retain up to 4 percent of the moneys collected pursuant to this article for reasonable costs associated with the implementation and enforcement of this article.

(2) Beginning July 1, 2022, the secretary may retain up to 2 percent of the moneys collected pursuant to this article for reasonable costs associated with the implementation and enforcement of this article.

14618. The secretary shall deposit all moneys received under this article into the fund.

SEC. 4. Article 14.5 (commencing with Section 62215) is added to Chapter 2 of Part 3 of Division 21 of the Food and Agricultural Code, to read:

Article 14.5. Dairy Safe Drinking Water Fee

62215. (a) It is the intent of the Legislature that the dairy safe drinking water fee described in Section 62216 be paid for all milk produced in the state, regardless of grade.

(b) For purposes of this article, the following definitions apply:

(1) “Fee” means the dairy safe drinking water fee.

(2) “Fund” means the Safe and Affordable Drinking Water Fund established by Section 116767 of the Health and Safety Code.

(3) “Manufacturing milk” has the same meaning as defined in Section 32509.

(4) “Market milk” has the same meaning as defined in Section 32510.

(5) “Milk” includes market milk and manufacturing milk.

62216. (a) Beginning January 1, 2022, each handler, including a producer-handler, shall deduct the sum of one cent and three hundred fifty-five mills (\$0.01355) per hundredweight of milk from payments made to producers for milk, including the handler’s own production, as a dairy safe drinking water fee.

(b) The secretary shall adopt regulations necessary for the proper administration and enforcement of this section by January 1, 2022.

62217. (a) A handler shall pay the dairy safe drinking water fee to the secretary on or before the 45th day following the last day of the month in which the milk was received.

(b) The secretary shall deposit all moneys received under this article into the fund.

(c) (1) Except as provided in paragraph (2), the secretary may retain up to 4 percent of the total amount that is paid to the secretary pursuant to this article for reasonable costs of the secretary associated with the implementation and enforcement of this article.

(2) Beginning July 1, 2022, the secretary may retain up to 2 percent of the moneys collected pursuant to this article for reasonable costs of the secretary associated with the implementation and enforcement of this article.

(d) The secretary may require handlers, including cooperative associations acting as handlers, to make reports at any intervals

1 and in any detail that the secretary finds necessary for the accurate  
2 collection of the fee.

3 (e) For the purposes of enforcing this article, the secretary,  
4 through the secretary's duly authorized representatives and agents,  
5 shall have access to the records of every producer and handler.  
6 The secretary shall have at all times free and unimpeded access  
7 to any building, yard, warehouse, store, manufacturing facility,  
8 or transportation facility in which any milk or milk product is  
9 produced, bought, sold, stored, bottled, handled, or manufactured.

10 (f) Any books, papers, records, documents, or reports made to,  
11 acquired by, prepared by, or maintained by the secretary pursuant  
12 to this article that would disclose any information about finances,  
13 financial status, financial worth, composition, market share, or  
14 business operations of any producer or handler, excluding  
15 information that solely reflects transfers of production base and  
16 pool quota among producers, is confidential and shall not be  
17 disclosed to any person other than the person from whom the  
18 information was received, except pursuant to the final order of a  
19 court with jurisdiction, or as necessary for the proper  
20 determination of any proceeding before the secretary.

21 SEC. 5. Chapter 4.6 (commencing with Section 116765) is  
22 added to Part 12 of Division 104 of the Health and Safety Code,  
23 to read:

24  
25 *CHAPTER 4.6. SAFE AND AFFORDABLE DRINKING WATER*

26  
27 *Article 1. Legislative Findings and Declarations*

28  
29 116765. The Legislature finds and declares all of the following:

30 (a) Section 106.3 of the Water Code declares that it is the policy  
31 of the state that every human being has the right to safe, clean,  
32 affordable, and accessible water adequate for human consumption,  
33 cooking, and sanitary purposes.

34 (b) For all public water systems, the operation and maintenance  
35 costs to supply, treat, and distribute potable water that complies  
36 with federal and state drinking water standards on a routine and  
37 consistent basis may be significant.

38 (c) All community water systems are currently required to set,  
39 establish, and charge a schedule of rates and fees that are sufficient  
40 to recover the operation and maintenance costs required to supply,



1 *treat, and distribute potable water that complies with federal and*  
2 *state drinking water standards on a routine and consistent basis.*

3 *(d) Hundreds of community water systems in the state cannot*  
4 *charge rates and fees that are affordable and sufficient to recover*  
5 *the full operation and maintenance costs required to supply, treat,*  
6 *and distribute potable water that complies with federal and state*  
7 *drinking water standards on a routine and consistent basis due to*  
8 *a combination of low income levels of customers, high treatment*  
9 *costs for contaminated water sources, and a lack of economies of*  
10 *scale that result in high unit costs for water service. Many schools*  
11 *that serve as their own regulated public water systems and have*  
12 *contaminated water sources cannot afford the full operation and*  
13 *maintenance costs required to provide water that meets federal*  
14 *and state drinking water standards.*

15 *(e) Nearly all state or federal drinking water project funding*  
16 *sources prohibit the use of that funding for operation and*  
17 *maintenance costs, and as a result, those systems that cannot afford*  
18 *required operation and maintenance costs are unable to access*  
19 *funding for capital projects to meet federal and state drinking*  
20 *water standards.*

21 *(f) As a result, hundreds of thousands of Californians,*  
22 *particularly those living in small disadvantaged communities, may*  
23 *be exposed to unsafe drinking water in their homes and schools,*  
24 *which impacts human health, household costs, and community*  
25 *economic development.*

26 *(g) A significant number of California residents rely on state*  
27 *small water systems and domestic wells to provide their drinking*  
28 *water.*

29 *(h) The state small water systems and individual domestic wells*  
30 *face a serious threat of contamination because they often draw*  
31 *their water from shallow groundwater sources and have fewer or*  
32 *no chemical monitoring requirements.*

33 *(i) To ensure that the right of every Californian to safe, clean,*  
34 *affordable, and accessible water adequate for human consumption,*  
35 *cooking, and sanitary purposes is protected, it is in the interest of*  
36 *the State of California to identify where Californians are at high*  
37 *risk of lacking reliable access to safe drinking water or are known*  
38 *to lack reliable access to safe drinking water, whether they rely*  
39 *on a public water system, state small water system, or domestic*  
40 *well for their potable water supply.*

1     (j) Long-term sustainability of drinking water infrastructure  
2     and service provision is necessary to secure safe drinking water  
3     for all Californians and therefore it is in the interest of the state  
4     to discourage the proliferation of new, unsustainable public water  
5     systems and state small water systems, to prevent waste, and to  
6     encourage consolidation and service extension when feasible.

7     (k) It is in the interest of all Californians to establish a fund  
8     with a stable source of revenue to provide financial support,  
9     particularly for operation and maintenance, necessary to secure  
10    access to safe drinking water for all Californians, while also  
11    ensuring the long-term sustainability of drinking water service  
12    and infrastructure.

13    (l) It is in the interest of all Californians that when funding is  
14    available from other sources, including the General Fund, the fees  
15    necessary to enact this statute be reduced.

16    116765.5. It is the intent of the Legislature that any interest  
17    revenues from the Safe and Affordable Drinking Water Trust Fund  
18    as well as revenue from fees deposited in the Safe and Affordable  
19    Drinking Water Fund be available annually for the purposes of  
20    this chapter.

21  
22                   Article 2. Definitions  
23

24    116766. For the purposes of this chapter:

25    (a) “Administrator” has the same meaning as defined in Section  
26    116686.

27    (b) “Board” means the State Water Resources Control Board.

28    (c) “Community water system” has the same meaning as defined  
29    in Section 116275.

30    (d) “Disadvantaged community” has the same meaning as  
31    defined in Section 116275.

32    (e) “Domestic well” means a groundwater well used to supply  
33    water for the domestic needs of an individual residence or water  
34    systems that are not public water systems and that have no more  
35    than four service connections.

36    (f) “Eligible applicant” means a public water system, including,  
37    but not limited to, a mutual water company; a public utility; a  
38    public agency, including, but not limited to, a local educational  
39    agency that owns or operates a public water system; a nonprofit  
40    organization; a federally recognized Indian tribe; a state Indian

1 tribe listed on the Native American Heritage Commission's  
2 California Tribal Consultation List; an administrator; or a  
3 groundwater sustainability agency.

4 (g) "Fund" means the Safe and Affordable Drinking Water  
5 Fund established pursuant to Section 116767.

6 (h) "Fund implementation plan" means the fund implementation  
7 plan adopted pursuant to Section 116769.

8 (i) "Groundwater sustainability agency" has the same meaning  
9 as defined in Section 10721 of the Water Code.

10 (j) "Low-income household" means a household with an income  
11 that is less than 80 percent of the statewide median household  
12 income.

13 (k) "Public water system" has the same meaning as defined in  
14 Section 116275.

15 (l) "Replacement water" includes, but is not limited to, bottled  
16 water, vended water, point-of-use, or point-of-entry treatment  
17 units.

18 (m) "Safe drinking water" has the same meaning as defined in  
19 Section 116681.

20 (n) "Service connection" has the same meaning as defined in  
21 Section 116275.

22 (o) "State small water system" has the same meaning as defined  
23 in Section 116275.

24 (p) "Vended water" has the same meaning as defined in Section  
25 111070.

### 26 Article 3. Safe and Affordable Drinking Water Fund

27  
28  
29 116767. (a) The Safe and Affordable Drinking Water Fund is  
30 hereby established in the State Treasury. Notwithstanding Section  
31 13340 of the Government Code, all moneys in the fund are  
32 continuously appropriated to the board without regard to fiscal  
33 years, in accordance with this chapter. Moneys in the fund at the  
34 close of the fiscal year shall remain in the fund and shall not revert  
35 to the General Fund. Moneys in the fund shall not be available for  
36 appropriation or borrowed for use for any purpose not established  
37 in this chapter unless that use of the moneys receives an affirmative  
38 vote of two-thirds of the membership in each house of the  
39 Legislature.

1     (b) The board shall report annually in the Governor's budget  
2     fund revenues, including interest revenues, expenditures, and fund  
3     balances.

4     116768. (a) The board shall administer the fund for the  
5     purposes of this chapter to provide a source of funding to secure  
6     access to safe drinking water for all Californians, while also  
7     ensuring the long-term sustainability of drinking water service  
8     and infrastructure. The board shall prioritize the use of this funding  
9     to assist disadvantaged communities and low-income households  
10    served by a state small water system or a domestic well. In order  
11    to maximize the use of other funding sources for capital  
12    construction projects when available, the board shall prioritize  
13    use of this funding for costs other than those related to capital  
14    construction costs, except for capital construction costs associated  
15    with consolidation and service extension to reduce the ongoing  
16    unit cost of service and to increase sustainability of drinking water  
17    infrastructure and service delivery. Beginning January 1, 2020,  
18    an expenditure from the fund shall be consistent with the annual  
19    fund implementation plan.

20    (b) In accordance with subdivision (a), the board shall expend  
21    moneys in the fund for grants, loans, contracts, or services to assist  
22    eligible applicants with any of the following:

23    (1) The provision of replacement water, as needed, to ensure  
24    immediate protection of health and safety as a short-term solution.

25    (2) The development, implementation, and sustainability of  
26    long-term drinking water solutions that include, but are not limited  
27    to, the following:

28    (A) Technical assistance, planning, construction, repair, and  
29    operation and maintenance costs associated with replacing,  
30    blending, or treating contaminated drinking water or with fixing  
31    failing water systems, pipes, or fixtures. Technical assistance and  
32    planning costs may include, but are not limited to, analyses to  
33    identify, and efforts to further, opportunities to reduce the unit  
34    cost of providing drinking water through organizational and  
35    operational efficiency improvements, system consolidation and  
36    service extension, implementation of new technology, and other  
37    options and approaches to reduce costs.

38    (B) Operations and maintenance costs associated with  
39    consolidated water systems, extended drinking water services, or  
40    reliance on a substituted drinking water source.

1 (C) Creating and maintaining natural means and green  
2 infrastructure solutions that contribute to sustainable drinking  
3 water.

4 (D) Consolidating water systems.

5 (E) Extending drinking water services to other public water  
6 systems, domestic wells, or state small water systems.

7 (F) The satisfaction of outstanding long-term debt obligations  
8 of public water systems where the board determines that a system's  
9 lack of access to capital markets renders this solution the most  
10 cost effective for removing a financial barrier to the system's  
11 sustainable, long-term provision of drinking water.

12 (3) Identifying and providing outreach to Californians who are  
13 eligible to receive assistance from the fund.

14 (4) Testing the drinking water quality of domestic wells serving  
15 low-income households in high-risk areas identified pursuant to  
16 Article 4 (commencing with Section 116770).

17 (5) The provision of administrative and managerial services  
18 under Section 116686.

19 (6) Provision of wastewater treatment plant operations and  
20 maintenance for areas in which polluted water originates from  
21 outside the state.

22 (c) The board may expend moneys from the fund for reasonable  
23 costs associated with administration of the fund. Beginning July  
24 1, 2022, the board may expend no more than 5 percent of the  
25 annual revenues from the fund for reasonable costs associated  
26 with administration of the fund.

27 (d) The board may undertake any of the following actions to  
28 implement the fund:

29 (1) Provide for the deposit of any of the following moneys into  
30 the fund:

31 (A) Federal contributions.

32 (B) Voluntary contributions, gifts, grants, or bequests.

33 (2) Enter into agreements for contributions to the fund from the  
34 federal government, local or state agencies, and private  
35 corporations or nonprofit organizations.

36 (3) Provide for appropriate audit, accounting, and fiscal  
37 management services, plans, and reports relative to the fund.

38 (4) Direct portions of the fund to a subset of eligible applicants  
39 as required or appropriate based on funding source and consistent  
40 with the annual fund implementation plan.



1     (5) Direct moneys deposited into the fund described in  
2     subparagraph (B) of paragraph (1) towards a specific project,  
3     program, or study.

4     (6) Take additional action as may be appropriate for adequate  
5     administration and operation of the fund.

6     (e) In administering the fund, the board shall make reasonable  
7     efforts to ensure both of the following:

8         (1) That funds are used to secure the long-term sustainability  
9         of drinking water service and infrastructure, including, but not  
10        limited to, requiring adequate technical, managerial, and financial  
11        capacity of eligible applicants as part of funding agreement  
12        outcomes. Funding shall be prioritized to implement consolidations  
13        and service extensions when feasible, and administrative and  
14        managerial contracts or grants entered into pursuant to Section  
15        116686 where applicable. Funds shall not be used to delay,  
16        prevent, or avoid the consolidation or extension of service to public  
17        water systems where it is feasible and the least-cost alternative.  
18        The board may set appropriate requirements as a condition of  
19        funding, including, but not limited to, a system technical,  
20        managerial, or financial capacity audit, improvements to reduce  
21        costs and increase efficiencies, an evaluation of alternative  
22        treatment technologies, and a consolidation or service extension  
23        feasibility study. As a condition of funding, the board may require  
24        a domestic well with nitrate contamination where ongoing septic  
25        system failure may be causing or contributing to contamination  
26        of a drinking water source to conduct an investigation and project  
27        to address the septic system failure if adequate funding sources  
28        are identified and accessible.

29        (2) That funds are not used to subsidize large-scale nonpotable  
30        use.

31     (f) In administering the fund, the board shall ensure that all  
32     moneys deposited into the fund from the safe drinking water fee  
33     for nondairy confined animal facilities pursuant to Article 10.5  
34     (commencing with Section 595) of Chapter 3 of Part 1 of Division  
35     1 of the Food and Agricultural Code, the fertilizer safe drinking  
36     water fee pursuant to Article 6.5 (commencing with Section 14615)  
37     of Chapter 5 of Division 7 of the Food and Agricultural Code, and  
38     the dairy safe drinking water fee pursuant to Article 14.5  
39     (commencing with Section 62215) of Chapter 2 of Part 3 of

1 Division 21 of the Food and Agricultural Code shall be used to  
2 address nitrate-related contamination issues.

3 (g) At least once every 10 years, the board shall conduct a public  
4 review and assessment of the fund to determine all of the following:

5 (1) The effectiveness of the fund in securing access to safe  
6 drinking water for all Californians, while also ensuring the  
7 long-term sustainability of drinking water service and  
8 infrastructure.

9 (2) If the fees deposited into the fund have been appropriately  
10 expended.

11 (3) For community water systems that have received funding  
12 for 10 years or more and for which self-sufficiency has not been  
13 achieved, the actions that have been taken, the reasons why  
14 self-sufficiency has not been achieved, and, if available, ways in  
15 which the community water system may become self-sufficient.

16 (4) What other actions are necessary to carry out the purposes  
17 of this chapter.

18 (h) Neither the board nor any employee of the board may be  
19 held liable for any act that is necessary to carry out the purposes  
20 of this chapter. The board or any authorized person shall not be  
21 deemed to have incurred or to be required to incur any obligation  
22 to provide additional funding or undertake additional action solely  
23 as a result of having undertaken an action pursuant to this chapter.

24 (i) (1) The board shall convene an environmental justice  
25 advisory committee, for the purposes of this section, consisting of  
26 at least three members, to advise it in conducting the public review  
27 and assessment pursuant to subdivision (g) and any other pertinent  
28 matter in implementing this chapter. The advisory committee shall  
29 be comprised of representatives from communities in the state with  
30 the most significant exposure to water pollution, including, but  
31 not limited to, communities with minority populations or  
32 low-income populations, or both.

33 (2) The board shall appoint committee members to the  
34 environmental justice advisory committee from nominations  
35 received from environmental justice organizations and community  
36 groups.

37 (3) The board shall provide reasonable per diem for attendance  
38 at environmental justice advisory committee meetings by committee  
39 members from nonprofit organizations.

1 116769. By July 1 of each year, the board shall do all of the  
2 following:

3 (a) Prepare and make available a report of expenditures from  
4 the fund.

5 (b) Adopt, after a public hearing, an assessment of funding need,  
6 based on available data, that includes all of the following:

7 (1) Identification of systems and populations potentially in need  
8 of assistance, including, but not limited to, all of the following:

9 (A) A list of systems that consistently fail to provide an adequate  
10 supply of safe drinking water. The list shall include all of the  
11 following:

12 (i) Any public water system that consistently fails to provide an  
13 adequate supply of safe drinking water.

14 (ii) Any community water system that serves a disadvantaged  
15 community that must charge fees that exceed the affordability  
16 threshold established in the board's Safe Drinking Water State  
17 Revolving Fund Intended Use Plan in order to supply, treat, and  
18 distribute potable water that complies with federal and state  
19 drinking water standards.

20 (iii) Any state small water system that consistently fails to  
21 provide an adequate supply of safe drinking water.

22 (B) A list of programs that assist, or that will assist, households  
23 supplied by a domestic well that consistently fails to provide an  
24 adequate supply of safe drinking water. This list shall include the  
25 number and approximate location of households served by each  
26 program without identifying exact addresses or other personal  
27 information.

28 (C) A list of public water systems and state small water systems  
29 that may be at risk of failing to provide an adequate supply of safe  
30 drinking water.

31 (D) An estimate of the number of households that are served by  
32 domestic wells or state small water systems in high-risk areas  
33 identified pursuant to Article 4 (commencing with Section 116770).  
34 The estimate shall identify approximate locations of households,  
35 without identifying exact addresses or other personal information,  
36 in order to identify potential target areas for outreach and  
37 assistance programs.

38 (2) An analysis of anticipated funding, per contaminant, needed  
39 for known projects, services, or programs by eligible applicants,  
40 consistent with the fund implementation plan, including any funding

1 needed for existing long-term funding commitments from the fund.  
2 The board shall identify and consider other existing funding  
3 sources able to support any projects, services, or programs  
4 identified, including, but not limited to, local funding capacity,  
5 state or federal funding sources for capital projects, funding from  
6 responsible parties, and specialized funding sources contributing  
7 to the fund.

8 (3) An estimate of the funding needed for the next fiscal year  
9 based on the amount available in the fund, anticipated funding  
10 needs, other existing funding sources, and other relevant data and  
11 information.

12 (c) (1) Adopt, after a public hearing, a fund implementation  
13 plan and policy handbook with priorities and guidelines for  
14 expenditures of the fund.

15 (2) The board shall work with a multistakeholder advisory group  
16 to establish priorities and guidelines for the fund implementation  
17 plan and policy handbook. The multistakeholder advisory group  
18 shall be open to participation by all of the following:

19 (A) Representatives of entities paying into the fund.

20 (B) Public water systems.

21 (C) Technical assistance providers.

22 (D) Local agencies.

23 (E) Nongovernmental organizations.

24 (F) Residents served by community water systems in  
25 disadvantaged communities, state small water systems, and  
26 domestic wells.

27 (G) The public.

28 (3) The adoption of a fund implementation plan and policy  
29 handbook and the implementation of the fund pursuant to the policy  
30 handbook are not subject to the Administrative Procedure Act  
31 (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
32 Division 3 of Title 2 of the Government Code).

#### 34 Article 4. Information on High-risk Areas

35  
36 116770. (a) (1) By January 1, 2021, the board, in consultation  
37 with local health officers and other relevant stakeholders, shall  
38 use available data to make available a map of aquifers that are at  
39 high risk of containing contaminants and that exceed primary  
40 federal and state drinking water standards that are used or likely

1 to be used as a source of drinking water for a state small water  
2 system or a domestic well. The board shall update the map at least  
3 annually based on any newly available data.

4 (2) The board shall make the map of high-risk areas, as well as  
5 the data used to make the map, publicly accessible on its internet  
6 website in a manner that does not identify exact addresses or other  
7 personal information and that complies with the Information  
8 Practices Act of 1977 (Chapter 1 (commencing with Section 1798)  
9 of Title 1.8 of Part 4 of Division 3 of the Civil Code). The board  
10 shall notify local health officers and county planning agencies of  
11 high-risk areas within their jurisdictions.

12 (b) (1) By January 1, 2021, a local health officer or other  
13 relevant local agency shall provide to the board all results of, and  
14 data associated with, water quality testing performed by certified  
15 laboratories for a state small water system or domestic well that  
16 was collected after January 1, 2015, and that is in the possession  
17 of the local health officer or other relevant local agency.

18 (2) By January 1, 2022, and by January 1 of each year  
19 thereafter, all results of, and data associated with, water quality  
20 testing performed by a certified laboratory for a state small water  
21 system or domestic well that is submitted to a local health officer  
22 or other relevant local agency shall also be submitted directly to  
23 the board in electronic format.

24 (c) A map of high-risk areas developed pursuant to this article  
25 is not subject to the Administrative Procedure Act (Chapter 3.5  
26 (commencing with Section 11340) of Part 1 of Division 3 of Title  
27 2 of the Government Code).

28  
29 Article 5. Safe and Affordable Drinking Water Fee  
30

31 116771. (a) The board shall adopt, by regulation, a schedule  
32 of fees as authorized by this section. Fees adopted shall not exceed  
33 \_\_\_\_\_. The regulations may include provisions concerning the  
34 administration and collection of the fees.

35 (b) (1) Except as provided in paragraph (2), the regulations  
36 adopted pursuant to this section, any amendment to these  
37 regulations, or subsequent adjustments to the annual fees, the  
38 board shall adopt as emergency regulations in accordance with  
39 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division  
40 3 of Title 2 of the Government Code. The adoption of these



1 regulations is an emergency and the Office of Administrative Law  
2 shall consider the adoption of the regulations as necessary for the  
3 immediate preservation of the public peace, health, safety, and  
4 general welfare.

5 (2) The board shall adopt the initial regulations to implement  
6 this section in accordance with Chapter 3.5 (commencing with  
7 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
8 Code and may not rely on the statutory declaration of emergency  
9 in paragraph (1).

10 (3) Any emergency regulations adopted by the board or  
11 adjustments to the fees made by the board pursuant to this section  
12 shall not be subject to review by the Office of Administrative Law  
13 and shall remain in effect until revised by the board.

14 (c) Fees collected pursuant to this section shall be deposited in  
15 the fund.

16 116772. (a) The Legislative Analyst shall report to the  
17 Legislature and the board if the Legislative Analyst determines,  
18 on or before January 1, 2023, that at least three billion dollars  
19 (\$3,000,000,000) has been made available in an interest bearing  
20 account in the State Treasury with a goal of at least one hundred  
21 million dollars (\$100,000,000) in interest revenues per year  
22 available for the purposes of the fund.

23 (b) (1) A report to be submitted pursuant to subdivision (a)  
24 shall be submitted in compliance with Section 9795 of the  
25 Government Code.

26 (2) Pursuant to Section 10231.5 of the Government Code, this  
27 section is repealed on January 1, 2027.

28 (c) This article shall become inoperative upon the Legislative  
29 Analyst submitting a report pursuant to subdivision (a), and, as  
30 of January 1, of the year following that determination, is repealed.

### 31 32 Article 6. Regional Distribution

33 116773. (a) The Legislature finds and declares as follows:

34 (1) Water quality problems occur in all areas of the state,  
35 including rural and urban areas.

36 (2) In particular, aging school infrastructure, including lead  
37 pipes, puts at risk thousands of children per year.

38 (b) It is the intent of the Legislature to establish a region specific  
39 program to address the purposes of this chapter.  
40

(c) The board may distribute funds for any purpose of this chapter through its drinking water regional offices, as follows:

(1) \_\_\_\_.

(d) The board shall not distribute more than 20 percent of the annual expenditures from the fund pursuant to subdivision (c).

SEC. 6. Chapter 4.7 (commencing with Section 116774) is added to Part 12 of Division 104 of the Health and Safety Code, to read:

*CHAPTER 4.7. SAFE AND AFFORDABLE DRINKING WATER TRUST FUND*

116774. (a) The Safe and Affordable Drinking Water Trust Fund is hereby established within the State Treasury. It is the intent of the Legislature that moneys in the trust fund remain for the purposes of the trust in perpetuity.

(b) Moneys held in the trust fund shall be invested by the Treasurer, in consultation with the Director of Finance and the Controller, in investments authorized by Section 16430 of the Government Code.

(c) Investment income derived from the trust fund is hereby transferred on January 1 of each year to the Safe and Affordable Drinking Water Fund, established by Section 116767 for the purposes of Chapter 4.6 (commencing with Section 116765).

116774.1. The sum of two hundred million dollars (\$200,000,000) shall be transferred to the trust fund by the Legislature each year for five years for the purpose of establishing a one-billion-dollar (\$1,000,000,000) trust fund to derive interest revenues to fund Chapter 4.6 (commencing with Section 116765).

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement

1 *to local agencies and school districts for those costs shall be made*  
2 *pursuant to Part 7 (commencing with Section 17500) of Division*  
3 *4 of Title 2 of the Government Code.*

4 SECTION 1. Chapter 4.6 (commencing with Section 116765)  
5 is added to Part 12 of Division 104 of the Health and Safety Code,  
6 to read:

7  
8 ~~CHAPTER 4.6. SAFE AND AFFORDABLE DRINKING WATER~~  
9

10 ~~116765. The Safe and Affordable Drinking Water Fund is~~  
11 ~~hereby established in the State Treasury. Moneys in the fund shall~~  
12 ~~be available to the State Water Resources Control Board, upon~~  
13 ~~appropriation by the Legislature, for the purposes of this chapter~~  
14 ~~to provide a stable source of funding to secure access to safe~~  
15 ~~drinking water for all Californians, while also ensuring the~~  
16 ~~long-term sustainability of drinking water service and~~  
17 ~~infrastructure.~~



June 6, 2017

The Honorable Senator Monning  
State Capitol, Room 313  
Sacramento, CA 95814

**Re: SUPPORT SB 623**

Dear Senator Monning:

I am pleased to write in support of your SB 623 (Monning), which would create a new Safe and Affordable Drinking Water Fund to ensure all Californians have access to safe and affordable drinking water.

Safe and affordable drinking water is a fundamental human right enshrined in California law, but one that is still not realized for too many Californians. Critical drinking water needs still remain unresolved, leaving families and communities across the state without safe and affordable drinking water. For example:

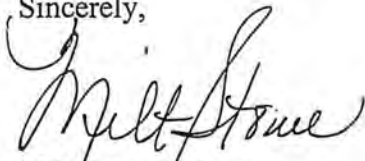
- The California State Water Resources Control Board has found that hundreds of communities are unable to consistently provide safe drinking water, some for a decade or longer.
- High treatment costs put clean drinking water out of reach for many communities, especially those with small and lower income ratepayer bases.
- Additionally, more and more families and individuals in both urban and rural portions of California are struggling to afford a basic amount of safe water due to unaffordable water rates.
- Finally, State Water Board data does not include the nearly 2 million Californians not served by a public water system, which have few regulatory requirements and are not eligible for most assistance programs, leaving them particularly vulnerable to unsafe drinking water.

The California State Water Resources Control Board has for years called for the creation of a sustainable funding source to support safe and affordable drinking water needs. In particular, the greatest barrier preventing communities from providing safe drinking water is the lack of an ongoing funding source to support O&M costs for drinking water treatment.

The new Safe and Affordable Drinking Water Fund would be authorized to provide both interim drinking water supplies and fund longer-term drinking water solutions, including operation and maintenance costs for low-income communities that need drinking water treatment. The Fund may also be used to finance a statewide low-income drinking water rate affordability program. The Fund would be administered by the Office of Sustainable Water Solutions at the State Water Board.

In the sixth largest economy in the world, we can and should ensure that all Californians have access to this most basic of human needs – safe and affordable drinking water. For this reason and the other reasons mentioned above, I am pleased to support your bill SB 623.

Sincerely,

A handwritten signature in black ink, appearing to read "Milt Stowe". The signature is fluid and cursive, with a large initial "M" and "S".

Milt Stowe, Mayor  
City of Porterville



AMENDED IN SENATE APRIL 26, 2017

AMENDED IN SENATE MARCH 30, 2017

**SENATE BILL**

**No. 623**

---

---

**Introduced by Senator Monning**  
**(Principal coauthor: Senator De León)**  
**(Coauthor: Senator Stone)**

February 17, 2017

---

---

An act to add Chapter 4.6 (commencing with Section 116765) to Part 12 of Division 104 of the Health and Safety Code, relating to drinking water, and making an appropriation therefor: *water*.

LEGISLATIVE COUNSEL'S DIGEST

SB 623, as amended, Monning. Safe and Affordable Drinking Water Fund.

Existing law, the California Safe Drinking Water Act, requires the State Water Resources Control Board to administer provisions relating to the regulation of drinking water to protect public health. Existing law establishes the Office of Sustainable Water Solutions within the State Water Resources Control Board with the purpose of promoting permanent and sustainable drinking water and wastewater treatment solutions to ensure the effective and efficient provision of safe, clean, affordable, and reliable drinking water and wastewater treatment services.

This bill would establish the Safe and Affordable Drinking Water Fund in the State Treasury and would provide that moneys in the fund are ~~continuously appropriated to the office~~: *available, upon appropriation, to the board*. The bill would require the board to administer the fund and authorize the board to provide for the deposit of federal contributions and voluntary contributions, gifts, grants, or

bequests. The bill would require the board to expend moneys in the fund for grants, loans, contracts, or services to assist those without access to safe and affordable drinking water consistent with a fund implementation plan adopted annually by the board, as prescribed. The bill would require the board annually to prepare and make available a report of expenditures of the fund and to adopt annually, after a public hearing, an assessment of funding needed to ensure all Californians have access to safe drinking water. ~~By creating a new continuously appropriated fund, this bill would make an appropriation.~~

Vote: majority. Appropriation: ~~yes~~*no*. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 4.6 (commencing with Section 116765)  
2 is added to Part 12 of Division 104 of the Health and Safety Code,  
3 to read:

4  
5 CHAPTER 4.6. SAFE AND AFFORDABLE DRINKING WATER

6  
7 116765. For the purposes of this chapter:

8 (a) "Board" means the State Water Resources Control Board.  
9 (b) "Community water system" has the same meaning as defined  
10 in Section 116275.

11 (c) "Fund" means the Safe and Affordable Drinking Water Fund  
12 established pursuant to Section 116766.

13 (d) "Nontransient noncommunity water system" has the same  
14 meaning as defined in Section 116275.

15 (e) "Public water system" has the same meaning as defined in  
16 Section 116275.

17 116766. The Safe and Affordable Drinking Water Fund is  
18 hereby established in the State Treasury. ~~Notwithstanding Section~~  
19 ~~13340 of the Government Code, all moneys in the fund are~~  
20 ~~continuously appropriated to the Office of Sustainable Water~~  
21 ~~Solutions within the board without regard to fiscal years, in~~  
22 ~~accordance with this chapter. Moneys in the fund at the close of~~  
23 ~~the fiscal year shall remain in the fund and shall not revert to the~~  
24 ~~General Fund. Moneys in the fund are available, upon~~  
25 ~~appropriation by the Legislature, to the board for the purposes of~~  
26 ~~this chapter.~~

1 116767. (a) The board shall administer the fund for auditing  
2 purposes and for the purposes of this chapter.

3 (b) The board may expend up to 5 percent of the annual  
4 expenditures from the fund for reasonable costs associated with  
5 administration of the fund.

6 (c) The board may undertake any of the following actions to  
7 implement the fund:

8 (1) Provide for the deposit of any of the following available and  
9 necessary moneys into the fund:

10 (A) Federal contributions.

11 (B) Voluntary contributions, gifts, grants, or bequests.

12 (2) Enter into agreements for contributions to the fund from the  
13 federal government, local or state agencies, and private  
14 corporations or nonprofit organizations.

15 (3) Provide for appropriate audit, accounting, and fiscal  
16 management services, plans, and reports relative to the fund.

17 (4) Take additional incidental action as may be appropriate for  
18 adequate administration and operation of the fund.

19 116768. The board shall expend moneys in the fund for grants,  
20 loans, contracts, or services to assist those without access to safe  
21 and affordable drinking water consistent with the annual fund  
22 implementation plan developed pursuant to Section 116769. To  
23 the extent that funding is available, the assistance shall include the  
24 following:

25 (a) The provision of replacement water on an interim basis  
26 pending implementation of long-term solutions.

27 (b) Planning costs for the development of long-term solutions.

28 (c) Capital costs of implementing long-term solutions.

29 (d) Costs associated with maintaining and operating interim  
30 solutions and long-term solutions.

31 (e) Outreach and technical assistance to those without access  
32 to safe and affordable drinking water.

33 116769. Annually, the board shall do all of the following:

34 (a) Prepare and make available a report of expenditures from  
35 the fund.

36 (b) Adopt, after a public hearing, an assessment of funding  
37 needed to ensure all Californians have access to safe drinking  
38 water. This annual assessment shall include a list of community  
39 water systems and nontransient noncommunity water systems  
40 without access to safe drinking water, as well as identification of

1 small communities and rural populations not served by public  
2 water systems that do not have access to safe drinking water.  
3 (c) Adopt, after a public hearing, a fund implementation plan  
4 with priorities and guidelines for expenditures of the fund. The  
5 board shall work with a multistakeholder advisory group that shall  
6 be open to participation by representatives of entities paying into  
7 the fund, public water systems, technical assistance providers,  
8 local agencies, affected persons, nongovernmental organizations,  
9 and the public, to establish priorities for the plan.

O



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Consider a Resolution of Support for H.R. 6: American Dream and Promise Act of 2019

**SOURCE:** City Manager's Office

**COMMENT:** At its meeting on April 16, 2019, the City Council approved Council Member Peñaloza's request that the Council consider a Resolution of Support for H.R. 6, "American Dream and Promise Act of 2019", as a Scheduled Matter at its next regularly scheduled meeting.

At its meeting on February 20, 2018, the Council approved a Resolution of Support for Deferred Action for Childhood Arrivals (DACA), which is very similar in legislative purpose.

**RECOMMENDATION:** That the City Council consider the Draft Resolution of Support for H.R. 6, "American Dream and Promise Act of 2019."

**ATTACHMENTS:**

1. Draft Resolution of Support - H.R. 6: American Dream and Promise Act of 2019
2. Example Resolution of Support for H.R. 6 - American Dream and Promise Act of 2019
3. HR 6 Bill Text - American Dream and Promise Act of 2019
4. February 20, 2018 City Council Resolution of Support - Deferred Action for Childhood Arrivals (DACA)

**Appropriated/Funded:**

**Review By:**  
Department Director:

**Final Approver:** John Lollis, City Manager



RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE,  
IN SUPPORT OF H.R. 6 – AMERICAN DREAM AND PROMISE ACT OF 2019

WHEREAS, any official position of the City of Porterville with respect to legislation, rules, regulations, or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, Congressional efforts to provide a permanent solution for unauthorized youth has been pending in Congress since 2001, with the introduction of bipartisan legislation, the Student Adjustment Act of 2001 which continued to be introduced consecutively in legislative sessions with bipartisan support and later morphed into the original version of the Development, Relief, and Education for Alien Minors (DREAM Act); and

WHEREAS, since its original introduction, the DREAM Act aimed to provide a multi-phase process for qualifying undocumented immigrant youth to seek conditional residency status and a path to citizenship. Requirements to qualify for such relief have changed throughout time and various provisions have expanded with each introduction to ensure that most youth are included; and

WHEREAS, the DREAM Act has been up for debate and has been brought to Congress Floor for a vote multiple times as a standalone bill, and has also been incorporated into other immigration related bills, including the Comprehensive Immigration Reform Act; and

WHEREAS, frustrated by the unwillingness of Congress to pass a legislative solution granting relief to immigrant youth, President Barack Obama issued an Executive Order on June 15, 2012, that created the Deferred Action for Childhood Arrivals (DACA) program temporarily halting the deportation of undocumented immigrant youth who matched certain criteria included in the most recent proposed DREAM Act bills; and

WHEREAS, California has by far the largest number of potential beneficiaries

under the DREAM Act with 553,000, and the largest population of current youth protected under DACA, approximately 200,000; and

WHEREAS, on September 5, 2017, under the Trump Administration, then Acting Secretary of Homeland Security Elaine Duke rescinded the 2012 DACA memorandum, effective immediately, which initiated a wind down phase of the program. This eliminated the opportunity to submit new DACA applications and for DACA beneficiaries to be granted advance parole; and

WHEREAS, multiple lawsuits followed Trump's announcement challenging his efforts to terminate the program, resulting in five court cases on DACA and an injunction allowing for renewals only; and

WHEREAS, the attacks of the Trump Administration also included immigrants with Temporary Protected Status (TPS), a program established by Congress through the Immigration Act of 1990. Currently, there are a total of 10 countries under TPS designation; and

WHEREAS, approximately 436,866 TPS holders live in the United States, with the largest groups located in California approximately 80,636 individuals; and

WHEREAS, the TPS program is another component of our legal immigration system which came under attack by the Trump Administration, when it terminated or redesignated countries that remain unstable, and such actions left beneficiaries in limbo with unknown futures;

NOW, THEREFORE, BE IT HEREBY RESOLVED, with the concurrence of the Mayor, that by adoption of this Resolution, the City of Porterville hereby includes in its 2018-2019 Federal Legislative Program SUPPORT for the DREAM and Promise Act (H.R. 6) to urge the Congress of the United States to pass legislation that provides a permanent solution for immigrant youth and those protected under TPS and DED; and BE IT FURTHER RESOLVED that the Chief Deputy City Clerk transmit copies of this Resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives Nancy Pelosi, to the Senator Majority Leader Mitch McConnell, and to each Senator and Representative from California in the Congress of the United States.

This Resolution shall take effect from and after the date of its passage and adoption by this Council.

PASSED, APPROVED, AND ADOPTED this 7<sup>th</sup> day of May, 2019.

---

Martha A. Flores, Mayor

ATTEST:

John D. Lollis, City Clerk

By: \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk

WHEREAS, any official position of the City of Porterville with respect to legislation, rules, regulations, or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS: Congressional efforts to provide a permanent solution for unauthorized youth has been pending in Congress since 2001, with the introduction of bipartisan legislation, the Student Adjustment Act of 2001 which continued to be introduced consecutively in legislative sessions with bipartisan support and later morphed into the original version of the Development, Relief, and Education for Alien Minors (DREAM Act); and

WHEREAS: Since its original introduction, the DREAM Act aimed to provide a multi-phase process for qualifying undocumented immigrant youth to seek conditional residency status and a path to citizenship. Requirements to qualify for such relief have changed throughout time and various provisions have expanded with each introduction to ensure that most youth are included; and

WHEREAS: The DREAM Act has been up for debate and has been brought to Congress Floor for a vote multiple times as a stand alone bill, and has also been incorporated into other immigration related bills, including the Comprehensive Immigration Reform Act; and

WHEREAS: Frustrated by the unwillingness of Congress to pass a legislative solution granting relief to immigrant youth, President Barack Obama issued an executive order on June 15, 2012 that created the Deferred Action for Childhood Arrivals (DACA) program temporarily halting the deportation of undocumented immigrant youth who matched certain criteria included in the most recent proposed DREAM Act bills; and

WHEREAS: California has by far the largest number of potential beneficiaries under the DREAM ACT with 553,000<sup>1</sup>, and the largest population of current youth protected under DACA, approximately 200,000<sup>2</sup>; and

WHEREAS: On September 5, 2017, under the Trump administration, then Acting Secretary of Homeland Security Elaine Duke rescinded the 2012 DACA memorandum, effective immediately, which initiated a wind down phase of the program. This eliminated the opportunity to submit new DACA applications and for DACA beneficiaries to be granted advance parole; and

---

<sup>1</sup> <https://www.migrationpolicy.org/pubs/DREAM-Insight-July2010.pdf>

<sup>2</sup> <https://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles>

WHEREAS: Multiple lawsuits followed Trump's announcement challenging his efforts to terminate the program, resulting in five court cases on DACA and an injunction allowing for renewals only; and

WHEREAS: The attacks of the Trump Administration also included immigrants with Temporary Protected Status (TPS) a program established by Congress through the Immigration Act of 1990. Currently, there are a total of 10 countries under TPS designation; and

WHEREAS: Approximately 436,866 TPS holders live in the United States, with the largest groups located in California approximately 80,636 individuals; and

WHEREAS: The TPS program is another component of our legal immigration system which came under attack by the Trump Administration, when it terminated or redesignated countries that remain unstable, and such actions left beneficiaries in limbo with unknown futures; and

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Porterville hereby includes in its 2018-19 Federal Legislative Program SUPPORT for the DREAM and Promise Act (H.R.6) to urge the Congress of the United States to pass legislation that provides a permanent solution for immigrant youth and those protected under TPS and DED.; and BE IT FURTHER RESOLVED that the Chief Legislative Analyst transmit copies of this resolution to the President and the Vice President of the United States, to the Speaker of the House of Representatives Nancy Pelosi, to the Senate Majority Leader Mitch McConnell, and to each Senator and Representative from California in the Congress of the United States.



116TH CONGRESS  
1ST SESSION

# H. R. 6

To authorize the cancellation of removal and adjustment of status of certain aliens, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

MARCH 12, 2019

Ms. ROYBAL-ALLARD (for herself, Ms. VELÁZQUEZ, Ms. CLARKE of New York, Mr. AGUILAR, Ms. BARRAGÁN, Mr. CARBAJAL, Mr. CÁRDENAS, Mr. CASTRO of Texas, Mr. CISNEROS, Mr. CORREA, Mr. COSTA, Ms. ESCOBAR, Mr. ESPAILLAT, Mr. GALLEG0, Mr. GARCÍA of Illinois, Ms. GARCIA of Texas, Mr. GOMEZ, Mr. GONZALEZ of Texas, Mr. GRIJALVA, Mr. LEVIN of California, Mr. LUJÁN, Ms. MUCARSEL-POWELL, Mrs. NAPOLITANO, Ms. OCASIO-CORTEZ, Mr. RUIZ, Mr. SABLAN, Mr. SAN NICOLAS, Ms. SÁNCHEZ, Mr. SERRANO, Mr. SIREs, Mr. SOTO, Ms. TORRES SMALL of New Mexico, Mrs. TORRES of California, Mrs. TRAHAN, Mr. VARGAS, Mr. VELA, Ms. ADAMS, Mr. ALLRED, Ms. BASS, Mr. BERA, Mr. BEYER, Mr. BLUMENAUER, Ms. BLUNT ROCHIESTER, Ms. BONAMICI, Mr. BRENDAN F. BOYLE of Pennsylvania, Mr. BROWN of Maryland, Ms. BROWNLEY of California, Mrs. BUSTOS, Mr. BUTTERFIELD, Mr. CARSON of Indiana, Mr. CASTEN of Illinois, Ms. CASTOR of Florida, Ms. JUDY CHU of California, Mr. CICHLINE, Ms. CLARK of Massachusetts, Mr. CLAY, Mr. CLEAVER, Mr. CLYBURN, Mr. COHEN, Mr. CONNOLLY, Mr. COOPER, Mr. COURTNEY, Mr. COX of California, Mr. CRIST, Mr. CROW, Mr. CUMMINGS, Mr. DANNY K. DAVIS of Illinois, Mrs. DAVIS of California, Ms. DEAN, Mr. DEFazio, Ms. DEGETTE, Ms. DELAURO, Ms. DELBENE, Mr. DELGADO, Mrs. DEMINGS, Mr. DESAULNIER, Mr. DEUTCH, Mrs. DINGELL, Mr. DOGGETT, Mr. MICHAEL F. DOYLE of Pennsylvania, Mr. ENGEL, Ms. ESHOO, Mr. EVANS, Mrs. FLETCHER, Ms. FRANKEL, Ms. FUDGE, Ms. GABBARD, Mr. GARAMENDI, Mr. GREEN of Texas, Ms. HAALAND, Mr. HARDER of California, Mr. HASTINGS, Mrs. HAYES, Mr. HECK, Mr. HIGGINS of New York, Ms. HILL of California, Mr. HIMES, Mr. HORSFORD, Ms. HOULAHAN, Mr. HOYER, Mr. HUFFMAN, Ms. JACKSON LEE, Ms. JAYAPAL, Mr. JEFFRIES, Ms. JOHNSON of Texas, Mr. JOHNSON of Georgia, Mr. KEATING, Ms. KELLY of Illinois, Mr. KENNEDY, Mr. KHANNA, Mr. KILDEE, Mr. KILMER, Mr. KIM, Mr. KIND, Mrs. KIRKPATRICK, Mr. KRISHNAMOORTHl, Ms. KUSTER of New Hampshire, Mr. LANGEVIN, Mr. LARSEN of Washington, Mr. LARSON of Connecticut, Mrs. LAWRENCE, Mr. LAWSON of Florida, Ms. LEE of California, Mrs. LEE of Nevada, Mr.

LEVIN of Michigan, Mr. LEWIS, Mr. TED LIEU of California, Mr. LIPINSKI, Ms. LOFGREN, Mr. LOWENTHAL, Mrs. LOWEY, Mrs. LURIA, Mr. MALINOWSKI, Mrs. CAROLYN B. MALONEY of New York, Mr. SEAN PATRICK MALONEY of New York, Ms. MATSUI, Ms. MCCOLLUM, Mr. MCEACHIN, Mr. MCGOVERN, Mr. MCNERNEY, Mr. MEEKS, Ms. MENG, Ms. MOORE, Mr. MOULTON, Mr. NADLER, Mr. NEAL, Mr. NEGUSE, Mr. NORCROSS, Ms. NORTON, Mr. O'HALLERAN, Ms. OMAR, Mr. PALLONE, Mr. PANETTA, Mr. PAPPAS, Mr. PASCRELL, Mr. PAYNE, Ms. PELOSI, Mr. PERLMUTTER, Mr. PETERS, Ms. PINGREE, Ms. PLASKETT, Mr. POCAN, Ms. PRESSLEY, Mr. PRICE of North Carolina, Mr. QUIGLEY, Mr. RASKIN, Miss RICE of New York, Mr. RICHMOND, Mr. ROUDA, Mr. RUPERSBERGER, Mr. RUSH, Mr. SARBANES, Ms. SCANLON, Ms. SCHARKOWSKY, Mr. SCHIFF, Mr. SCHNEIDER, Mr. SCHRADER, Ms. SCHRIER, Mr. SCOTT of Virginia, Ms. SEWELL of Alabama, Ms. SILALALA, Mr. SHERMAN, Mr. SMITH of Washington, Mr. STANTON, Mr. SUOZZI, Mr. SWALWELL of California, Mr. TAKANO, Mr. THOMPSON of Mississippi, Mr. THOMPSON of California, Ms. TITUS, Ms. TLAIB, Mr. TONKO, Mr. TRONE, Ms. UNDERWOOD, Mr. VEASEY, Ms. WASSERMAN SCHULTZ, Ms. WATERS, Mrs. WATSON COLEMAN, Mr. WELCH, Ms. WEXTON, Ms. WILD, Ms. WILSON of Florida, Mr. YARMUTH, and Mr. CUELLAR) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

---

## A BILL

To authorize the cancellation of removal and adjustment  
of status of certain aliens, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “American Dream and  
5       Promise Act of 2019”.

6       **SEC. 2. TABLE OF CONTENTS.**

7       The table of contents of this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

#### TITLE I—DREAM ACT OF 2019

- Sec. 101. Short title.
- Sec. 102. Permanent resident status on a conditional basis for certain long-term residents who entered the United States as children.
- Sec. 103. Terms of permanent resident status on a conditional basis.
- Sec. 104. Return to previous immigration status.
- Sec. 105. Removal of conditional basis of permanent resident status.
- Sec. 106. Restoration of State option to determine residency for purposes of higher education benefits.

#### TITLE II—AMERICAN PROMISE ACT OF 2019

- Sec. 201. Short title.
- Sec. 202. Adjustment of status for certain nationals of certain countries designated for temporary protected status or deferred enforced departure.
- Sec. 203. Reporting requirements regarding future discontinued eligibility of aliens from countries currently listed under temporary protected status.
- Sec. 204. Waiver of certain language requirements.
- Sec. 205. Clarification of inspection and admission under temporary protected status.

#### TITLE III—GENERAL PROVISIONS

- Sec. 301. Definitions.
- Sec. 302. Limitation on removal; application and fee exemption; waiver of grounds for inadmissibility and other conditions on eligible individuals.
- Sec. 303. Determination of continuous presence.
- Sec. 304. Exemption from numerical limitations.
- Sec. 305. Availability of administrative and judicial review.
- Sec. 306. Documentation requirements.
- Sec. 307. Rule making.
- Sec. 308. Confidentiality of information.
- Sec. 309. Grant program to assist eligible applicants.
- Sec. 310. Provisions affecting eligibility for adjustment of status.

## 1      **TITLE I—DREAM ACT OF 2019**

### 2      **SEC. 101. SHORT TITLE.**

3      This title may be cited as the “Dream Act of 2019”.

1 SEC. 102. PERMANENT RESIDENT STATUS ON A CONDI-  
2 TIONAL BASIS FOR CERTAIN LONG-TERM  
3 RESIDENTS WHO ENTERED THE UNITED  
4 STATES AS CHILDREN.

5 (a) CONDITIONAL BASIS FOR STATUS.—Notwith-  
6 standing any other provision of law, and except as pro-  
7 vided in section 105(c)(2), an alien shall be considered,  
8 at the time of obtaining the status of an alien lawfully  
9 admitted for permanent residence under this section, to  
10 have obtained such status on a conditional basis subject  
11 to the provisions of this title.

12 (b) REQUIREMENTS.—

13 (1) IN GENERAL.—Notwithstanding any other  
14 provision of law, the Secretary or the Attorney Gen-  
15 eral shall cancel the removal of, and adjust to the  
16 status of an alien lawfully admitted for permanent  
17 residence on a conditional basis, or without the con-  
18 ditional basis as provided in section 105(c)(2), an  
19 alien who is inadmissible or deportable from the  
20 United States if—

21 (A) the alien has been continuously phys-  
22 ically present in the United States since the  
23 date that is 4 years before the date of the en-  
24 actment of this Act;

1 (B) the alien was younger than 18 years of  
2 age on the date on which the alien initially en-  
3 tered the United States;

4 (C) subject to sections 301(b) and 302(d),  
5 the alien—

6 (i) is not inadmissible under para-  
7 graph (2), (3), (6)(E), (6)(G), (8),  
8 (10)(A), (10)(C), (10)(D), or (10)(E) of  
9 section 212(a) of the Immigration and Na-  
10 tionality Act (8 U.S.C. 1182(a));

11 (ii) has not ordered, incited, assisted,  
12 or otherwise participated in the persecution  
13 of any person on account of race, religion,  
14 nationality, membership in a particular so-  
15 cial group, or political opinion; and

16 (iii) excluding any offense under State  
17 law for which an essential element is the  
18 alien's immigration status, and any minor  
19 traffic offense, has not been convicted of—

20 (I) any offense under Federal or  
21 State law that is punishable by a  
22 maximum term of imprisonment of  
23 more than 1 year;

24 (II) 3 or more offenses under  
25 Federal or State law for which the



1 alien was convicted on different dates  
2 for each of the 3 offenses and impris-  
3 oned for an aggregate of 90 days or  
4 more; or

5 (III) a crime of domestic vio-  
6 lence, unless—

7 (aa) the alien demonstrates  
8 that such crime is related to the  
9 alien having been—

10 (AA) a victim of domes-  
11 tic violence, sexual assault,  
12 stalking, child abuse or ne-  
13 glect, abuse or neglect in  
14 later life, or human traf-  
15 ficking;

16 (BB) battered or sub-  
17 jected to extreme cruelty; or

18 (CC) a victim of crimi-  
19 nal activity described in sec-  
20 tion 101(a)(15)(U)(iii) of  
21 the Immigration and Na-  
22 tionality Act (8 U.S.C.  
23 1101(a)(15)(U)(iii)); or

24 (bb) the Secretary, in the  
25 discretion of the Secretary,

1                   waives this subclause for humani-  
2                   tarian purposes, for family unity,  
3                   or because the waiver is other-  
4                   wise in the public interest; and

5                   (D) the alien—

6                   (i) has been admitted to an institution  
7                   of higher education;

8                   (ii) in the United States, has—

9                   (I) earned a high school diploma  
10                  or a commensurate alternative award  
11                  from a public or private high school;

12                  (II) obtained the General Edu-  
13                  cation Development credential;

14                  (III) obtained a high school  
15                  equivalency diploma recognized under  
16                  State law; or

17                  (IV) obtained a recognized post-  
18                  secondary credential; or

19                  (iii) is enrolled in secondary school or  
20                  in an education program assisting students  
21                  in—

22                  (I) obtaining a regular high  
23                  school diploma or its recognized equiv-  
24                  alent under State law;

1 (II) passing the General Edu-  
2 cation Development test, a high school  
3 equivalence diploma examination, or  
4 other similar State-authorized exam;

5 (III) obtaining a certificate or  
6 credential from an area career and  
7 technical education school providing  
8 education at the secondary level; or

9 (IV) obtaining a recognized post-  
10 secondary credential.

11 (2) DACA RECIPIENTS.—The Secretary or the  
12 Attorney General shall cancel the removal of, and  
13 adjust to the status of an alien lawfully admitted for  
14 permanent residence on a conditional basis, or with-  
15 out the conditional basis as provided in section  
16 105(c)(2), an alien who—

17 (A) was granted DACA, unless the alien  
18 has become ineligible for DACA renewal; or

19 (B) was never granted DACA, but would  
20 have been eligible for such a grant pursuant to  
21 the terms of the Deferred Action for Childhood  
22 Arrivals policy announced by the Secretary of  
23 Homeland Security on June 15, 2012, in place  
24 before it was rescinded on Sept. 5, 2017.

1           (3) APPLICATION FEE.—The Secretary may,  
2           subject to an exemption under section 302(c), re-  
3           quire an alien applying under this section to pay a  
4           reasonable fee that is commensurate with the cost of  
5           processing the application but does not exceed  
6           \$495.00.

7           (4) SUBMISSION OF BIOMETRIC AND BIO-  
8           GRAPHIC DATA.—The Secretary may not grant an  
9           alien permanent resident status on a conditional  
10          basis under this section unless the alien submits bio-  
11          metric and biographic data, in accordance with pro-  
12          cedures established by the Secretary. The Secretary  
13          shall provide an alternative procedure for aliens who  
14          are unable to provide such biometric or biographic  
15          data because of a physical impairment.

16          (5) BACKGROUND CHECKS.—

17                (A) REQUIREMENT FOR BACKGROUND  
18                CHECKS.—The Secretary shall utilize biometric,  
19                biographic, and other data that the Secretary  
20                determines appropriate—

21                       (i) to conduct security and law en-  
22                       forcement background checks of an alien  
23                       seeking permanent resident status on a  
24                       conditional basis under this section; and

(ii) to determine whether there is any criminal, national security, or other factor that would render the alien ineligible for such status.

(B) COMPLETION OF BACKGROUND CHECKS.—The security and law enforcement background checks of an alien required under subparagraph (A) shall be completed, to the satisfaction of the Secretary, before the date on which the Secretary grants such alien permanent resident status on a conditional basis under this section.

(6) MILITARY SELECTIVE SERVICE.—An alien applying for permanent resident status on a conditional basis under this section, or without the conditional basis as provided in section 105(c)(2), shall establish that the alien has registered under the Military Selective Service Act (50 U.S.C. 3801 et seq.), if the alien is subject to registration under such Act.

(7) CRIME OF DOMESTIC VIOLENCE DEFINED.—For purposes of paragraph (1)(C)(iii)(III), the term “crime of domestic violence” means any offense that has as an element the use, attempted use, or threatened use of physical force against a person



1 committed by a current or former spouse of the per-  
2 son, by an individual with whom the person shares  
3 a child in common, by an individual who is cohab-  
4 iting with or has cohabited with the person as a  
5 spouse, by an individual similarly situated to a  
6 spouse of the person under the domestic or family  
7 violence laws of the jurisdiction where the offense oc-  
8 curs, or by any other individual against a person  
9 who is protected from that individual's acts under  
10 the domestic or family violence laws of the United  
11 States or any State, Indian tribal government, or  
12 unit of local government.

13 (c) LIMITATION ON REMOVAL OF CERTAIN ALIEN  
14 MINORS; TREATMENT OF CERTAIN REMOVED OR DE-  
15 PARTED ALIENS.—

16 (1) CERTAIN ALIEN MINORS.—

17 (A) STAY OF REMOVAL.—The Attorney  
18 General shall stay the removal proceedings of  
19 an alien who meets all the requirements under  
20 subparagraphs (A), (B), and (C) of subsection  
21 (b)(1), subject to sections 301(b) and 302(d),  
22 and is not older than 18 years of age.

23 (B) COMMENCEMENT OF REMOVAL PRO-  
24 CEEDINGS.—The Secretary may not commence

1 removal proceedings for an alien described in  
2 subparagraph (A).

3 (C) LIFT OF STAY.—The Secretary or At-  
4 torney General may not lift the stay granted to  
5 an alien under subparagraph (A) unless the  
6 alien ceases to meet the requirements under  
7 such subparagraph.

8 (2) ELIGIBILITY OF REMOVED OR VOLUNTARILY  
9 DEPARTED ALIENS.—An alien who was removed or  
10 permitted to depart voluntarily from the United  
11 States on or after January 20, 2017, may apply for  
12 relief under this section from abroad if—

13 (A) the alien meets all the requirements  
14 under subparagraphs (B) and (C) of subsection  
15 (b)(1), subject to sections 301(b) and 302(d);

16 (B) the alien meets the requirements of  
17 subsection (b)(1)(D) or was enrolled in an ele-  
18 mentary school or secondary school in the  
19 United States during the 60-day period before  
20 the alien's removal or voluntary departure;

21 (C) the alien was continuously physically  
22 present in the United States for a period of at  
23 least 4 years;

24 (D) at the time of their removal or vol-  
25 untary departure, the alien—

(i) had been granted DACA, and was not ineligible for DACA renewal; or

(ii) had never been granted DACA, but would have been eligible for such a grant pursuant to the terms of the Deferred Action for Childhood Arrivals policy announced by the Secretary of Homeland Security on June 15, 2012, in place before it was rescinded on Sept. 5, 2017; and

(E) the sole reason for their removal or voluntary departure was that the alien was present in the United States after the expiration of the period of stay authorized by the Secretary of Homeland Security or was present in the United States without being admitted or paroled.

**SEC. 103. TERMS OF PERMANENT RESIDENT STATUS ON A  
CONDITIONAL BASIS.**

(a) PERIOD OF STATUS.—Permanent resident status on a conditional basis is—

(1) valid for a period of 10 years, unless such period is extended by the Secretary; and

(2) subject to termination under subsection (d).

(b) NOTICE OF REQUIREMENTS.—At the time an alien obtains permanent resident status on a conditional

1 basis, the Secretary shall provide notice to the alien re-  
2 garding the provisions of this title and the requirements  
3 to have the conditional basis of such status removed.

4 (c) PROFESSIONAL, COMMERCIAL, AND BUSINESS LI-  
5 CENSES.—Notwithstanding any other law, for the pur-  
6 poses of professional, commercial, and business licenses,  
7 an alien with permanent status on a conditional basis shall  
8 be treated as an alien lawfully admitted for permanent res-  
9 idence.

10 (d) TERMINATION OF STATUS.—The Secretary may  
11 terminate the permanent resident status on a conditional  
12 basis of an alien only if the Secretary—

13 (1) determines that the alien ceases to meet the  
14 requirements under section 102(b)(1)(C), subject to  
15 sections 301(b) and 302(d); and

16 (2) prior to the termination, provides the  
17 alien—

18 (A) notice of the proposed termination;

19 and

20 (B) the opportunity for a hearing to pro-  
21 vide evidence that the alien meets such require-  
22 ments or otherwise contest the termination.

23 **SEC. 104. RETURN TO PREVIOUS IMMIGRATION STATUS.**

24 An alien whose permanent resident status on a condi-  
25 tional basis expires under section 103(a)(1) or is termi-

1 nated under section 103(d), or whose application under  
2 section 102 is denied, shall return to the immigration sta-  
3 tus that the alien had immediately before receiving perma-  
4 nent resident status on a conditional basis or applying  
5 under section 102, as appropriate.

6 **SEC. 105. REMOVAL OF CONDITIONAL BASIS OF PERMA-**  
7 **NENT RESIDENT STATUS.**

8 (a) **ELIGIBILITY FOR REMOVAL OF CONDITIONAL**  
9 **BASIS.—**

10 (1) **IN GENERAL.**—Subject to paragraph (2),  
11 the Secretary shall remove the conditional basis of  
12 an alien's permanent resident status granted under  
13 this title and grant the alien status as an alien law-  
14 fully admitted for permanent residence if the alien—

15 (A) is described in section 102(b)(1)(C),  
16 subject to sections 301(b) and 302(d);

17 (B) has not abandoned the alien's resi-  
18 dence in the United States during the period in  
19 which the alien has permanent resident status  
20 on a conditional basis; and

21 (C)(i) has earned a degree from an institu-  
22 tion of higher education, or has completed at  
23 least 2 years, in good standing, of a program in  
24 the United States leading to a bachelor's degree  
25 or higher degree or a certificate or credential



1 from an area career and technical education  
2 school providing education at the postsecondary  
3 level;

4 (ii) has served in the Uniformed Services  
5 for at least 2 years and, if discharged, received  
6 an honorable discharge; or

7 (iii) has been employed for periods totaling  
8 at least 3 years and at least 75 percent of the  
9 time that the alien has had a valid employment  
10 authorization, except that any period during  
11 which the alien is not employed while having a  
12 valid employment authorization and is enrolled  
13 in an institution of higher education, a sec-  
14 ondary school, or an education program de-  
15 scribed in section 102(b)(1)(D)(iii), shall not  
16 count toward the time requirements under this  
17 clause.

18 (2) HARDSHIP EXCEPTION.—

19 (A) IN GENERAL.—The Secretary shall re-  
20 move the conditional basis of an alien's perma-  
21 nent resident status and grant the alien status  
22 as an alien lawfully admitted for permanent  
23 residence if the alien—

1 (i) satisfies the requirements under  
2 subparagraphs (A) and (B) of paragraph  
3 (1);

4 (ii) demonstrates compelling cir-  
5 cumstances for the inability to satisfy the  
6 requirements under subparagraph (C) of  
7 such paragraph; and

8 (iii) demonstrates that—

9 (I) the alien has a disability;

10 (II) the alien is a full-time care-  
11 giver of a minor child; or

12 (III) the removal of the alien  
13 from the United States would result  
14 in hardship to the alien or the alien's  
15 spouse, parent, or child who is a na-  
16 tional of the United States or is law-  
17 fully admitted for permanent resi-  
18 dence.

19 (3) CITIZENSHIP REQUIREMENT.—

20 (A) IN GENERAL.—Except as provided in  
21 subparagraph (B), the conditional basis of an  
22 alien's permanent resident status granted under  
23 this title may not be removed unless the alien  
24 demonstrates that the alien satisfies the re-

1           requirements under section 312(a) of the Immi-  
2           gration and Nationality Act (8 U.S.C. 1423(a)).

3           (B) EXCEPTION.—Subparagraph (A) shall  
4           not apply to an alien who is unable to meet the  
5           requirements under such section 312(a) due to  
6           disability.

7           (4) APPLICATION FEE.—The Secretary may,  
8           subject to an exemption under section 302(c), re-  
9           quire aliens applying for removal of the conditional  
10          basis of an alien's permanent resident status under  
11          this section to pay a reasonable fee that is commensurate with the cost of processing the application.

13          (5) SUBMISSION OF BIOMETRIC AND BIO-  
14          GRAPHIC DATA.—The Secretary may not remove the  
15          conditional basis of an alien's permanent resident  
16          status unless the alien submits biometric and bio-  
17          graphic data, in accordance with procedures estab-  
18          lished by the Secretary. The Secretary shall provide  
19          an alternative procedure for applicants who are un-  
20          able to provide such biometric data because of a  
21          physical impairment.

22          (6) BACKGROUND CHECKS.—

23                (A) REQUIREMENT FOR BACKGROUND  
24                CHECKS.—The Secretary shall utilize biometric,

1 biographic, and other data that the Secretary  
2 determines appropriate—

3 (i) to conduct security and law en-  
4 forcement background checks of an alien  
5 applying for removal of the conditional  
6 basis of the alien's permanent resident sta-  
7 tus; and

8 (ii) to determine whether there is any  
9 criminal, national security, or other factor  
10 that would render the alien ineligible for  
11 removal of such conditional basis.

12 (B) COMPLETION OF BACKGROUND  
13 CHECKS.—The security and law enforcement  
14 background checks of an alien required under  
15 subparagraph (A) shall be completed, to the  
16 satisfaction of the Secretary, before the date on  
17 which the Secretary removes the conditional  
18 basis of the alien's permanent resident status.

19 (b) TREATMENT FOR PURPOSES OF NATURALIZA-  
20 TION.—

21 (1) IN GENERAL.—For purposes of title III of  
22 the Immigration and Nationality Act (8 U.S.C. 1401  
23 et seq.), an alien granted permanent resident status  
24 on a conditional basis shall be considered to have  
25 been admitted to the United States, and be present

1 in the United States, as an alien lawfully admitted  
2 for permanent residence.

3 (2) LIMITATION ON APPLICATION FOR NATU-  
4 RALIZATION.—An alien may not apply for natu-  
5 ralization while the alien is in permanent resident  
6 status on a conditional basis.

7 (c) TIMING OF APPROVAL OF LAWFUL PERMANENT  
8 RESIDENCE STATUS.—

9 (1) IN GENERAL.—An alien granted lawful per-  
10 manent residence on a conditional basis under this  
11 title may apply to have such conditional basis re-  
12 moved at any time after such alien has met the eligi-  
13 bility requirements set forth in subsection (a).

14 (2) APPROVAL WITH REGARD TO INITIAL APPLI-  
15 CATIONS.—

16 (A) IN GENERAL.—Notwithstanding any  
17 other provision of law, the Secretary or the At-  
18 torney General shall cancel the removal of, and  
19 adjust to the status of an alien lawfully admit-  
20 ted for permanent residence status without con-  
21 ditional basis, any alien who—

22 (i) subject to the waiver described in  
23 section 302(d), and the provisions on de-  
24 termination of continuous presence in sec-  
25 tion 303, demonstrates eligibility for lawful



1 permanent residence status on a condi-  
2 tional basis under section 102(b); and

3 (ii) subject to the exceptions described  
4 in subsections (a)(2) and (a)(3)(B) of this  
5 section, already has fulfilled the require-  
6 ments of paragraphs (1) and (3) of sub-  
7 section (a) of this section at the time such  
8 alien first submits an application for bene-  
9 fits under this title.

10 (B) BACKGROUND CHECKS.—Paragraphs  
11 (5) and (6) of subsection (a) of this section  
12 shall apply to an alien seeking lawful perma-  
13 nent residence status without conditional basis  
14 in an initial application in the same manner as  
15 they apply to an alien seeking removal of the  
16 conditional basis of an alien's permanent resi-  
17 dent status. Paragraphs (4) and (5) of section  
18 102(b) shall not be construed to require the  
19 Secretary to conduct more than one identical  
20 security or law enforcement background check  
21 on such an alien.

22 (C) APPLICATION FEES.—In the case of an  
23 alien seeking lawful permanent residence status  
24 without conditional basis in an initial applica-  
25 tion, the alien shall pay the fee required under

1 subsection (a)(4)(A) of this section, subject to  
2 the exemption allowed under section 302(c), but  
3 shall not be required to pay the application fee  
4 under section 102(b)(3).

5 **SEC. 106. RESTORATION OF STATE OPTION TO DETERMINE**  
6 **RESIDENCY FOR PURPOSES OF HIGHER EDU-**  
7 **CATION BENEFITS.**

8 (a) IN GENERAL.—Section 505 of the Illegal Immi-  
9 gration Reform and Immigrant Responsibility Act of 1996  
10 (8 U.S.C. 1623) is repealed.

11 (b) EFFECTIVE DATE.—The repeal under subsection  
12 (a) shall take effect as if included in the original enact-  
13 ment of the Illegal Immigration Reform and Immigrant  
14 Responsibility Act of 1996 (division C of Public Law 104–  
15 208; 110 Stat. 3009–546).

16 (c) LIMITATION OF FEDERAL STUDENT ASSIST-  
17 ANCE.—Notwithstanding any other provision of law, an  
18 alien who has permanent resident status on a conditional  
19 basis under this title shall be eligible only for the following  
20 assistance under title IV of the Higher Education Act of  
21 1965 (20 U.S.C. 1070 et seq.):

22 (1) Student loans under parts D and E of such  
23 title IV (20 U.S.C. 1087a et seq. and 1087aa et  
24 seq.), subject to the requirements of such parts.

1           (2) Federal work-study programs under part C  
2           of such title IV (42 U.S.C. 2751 et seq.), subject to  
3           the requirements of such part.

4           (3) Services under such title IV (20 U.S.C.  
5           1070 et seq.), subject to the requirements for such  
6           services.

7           **TITLE II—AMERICAN PROMISE**  
8                           **ACT OF 2019**

9           **SEC. 201. SHORT TITLE.**

10          This title may be cited as the “American Promise Act  
11          of 2019”.

12          **SEC. 202. ADJUSTMENT OF STATUS FOR CERTAIN NATION-**  
13                           **ALS OF CERTAIN COUNTRIES DESIGNATED**  
14                           **FOR TEMPORARY PROTECTED STATUS OR**  
15                           **DEFERRED ENFORCED DEPARTURE.**

16          (a) IN GENERAL.—Notwithstanding any other provi-  
17          sion of law, the Secretary or the Attorney General shall  
18          cancel the removal of, and adjust to the status of an alien  
19          lawfully admitted for permanent residence, an alien de-  
20          scribed in subsection (c) if the alien—

21               (1) applies for such adjustment, including sub-  
22               mitting the documents required under section 306,  
23               not later than 3 years after the date of the enact-  
24               ment of this Act; and

1           (2) is determined to be an alien admissible to  
2       the United States as an immigrant, except as other-  
3       wise provided under subsection (b) and subject to  
4       sections 301(b) and 302(d).

5       (b) CERTAIN GROUNDS FOR INADMISSIBILITY INAP-  
6       PLICABLE.—For purposes of determining admissibility  
7       under subsection (a)(2), the grounds for inadmissibility  
8       specified in paragraphs (4), (5), (6)(A),(6)(B), (6)(C),  
9       (7)(A), (9)(A), and (9)(B) of section 212(a) of the Immi-  
10      gration and Nationality Act (8 U.S.C. 1182(a)) shall not  
11      apply.

12      (c) ALIENS ELIGIBLE FOR ADJUSTMENT OF STA-  
13      TUS.—

14           (1) IN GENERAL.—An alien shall be eligible for  
15      adjustment of status if the alien—

16                   (Λ) is—

17                           (i) a national of a foreign state (or  
18                           part thereof), (or in the case of an alien  
19                           having no nationality, is a person who last  
20                           habitually resided in such state), with a  
21                           designation under subsection (b) of section  
22                           244 of the Immigration and Nationality  
23                           Act (8 U.S.C. 1254a(b)) on September 25,  
24                           2016, who had or was otherwise eligible for  
25                           temporary protected status on such date

1                   notwithstanding subsections (c)(1)(A)(iv)  
2                   and (c)(3)(C) of such section; or

3                   (ii) under a grant of Deferred En-  
4                   forced Departure as of September 28,  
5                   2016; and

6                   (B) has been continuously physically  
7                   present in the United States for a period of not  
8                   less than 3 years before the date of the enact-  
9                   ment of this Act.

10           (2) TPS ALIENS PREVIOUSLY REMOVED OR DE-  
11           PARTED.—An alien shall be eligible for adjustment  
12           of status if the alien was removed or voluntarily de-  
13           parted from the United States on or after Sep-  
14           tember 25, 2016, if the alien—

15                   (A) applies from abroad;

16                   (B) was continuously physically present in  
17                   the United States for a period of not less than  
18                   3 years before the date of removal or departure;

19                   (C) had temporary protected status on  
20                   such date, or was otherwise eligible, on such  
21                   date, for temporary protected status notwith-  
22                   standing subsections (c)(1)(A)(iv) and (c)(3)(C)  
23                   of section 244 of the Immigration and Nation-  
24                   ality Act (8 U.S.C. 1254a); and



1 (D) the sole reason for the alien's removal  
2 or departure was—

3 (i) that the alien was present in the  
4 United States after the expiration of the  
5 designation of that foreign state (or part  
6 thereof) under section 244(b)(3)(B) of the  
7 Immigration and Nationality Act (8 U.S.C.  
8 1254a(b)(3)(B)); or

9 (ii) in the case of a voluntary depart-  
10 ure, the alien did so on the basis of the  
11 Secretary's determination to terminate  
12 such designation.

13 (3) DED ALIENS PREVIOUSLY REMOVED OR  
14 DEPARTED.—An alien shall be eligible for adjust-  
15 ment of status if the alien was removed or volun-  
16 tarily departed from the United States on or after  
17 September 28, 2016, if the alien—

18 (A) applies from abroad;

19 (B) is under a grant of Deferred Enforced  
20 Departure as of September 28, 2016;

21 (C) was continuously physically present in  
22 the United States for a period of not less than  
23 3 years before the date of removal or departure;  
24 and

1 (D) the sole reason for the alien's removal  
2 or departure—

3 (i) was that the alien was present in  
4 the United States after the expiration of  
5 the deferral of enforced departure directed  
6 in the Presidential Memorandum on De-  
7 ferred Enforced Departure for Liberians  
8 issued on September 28, 2016, or any sub-  
9 sequent extension of such deferral; or

10 (ii) in the case of a voluntary depart-  
11 ure, the alien did so on the basis of the  
12 President's determination to terminate  
13 such presidential memorandum or exten-  
14 sion.

15 (d) APPLICATION.—

16 (1) FEE.—The Secretary shall, subject to an  
17 exemption under section 302(c), require an alien ap-  
18 plying for permanent resident status under this sec-  
19 tion to pay a reasonable fee that is commensurate  
20 with the cost of processing the application, but does  
21 not exceed \$1,140.

22 (2) STAY OF REMOVAL WHILE APPLICATION  
23 PENDING.—The removal proceedings of an alien  
24 shall be stayed while an application for adjustment

1 of status submitted pursuant to this section is pend-  
2 ing.

3 **SEC. 203. REPORTING REQUIREMENTS REGARDING FU-**  
4 **TURE DISCONTINUED ELIGIBILITY OF**  
5 **ALIENS FROM COUNTRIES CURRENTLY LIST-**  
6 **ED UNDER TEMPORARY PROTECTED STATUS.**

7 Section 244(b)(3) of the Immigration and Nationality  
8 Act (8 U.S.C. 1254a(b)(3)) is amended by adding at the  
9 end, the following:

10 “(D) REPORT ON TERMINATIONS.—Not  
11 later than 3 days after the Secretary of Home-  
12 land Security publishes a notice in the Federal  
13 Register of the determination to terminate the  
14 designation of a foreign state (or part thereof)  
15 under subparagraph (B), the Secretary of  
16 Homeland Security shall submit to the Commit-  
17 tees on the Judiciary of the House of Rep-  
18 resentatives and of the Senate a report that in-  
19 cludes—

20 “(i) an explanation of any event that  
21 initially prompted the designation of the  
22 foreign state (or part thereof) under this  
23 subsection;

24 “(ii) the progress that the foreign  
25 state (or part thereof) has made in rem-

1 edying, solving, or addressing the condi-  
2 tions prompting the designation specified  
3 under clause (i), including any significant  
4 challenges or shortcomings that have aris-  
5 en from conditions related to the initial  
6 designation;

7 “(iii) a description of the quantitative  
8 and qualitative methodologies used by the  
9 Secretary to assess and determine improve-  
10 ments in country conditions; and

11 “(iv) any additional metrics the Sec-  
12 retary deems necessary.”.

13 **SEC. 204. WAIVER OF CERTAIN LANGUAGE REQUIREMENTS.**

14 The language requirements of section 312(a)(1) of  
15 the Immigration and Nationality Act (8 U.S.C.  
16 1423(a)(1)) shall not apply to an alien in receipt of a sta-  
17 tus adjustment under section 202 of this title.

18 **SEC. 205. CLARIFICATION OF INSPECTION AND ADMISSION**  
19 **UNDER TEMPORARY PROTECTED STATUS.**

20 Section 244(f)(4) of the Immigration and Nationality  
21 Act (8 U.S.C. 1254a(f)(4)) is amended by inserting after  
22 “considered” the following: “as having been inspected and  
23 admitted into the United States, and”.

## **TITLE III—GENERAL PROVISIONS**

### **SEC. 301. DEFINITIONS.**

(a) IN GENERAL.—In this Act:

(1) IN GENERAL.—Except as otherwise specifically provided, any term used in this Act that is used in the immigration laws shall have the meaning given such term in the immigration laws.

(2) AREA CAREER AND TECHNICAL EDUCATION SCHOOL.—The term “area career and technical education school” has the meaning given such term in section 3 of the Carl D. Perkins Career and Technical Education Act of 2006 (20 U.S.C. 2302).

(3) DACA.—The term “DACA” means deferred action granted to an alien pursuant to the Deferred Action for Childhood Arrivals policy announced by the Secretary of Homeland Security on June 15, 2012.

(4) DISABILITY.—The term “disability” has the meaning given such term in section 3(1) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(1)).

(5) EARLY CHILDHOOD EDUCATION PROGRAM.—The term “early childhood education program” has the meaning given such term in section



1 103 of the Higher Education Act of 1965 (20  
2 U.S.C. 1003).

3 (6) ELEMENTARY SCHOOL; HIGH SCHOOL; SEC-  
4 ONDARY SCHOOL.—The terms “elementary school”,  
5 “high school”, and “secondary school” have the  
6 meanings given such terms in section 8101 of the  
7 Elementary and Secondary Education Act of 1965  
8 (20 U.S.C. 7801).

9 (7) IMMIGRATION LAWS.—The term “immigra-  
10 tion laws” has the meaning given such term in sec-  
11 tion 101(a)(17) of the Immigration and Nationality  
12 Act (8 U.S.C. 1101(a)(17)).

13 (8) INSTITUTION OF HIGHER EDUCATION.—The  
14 term “institution of higher education”—

15 (A) except as provided in subparagraph  
16 (B), has the meaning given such term in section  
17 102 of the Higher Education Act of 1965 (20  
18 U.S.C. 1002); and

19 (B) does not include an institution of high-  
20 er education outside of the United States.

21 (9) PERMANENT RESIDENT STATUS ON A CON-  
22 DITIONAL BASIS.—The term “permanent resident  
23 status on a conditional basis” means status as an  
24 alien lawfully admitted for permanent residence on  
25 a conditional basis under this Act.

1           (10) FEDERAL POVERTY LINE.—The term  
2           “Federal poverty line” has the meaning given such  
3           term in section 213A(h) of the Immigration and Na-  
4           tionality Act (8 U.S.C. 1183a).

5           (11) RECOGNIZED POSTSECONDARY CREDEN-  
6           TIAL.—The term “recognized postsecondary creden-  
7           tial” has the meaning given such term in section 3  
8           of the Workforce Innovation and Opportunity Act  
9           (29 U.S.C. 3102).

10          (12) SECRETARY.—Except as otherwise specifi-  
11          cally provided, the term “Secretary” means the Sec-  
12          retary of Homeland Security.

13          (13) UNIFORMED SERVICES.—The term “Uni-  
14          formed Services” has the meaning given the term  
15          “uniformed services” in section 101(a) of title 10,  
16          United States Code.

17          (b) TREATMENT OF EXPUNGED CONVICTIONS.—For  
18          purposes of this Act, the term “conviction” does not in-  
19          clude a judgment that has been expunged or set aside,  
20          that resulted in a rehabilitative disposition, or the equiva-  
21          lent.

1 **SEC. 302. LIMITATION ON REMOVAL; APPLICATION AND**  
2 **FEE EXEMPTION; WAIVER OF GROUNDS FOR**  
3 **INADMISSIBILITY AND OTHER CONDITIONS**  
4 **ON ELIGIBLE INDIVIDUALS.**

5 (a) **LIMITATION ON REMOVAL.**—An alien who has  
6 presented evidence to establish prima facie eligibility for  
7 relief from removal, who appears to be prima facie eligible,  
8 or who has an application pending under this Act may  
9 not be removed.

10 (b) **APPLICATION.**—An alien present in the United  
11 States who has been ordered removed or has been per-  
12 mitted to depart voluntarily from the United States may,  
13 notwithstanding such order or permission to depart, apply  
14 for adjustment of status under this Act. Such alien shall  
15 not be required to file a separate motion to reopen, recon-  
16 sider, or vacate the order of removal. If the Secretary ap-  
17 proves the application, the Secretary shall cancel the order  
18 of removal. If the Secretary renders a final administrative  
19 decision to deny the application, the order of removal or  
20 permission to depart shall be effective and enforceable to  
21 the same extent as if the application had not been made,  
22 only after all available administrative and judicial rem-  
23 edies have been exhausted.

24 (c) **FEE EXEMPTION.**—An applicant may be exempt-  
25 ed from paying an application fee required under this Act  
26 if the applicant—

1 (1) is younger than 18 years of age;

2 (2) received total income, during the 12-month  
3 period immediately preceding the date on which the  
4 applicant files an application under this Act, that is  
5 less than 150 percent of the Federal poverty line;

6 (3) is in foster care or otherwise lacking any  
7 parental or other familial support; or

8 (4) cannot care for himself or herself because of  
9 a serious, chronic disability.

10 (d) WAIVER OF GROUNDS OF INADMISSIBILITY.—

11 With respect to any benefit under this Act, the Secretary  
12 may waive the grounds of inadmissibility under paragraph  
13 (2), (6)(E), (6)(G), or (10)(D) of section 212(a) of the  
14 Immigration and Nationality Act (8 U.S.C. 1182(a)) for  
15 humanitarian purposes, for family unity, or because the  
16 waiver is otherwise in the public interest.

17 (e) ADVANCE PAROLE.—During the period beginning  
18 on the date on which an alien applies for adjustment of  
19 status under this Act and ending on the date on which  
20 the Secretary makes a final decision regarding such appli-  
21 cation, the alien shall be eligible to apply for advance pa-  
22 role. Section 101(g) of the Immigration and Nationality  
23 Act (8 U.S.C. 1101(g)) shall not apply to an alien granted  
24 advance parole under this section.

1       (f) EMPLOYMENT.—An alien whose removal is stayed  
2 pursuant to this Act, who may not be placed in removal  
3 proceedings pursuant to this Act, or who has pending an  
4 application under this Act, shall, upon application to the  
5 Secretary, be granted an employment authorization docu-  
6 ment.

7 **SEC. 303. DETERMINATION OF CONTINUOUS PRESENCE.**

8       (a) TERMINATION OF CONTINUOUS PERIOD.—Any  
9 period of continuous physical presence in the United  
10 States of an alien who applies for permanent resident sta-  
11 tus under title I (whether on a conditional basis or without  
12 the conditional basis as provided in section 105(c)(2)) or  
13 under title II shall not terminate when the alien is served  
14 a notice to appear under section 239(a) of the Immigra-  
15 tion and Nationality Act (8 U.S.C. 1229(a)).

16       (b) TREATMENT OF CERTAIN BREAKS IN PRES-  
17 ENCE.—

18           (1) IN GENERAL.—Except as provided in para-  
19 graphs (2) and (3), an alien shall be considered to  
20 have failed to maintain continuous physical presence  
21 in the United States under this Act if the alien has  
22 departed from the United States for any period ex-  
23 ceeding 90 days or for any periods, in the aggregate,  
24 exceeding 180 days.



1           (2) EXTENSIONS FOR EXTENUATING CIR-  
2 CUMSTANCES.—The Secretary may extend the time  
3 periods described in paragraph (1) for an alien who  
4 demonstrates that the failure to timely return to the  
5 United States was due to extenuating circumstances  
6 beyond the alien's control, including the serious ill-  
7 ness of the alien, or death or serious illness of a par-  
8 ent, grandparent, sibling, or child of the alien.

9           (3) TRAVEL AUTHORIZED BY THE SEC-  
10 RETARY.—Any period of travel outside of the United  
11 States by an alien that was authorized by the Sec-  
12 retary may not be counted toward any period of de-  
13 parture from the United States under paragraph  
14 (1).

15 **SEC. 304. EXEMPTION FROM NUMERICAL LIMITATIONS.**

16       Nothing in this Act or in any other law may be con-  
17 strued to apply a numerical limitation on the number of  
18 aliens who may be granted permanent resident status  
19 under title I (whether on a conditional basis, or without  
20 the conditional basis as provided in section 105(c)(2)) or  
21 under title II of this Act.

22 **SEC. 305. AVAILABILITY OF ADMINISTRATIVE AND JUDI-**  
23 **CIAL REVIEW.**

24       (a) ADMINISTRATIVE REVIEW.—Not later than 30  
25 days after the date of the enactment of this Act, the Sec-

1 retary shall provide to aliens applying for adjustment of  
2 status under this Act a process by which the denial of an  
3 application for adjustment of status may undergo a single  
4 level of administrative appellate review, which shall be sub-  
5 stantially similar to the procedures for administrative re-  
6 view provided to applicants for adjustment of status under  
7 section 245 of the Immigration and Nationality Act (8  
8 U.S.C. 1255).

9 (b) CONSOLIDATION OF ISSUES FOR JUDICIAL RE-  
10 VIEW.—An alien may seek judicial review of a denial of  
11 an application for benefits, or a revocation of such bene-  
12 fits, under this Act in the appropriate United States court  
13 of appeals in conjunction with the judicial review of an  
14 order of removal under section 242 of the Immigration  
15 and Nationality Act (8 U.S.C. 1252).

16 (c) STAY OF REMOVAL.—An alien seeking adminis-  
17 trative or judicial review under this Act may not be re-  
18 moved from the United States until a final decision is ren-  
19 dered establishing that the alien is ineligible for adjust-  
20 ment of status under this Act, unless such removal is  
21 based on criminal or national security grounds.

22 **SEC. 306. DOCUMENTATION REQUIREMENTS.**

23 (a) DOCUMENTS ESTABLISHING IDENTITY.—An  
24 alien's application for permanent resident status under  
25 title I (whether on a conditional basis, or without the con-

ditional basis as provided in section 105(c)(2)) or under title II, may include, as proof of identity—

(1) a passport or national identity document from the alien's country of origin that includes the alien's name and the alien's photograph or fingerprint;

(2) the alien's birth certificate and an identity card that includes the alien's name and photograph;

(3) a school identification card that includes the alien's name and photograph, and school records showing the alien's name and that the alien is or was enrolled at the school;

(4) a Uniformed Services identification card issued by the Department of Defense;

(5) any immigration or other document issued by the United States Government bearing the alien's name and photograph; or

(6) a State-issued identification card bearing the alien's name and photograph.

(b) DOCUMENTS ESTABLISHING CONTINUOUS PHYSICAL PRESENCE IN THE UNITED STATES.—To establish that an alien has been continuously physically present in the United States, as required under sections 102(b)(1)(A) and 202(c)(1)(B), or to establish that an alien has not abandoned residence in the United States,

1 as required under section 105(a)(1)(B), the alien may sub-  
2 mit documents to the Secretary, including—

3 (1) employment records of the alien that in-  
4 clude the employer's name and contact information;

5 (2) records from any educational institution the  
6 alien has attended in the United States;

7 (3) records of service from the Uniformed Serv-  
8 ices;

9 (4) official records from a religious entity con-  
10 firming the alien's participation in a religious cere-  
11 mony;

12 (5) passport entries;

13 (6) a birth certificate for a child of the alien  
14 who was born in the United States;

15 (7) automobile license receipts or registration;

16 (8) deeds, mortgages, or rental agreement con-  
17 tracts;

18 (9) tax receipts;

19 (10) insurance policies;

20 (11) remittance records;

21 (12) rent receipts or utility bills bearing the  
22 alien's name or the name of an immediate family  
23 member of the alien, and the alien's address;

24 (13) copies of money order receipts for money  
25 sent in or out of the United States;

1 (14) dated bank transactions; or

2 (15) two or more sworn affidavits from individ-  
3 uals who are not related to the alien who have direct  
4 knowledge of the alien's continuous physical pres-  
5 ence in the United States, that contain—

6 (A) the name, address, and telephone num-  
7 ber of the affiant; and

8 (B) the nature and duration of the rela-  
9 tionship between the affiant and the alien.

10 (c) DOCUMENTS ESTABLISHING INITIAL ENTRY  
11 INTO THE UNITED STATES.—To establish under section  
12 102(b)(1)(B) that an alien was younger than 18 years of  
13 age on the date on which the alien initially entered the  
14 United States, an alien may submit documents to the Sec-  
15 retary, including—

16 (1) an admission stamp on the alien's passport;

17 (2) records from any educational institution the  
18 alien has attended in the United States;

19 (3) any document from the Department of Jus-  
20 tice or the Department of Homeland Security stat-  
21 ing the alien's date of entry into the United States;

22 (4) hospital or medical records showing medical  
23 treatment or hospitalization, the name of the med-  
24 ical facility or physician, and the date of the treat-  
25 ment or hospitalization;



1           (5) rent receipts or utility bills bearing the  
2       alien's name or the name of an immediate family  
3       member of the alien, and the alien's address;

4           (6) employment records that include the em-  
5       ployer's name and contact information;

6           (7) official records from a religious entity con-  
7       firming the alien's participation in a religious cere-  
8       mony;

9           (8) a birth certificate for a child who was born  
10      in the United States;

11          (9) automobile license receipts or registration;

12          (10) deeds, mortgages, or rental agreement con-  
13      tracts;

14          (11) tax receipts;

15          (12) travel records;

16          (13) copies of money order receipts sent in or  
17      out of the country;

18          (14) dated bank transactions;

19          (15) remittance records; or

20          (16) insurance policies.

21      (d) DOCUMENTS ESTABLISHING ADMISSION TO AN  
22      INSTITUTION OF HIGHER EDUCATION.—To establish that  
23      an alien has been admitted to an institution of higher edu-  
24      cation, the alien shall submit to the Secretary a document

1 from the institution of higher education certifying that the  
2 alien—

3 (1) has been admitted to the institution; or

4 (2) is currently enrolled in the institution as a  
5 student.

6 (c) DOCUMENTS ESTABLISHING RECEIPT OF A DE-  
7 GREE FROM AN INSTITUTION OF HIGHER EDUCATION.—

8 To establish that an alien has acquired a degree from an  
9 institution of higher education in the United States, the  
10 alien shall submit to the Secretary a diploma or other doc-  
11 ument from the institution stating that the alien has re-  
12 ceived such a degree.

13 (f) DOCUMENTS ESTABLISHING RECEIPT OF HIGH  
14 SCHOOL DIPLOMA, GENERAL EDUCATIONAL DEVELOP-  
15 MENT CREDENTIAL, OR A RECOGNIZED EQUIVALENT.—

16 To establish that in the United States an alien has earned  
17 a high school diploma or a commensurate alternative  
18 award from a public or private high school, has obtained  
19 the General Education Development credential, or other-  
20 wise has satisfied section 102(b)(1)(D)(ii), the alien shall  
21 submit to the Secretary—

22 (1) a high school diploma, certificate of comple-  
23 tion, or other alternate award;

24 (2) a high school equivalency diploma or certifi-  
25 cate recognized under State law;

1           (3) evidence that the alien passed a State-au-  
2           thorized exam, including the General Education De-  
3           velopment test, in the United States;

4           (4) evidence that the alien successfully com-  
5           pleted an area career and technical education pro-  
6           gram, such as a certification, certificate, or similar  
7           alternate award; or

8           (5) evidence that the alien obtained a recog-  
9           nized postsecondary credential.

10          (g) DOCUMENTS ESTABLISHING ENROLLMENT IN AN  
11          EDUCATIONAL PROGRAM.—To establish that an alien is  
12          enrolled in any school or education program described in  
13          section 102(b)(1)(D)(iii), 102(c)(4)(B), or 105(a)(1)(C),  
14          the alien shall submit school records from the United  
15          States school that the alien is currently attending that in-  
16          clude—

17                (1) the name of the school; and

18                (2) the alien's name, periods of attendance, and  
19          current grade or educational level.

20          (h) DOCUMENTS ESTABLISHING EXEMPTION FROM  
21          APPLICATION FEES.—To establish that an alien is exempt  
22          from an application fee under section 302(c), the alien  
23          shall submit to the Secretary the following relevant docu-  
24          ments:

1           (1) DOCUMENTS TO ESTABLISH AGE.—To es-  
2       tablish that an alien meets an age requirement, the  
3       alien shall provide proof of identity, as described in  
4       subsection (a), that establishes that the alien is  
5       younger than 18 years of age.

6           (2) DOCUMENTS TO ESTABLISH INCOME.—To  
7       establish the alien's income, the alien shall provide—

8                (A) employment records that have been  
9       maintained by the Social Security Administra-  
10      tion, the Internal Revenue Service, or any other  
11      Federal, State, or local government agency;

12               (B) bank records; or

13               (C) at least 2 sworn affidavits from indi-  
14      viduals who are not related to the alien and  
15      who have direct knowledge of the alien's work  
16      and income that contain—

17                   (i) the name, address, and telephone  
18                   number of the affiant; and

19                   (ii) the nature and duration of the re-  
20                   lationship between the affiant and the  
21                   alien.

22           (3) DOCUMENTS TO ESTABLISH FOSTER CARE,  
23       LACK OF FAMILIAL SUPPORT, HOMELESSNESS, OR  
24       SERIOUS, CHRONIC DISABILITY.—To establish that  
25       the alien was in foster care, lacks parental or famil-

1       ial support, is homeless, or has a serious, chronic  
2       disability, the alien shall provide at least 2 sworn af-  
3       fidavits from individuals who are not related to the  
4       alien and who have direct knowledge of the cir-  
5       cumstances that contain—

6               (Δ) a statement that the alien is in foster  
7       care, otherwise lacks any parental or other fa-  
8       miliar support, is homeless, or has a serious,  
9       chronic disability, as appropriate;

10              (B) the name, address, and telephone num-  
11       ber of the affiant; and

12              (C) the nature and duration of the rela-  
13       tionship between the affiant and the alien.

14       (4) DOCUMENTS TO ESTABLISH UNPAID MED-  
15       ICAL EXPENSE.—To establish that the alien has debt  
16       as a result of unreimbursed medical expenses, the  
17       alien shall provide receipts or other documentation  
18       from a medical provider that—

19              (Δ) bear the provider's name and address;

20              (B) bear the name of the individual receiv-  
21       ing treatment; and

22              (C) document that the alien has accumu-  
23       lated \$10,000 or more in debt in the past 12  
24       months as a result of unreimbursed medical ex-



1           penses incurred by the alien or an immediate  
2           family member of the alien.

3           (i) DOCUMENTS ESTABLISHING QUALIFICATION FOR  
4   HARDSHIP EXEMPTION.—To establish that an alien satis-  
5   fies one of the criteria for the hardship exemption set forth  
6   in section 105(a)(2)(A)(iii), the alien shall submit to the  
7   Secretary at least 2 sworn affidavits from individuals who  
8   are not related to the alien and who have direct knowledge  
9   of the circumstances that warrant the exemption, that  
10   contain—

11           (1) the name, address, and telephone number of  
12   the affiant; and

13           (2) the nature and duration of the relationship  
14   between the affiant and the alien.

15           (j) DOCUMENTS ESTABLISHING SERVICE IN THE  
16   UNIFORMED SERVICES.—To establish that an alien has  
17   served in the Uniformed Services for at least 2 years and,  
18   if discharged, received an honorable discharge, the alien  
19   shall submit to the Secretary—

20           (1) a Department of Defense form DD-214;

21           (2) a National Guard Report of Separation and  
22   Record of Service form 22;

23           (3) personnel records for such service from the  
24   appropriate Uniformed Service; or

1           (4) health records from the appropriate Uni-  
2       formed Service.

3       (k) DOCUMENTS ESTABLISHING EMPLOYMENT.—

4           (1) IN GENERAL.—An alien may satisfy the em-  
5       ployment requirement under section  
6       105(a)(1)(C)(iii) by submitting records that—

7           (A) establish compliance with such employ-  
8       ment requirement; and

9           (B) have been maintained by the Social Se-  
10      curity Administration, the Internal Revenue  
11      Service, or any other Federal, State, or local  
12      government agency.

13          (2) OTHER DOCUMENTS.—An alien who is un-  
14      able to submit the records described in paragraph  
15      (1) may satisfy the employment requirement by sub-  
16      mitting at least 2 types of reliable documents that  
17      provide evidence of employment, including—

18           (A) bank records;

19           (B) business records;

20           (C) employer records;

21           (D) records of a labor union, day labor  
22      center, or organization that assists workers in  
23      employment;

(E) sworn affidavits from individuals who are not related to the alien and who have direct knowledge of the alien's work, that contain—

(i) the name, address, and telephone number of the affiant; and

(ii) the nature and duration of the relationship between the affiant and the alien; and

(F) remittance records.

(1) **AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.**—If the Secretary determines, after publication in the Federal Register and an opportunity for public comment, that any document or class of documents does not reliably establish identity or that permanent resident status under title I (whether on a conditional basis, or without the conditional basis as provided in section 105(c)(2)) or under title II is being obtained fraudulently to an unacceptable degree, the Secretary may prohibit or restrict the use of such document or class of documents.

**SEC. 307. RULE MAKING.**

(a) **IN GENERAL.**—Not later than 90 days after the date of the enactment of this Act, the Secretary shall publish in the Federal Register interim final rules implementing this Act, which shall allow eligible individuals to immediately apply for relief under section 102, 105(c)(2),

1 or 202. Notwithstanding section 553 of title 5, United  
2 States Code, the regulation shall be effective, on an in-  
3 terim basis, immediately upon publication, but may be  
4 subject to change and revision after public notice and op-  
5 portunity for a period of public comment. The Secretary  
6 shall finalize such rules not later than 180 days after the  
7 date of publication.

8 (b) PAPERWORK REDUCTION ACT.—The require-  
9 ments under chapter 35 of title 44, United States Code  
10 (commonly known as the “Paperwork Reduction Act”),  
11 shall not apply to any action to implement this Act.

12 **SEC. 308. CONFIDENTIALITY OF INFORMATION.**

13 (a) IN GENERAL.—The Secretary may not disclose  
14 or use information provided in applications filed under this  
15 Act or in requests for DACA for the purpose of immigra-  
16 tion enforcement.

17 (b) REFERRALS PROHIBITED.—The Secretary may  
18 not refer any individual who has been granted permanent  
19 resident status under title I (whether on a conditional  
20 basis, or without the conditional basis as provided in sec-  
21 tion 105(c)(2)) or under title II of this Act or who was  
22 granted DACA or temporary protected status under sec-  
23 tion 244 of the Immigration and Nationality Act (8 U.S.C.  
24 1254a), to U.S. Immigration and Customs Enforcement,

1 U.S. Customs and Border Protection, or any designee of  
2 either such entity.

3 (c) LIMITED EXCEPTION.—Notwithstanding sub-  
4 sections (a) and (b), information provided in an applica-  
5 tion for permanent resident status under title I (whether  
6 on a conditional basis, or without the conditional basis as  
7 provided in section 105(c)(2)) or under title II of this Act  
8 or a request for DACA or temporary protected status  
9 under section 244 of the Immigration and Nationality Act  
10 (8 U.S.C. 1254a), may be shared with Federal security  
11 and law enforcement agencies—

12 (1) for assistance in the consideration of an ap-  
13 plication for permanent resident status under title I  
14 (whether on a conditional basis, or without the con-  
15 ditional basis as provided in section 105(c)(2)) or  
16 under title II of this Act;

17 (2) to identify or prevent fraudulent claims;

18 (3) for national security purposes; or

19 (4) for the investigation or prosecution of any  
20 felony not related to immigration status.

21 (d) PENALTY.—Any person who knowingly uses, pub-  
22 lishes, or permits information to be examined in violation  
23 of this section shall be fined not more than \$10,000.



1 **SEC. 309. GRANT PROGRAM TO ASSIST ELIGIBLE APPLI-**  
2 **CANTS.**

3 (a) **ESTABLISHMENT.**—The Secretary of Homeland  
4 Security shall establish, within U.S. Citizenship and Immi-  
5 gration Services, a program to award grants, on a com-  
6 petitive basis, to eligible nonprofit organizations that will  
7 use the funding to assist eligible applicants under this Act  
8 by providing them with the services described in sub-  
9 section (b).

10 (b) **USE OF FUNDS.**—Grant funds awarded under  
11 this section shall be used for the design and implementa-  
12 tion of programs that provide—

13 (1) information to the public regarding the eli-  
14 gibility and benefits of permanent resident status  
15 under title I (whether on a conditional basis, or  
16 without the conditional basis as provided in section  
17 105(c)(2)) or under title II of this Act, particularly  
18 to individuals potentially eligible for such status;

19 (2) assistance, within the scope of authorized  
20 practice of immigration law, to individuals submit-  
21 ting applications for permanent resident status  
22 under title I (whether on a conditional basis, or  
23 without the conditional basis as provided in section  
24 105(c)(2)) or under title II of this Act, including—

25 (A) screening prospective applicants to as-  
26 sess their eligibility for such status;

1 (B) completing applications and petitions,  
 2 including providing assistance in obtaining the  
 3 requisite documents and supporting evidence;  
 4 and

5 (C) providing any other assistance that the  
 6 Secretary or grantee considers useful or nec-  
 7 essary to apply for permanent resident status  
 8 under title I (whether on a conditional basis, or  
 9 without the conditional basis as provided in sec-  
 10 tion 105(e)(2)) or under title II of this Act; and

11 (3) assistance, within the scope of authorized  
 12 practice of immigration law, and instruction, to indi-  
 13 viduals—

14 (A) on the rights and responsibilities of  
 15 United States citizenship;

16 (B) in civics and English as a second lan-  
 17 guage;

18 (C) in preparation for the General Edu-  
 19 cation Development test; and

20 (D) in applying for adjustment of status  
 21 and United States citizenship.

22 (c) AUTHORIZATION OF APPROPRIATIONS.—

23 (1) AMOUNTS AUTHORIZED.—There are author-  
 24 ized to be appropriated such sums as may be nec-

1        necessary for each of the fiscal years 2020 through  
2        2030 to carry out this section.

3            (2) AVAILABILITY.—Any amounts appropriated  
4        pursuant to paragraph (1) shall remain available  
5        until expended.

6        **SEC. 310. PROVISIONS AFFECTING ELIGIBILITY FOR AD-**  
7            **JUSTMENT OF STATUS.**

8        An alien's eligibility to be lawfully admitted for per-  
9        manent residence under title I (whether on a conditional  
10       basis, or without the conditional basis as provided in sec-  
11       tion 105(c)(2)) or under title II of this Act shall not pre-  
12       clude the alien from seeking any status under any other  
13       provision of law for which the alien may otherwise be eligi-  
14       ble.

○



**RESOLUTION NO. 08-2018**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY  
OF PORTERVILLE SUPPORTING DEFERRED ACTION FOR CHILDHOOD  
ARRIVALS (DACA) LEGISLATION**

WHEREAS: 800,000 immigrant youth are in jeopardy of losing their ability to legally work and forced into the shadows as the result of the elimination of the Deferred Action for Childhood Arrivals (DACA); and

WHEREAS: DACA beneficiaries would have contributed \$460.3 billion to the U.S. gross domestic product over the next decade; and

WHEREAS: 97% of immigrant youth who benefited from the Deferred Action for Childhood Arrivals (DACA) program are either employed or enrolled in schools; and

WHEREAS: Legislation introduced by Congress can provide a permanent solution and peace of mind to immigrant youth who were brought to the United States as infants, children, and adolescents, and who have since grown up in our state and called our country home; and

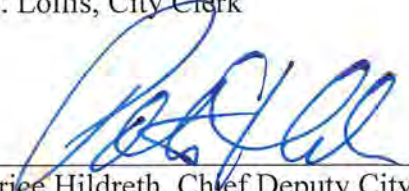
WHEREAS: Deporting immigrant youth who are protected under DACA and brought as infants is unfair and a violation of our values as a nation.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Porterville stands in strong support and urges the swift passage by Congress of legislation that will allow thousands of young students that have lived in the United States for years, and call it home, to realize their education dream and give them a path to legalizing their immigration status.

PASSED, APPROVED AND ADOPTED this 20<sup>th</sup> day of February, 2018.

  
Milt Stowe, Mayor

ATTEST:  
John D. Lollis, City Clerk

By:   
Patrice Hildreth, Chief Deputy City Clerk



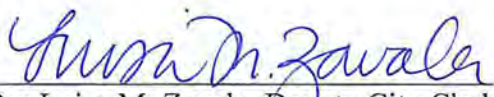
STATE OF CALIFORNIA    )  
CITY OF PORTERVILLE    )       SS  
COUNTY OF TULARE     )

I, JOHN D. LOLLIS, the duly appointed City Clerk of the City of Porterville do hereby certify and declare that the foregoing is a full, true and correct copy of the resolution passed and adopted by the Council of the City of Porterville at a meeting of the Porterville City Council duly called and held on the 20<sup>th</sup> day of February, 2018.

THAT said resolution was duly passed, approved, and adopted by the following vote:

|          |       |      |       |          |        |
|----------|-------|------|-------|----------|--------|
| Council: | REYES | WARD | STOWE | HAMILTON | FLORES |
| AYES:    | X     | X    | X     | X        | X      |
| NOES:    |       |      |       |          |        |
| ABSTAIN: |       |      |       |          |        |
| ABSENT:  |       |      |       |          |        |

JOHN D. LOLLIS, City Clerk

  
By: Luisa M. Zavala, Deputy City Clerk



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Consider a Resolution of Support for Assembly Bill 274 (Mathis); Water Treatment Facility: State Water Resources Control Board: Grant

**SOURCE:** City Manager's Office

**COMMENT:** As the City Council is aware, with the proposed relocation of Eagle Mountain Casino from the Tule River Reservation to the city of Porterville at property owned by the Tule River Tribe adjacent to the Porterville Municipal Airport, it has been proposed that the City and the Tribe partner in the development of a tertiary treatment plant that would facilitate the exchange of domestic water for the mutual benefit of both parties.

Due to a moratorium on housing development on the Reservation due to insufficient water supply, the Tule River Tribe proposes to relocate the casino, the most significant water user on the Reservation, so that it can approve the development of approximately eighty (80) new homes - there is currently a waiting list of approximately 200 families wishing to build homes on the Reservation.

The City currently irrigates the Sports Complex with domestic water, utilizing at least twice the annual average amount of water that the proposed relocated casino is projected to require. The proposed development of a tertiary treatment facility in conjunction with the new casino would allow the City to irrigate the Sports Complex with recycled water instead of domestic, allowing the Tribe to utilize approximately half of the domestic water that is saved, and producing an overall domestic water savings of the same amount that the new casino is projected to utilize to the ultimate benefit of the Porterville community. AB 274 (Mathis) proposes a grant of \$20 million from the State's General Fund to the State Water Resources Control Board (Water Boards) to support the formation of a joint powers authority between the City and the Tribe for the development and operation of the tertiary treatment facility.

Council is also aware that with the City committing to provide source water and assume responsibility for operation of the East Porterville Water Connection Project with partnership with the State, the State (Water Boards) had additionally committed to assisting the City in transitioning to tertiary treatment and recycled water toward meeting the developing groundwater regulations consistent with the Sustainable Groundwater Management Act (SGMA). The State's support of the proposed \$20 million grant for the development of the proposed tertiary treatment facility would be in keeping with the State's commitment.

RECOMMENDATION: That the City Council consider the Draft Resolution of Support for Assembly Bill 274 (Mathis).

ATTACHMENTS: 1. Draft Resolution of Support - AB 274 (Mathis)  
2. AB 274 (Mathis) Bill Text

Appropriated/Funded:

Review By:

Department Director:

Final Approver: John Lollis, City Manager

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE,  
IN SUPPORT OF ASSEMBLY BILL 274; WATER TREATMENT FACILITY: GRANT

WHEREAS, both the City of Porterville and the Tule River Tribe have been severely impacted by droughty and scarce water resources; and

WHEREAS, the lack of a sufficient and reliable water supply to serve the Reservation has significantly affected the quality of life on the Reservation and limited development, including the development of much needed residential housing; and

WHEREAS, due to the lack of water, the Tule River Tribe has placed a moratorium on residential development on the Reservation, with a waiting list of approximately 200 Tribal member families wishing to develop a home; and

WHEREAS, the Tule River Tribe is seeking to relocate Eagle Mountain Casino from the Tule River Reservation to a location within the city of Porterville; and

WHEREAS, Eagle Mountain Casino is currently the most significant water use on the Reservation, which its relocation to the city of Porterville would allow for the development of approximately 80 new homes for Tribal member families; and

WHEREAS, during the recent drought, the City assisted in the crisis that occurred in the unincorporated area known as East Porterville, partnering with the County of Tulare and the State of California in connecting to the City's water system over 750 residences and approximately 3,000 residents whose private wells had run dry as part of the historic East Porterville Water Supply Project; and

WHEREAS, the City's water system relies entirely on groundwater that are supplied by wells that draw water from the aquifers underlying the city; and

WHEREAS, the Sustainable Groundwater Management Act (SGMA) regulates and limits the amount of groundwater production to a determined sustainable yield; and

WHEREAS, during the East Porterville Water Supply Project, the State of California recognized that financial assistance would need to be provided to the City to implement tertiary treatment and recycled water in consideration of the increased residential demand and meeting SGMA's sustainable yield regulations; and

WHEREAS, the City and Tribe have proposed the development of a tertiary water treatment facility as part of the relocation of Eagle Mountain Casino; and

WHEREAS, the City utilizes approximately twice the expected amount of domestic water to irrigate the Porterville Sports Complex as is projected by the new Eagle Mountain Casino Resort; and

WHEREAS, the City proposes to irrigate the Sports Complex with tertiary treated recycles water instead of domestic water, with the Tribe utilizing approximately half of the domestic water currently used to irrigate the Sports Complex; and

WHEREAS, the net domestic water benefit to the City would be approximately half of the amount currently used to irrigate the Sports Complex, reducing the city's groundwater footprint and assisting the City to meet SGMA regulations for groundwater sustainable yield; and

WHEREAS, Assembly Bill 274 (Mathis) proposes to appropriate \$20 million from the State's General Fund to the State Water Resources Control Board (Water Boards) to provide a grant of \$20 million to a joint powers authority comprised of the City and the Tribe for the development and operation of the tertiary water treatment facility; and

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Porterville that it supports Assembly Bill 274 (Mathis).

This Resolution shall take effect from and after the date of its passage and adoption by this Council.

PASSED, APPROVED, AND ADOPTED this 7<sup>th</sup> day of May, 2019.

---

Martha A. Flores, Mayor



ATTEST:

John D. Lollis, City Clerk

By: \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk

AMENDED IN ASSEMBLY MARCH 28, 2019

AMENDED IN ASSEMBLY MARCH 18, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

## ASSEMBLY BILL

No. 274

**Introduced by Assembly Member Mathis**  
(Principal coauthor: Senator Hurtado)

January 28, 2019

---

An act relating to water, and making an appropriation therefor.

### LEGISLATIVE COUNSEL'S DIGEST

AB 274, as amended, Mathis. Water treatment facility: *State Water Resources Control Board*: grant.

Under existing law, various measures provide funds for water facilities and programs. Existing law authorizes the State Water Resources Control Board to establish the Water and Wastewater Loan and Grant Program, to the extent funding is made available, to provide funding to eligible applicants for specified purposes relating to drinking water and wastewater treatment.

This bill would appropriate \$20,000,000 from the General Fund to ~~an unspecified entity~~ *the board* for the purpose of *improving* water treatment. The bill would require ~~an unspecified entity~~ *the board* to grant \$20,000,000 to a specified joint powers authority for a water treatment facility to be operated by ~~a~~ *the* joint powers authority.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

SECTION 1. (a) Twenty million dollars (\$20,000,000) is hereby appropriated from the General Fund to the State Water Resources Control Board for the purpose of improving water treatment.

(b) ~~—The State Water Resources Control Board shall provide a grant of twenty million dollars (\$20,000,000) to a joint powers authority comprised~~ *composed* of the Tule River Tribe and the City of Porterville for a water treatment facility to be operated by the joint powers authority.

**REVISIONS:**

**Heading—Line 2.**



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Consider a Resolution of Support for Senate Bill 559 (Hurtado); Department of Water Resources: Grant: Friant-Kern Canal

**SOURCE:** City Manager's Office

**COMMENT:** State Senator Hurtado has introduced legislation to provide a \$400 million grant to the Friant Water Authority to provide the necessary funds to repair the segments of the Friant-Kern Canal that have been affected by subsidence and affecting the Canal's efficiency. The Friant-Kern Canal is the main water conveyance on the east side of the San Joaquin Valley, and although the city of Porterville currently does not access water from the Canal, the future ability to access Canal water would be of tremendous benefit and opportunity as the City seeks to meet the regulations and requirements of the Sustainable Groundwater Management Act (SGMA). Due to impacts from subsidence, especially to the southeast of Porterville, the Canal is unable to convey water necessary for agricultural irrigation and groundwater recharge, thus hampering the future ability of the City to access Canal water for recharge purposes.

**RECOMMENDATION:** That the City Council a Draft Resolution of Support for Senate Bill 559 (Hurtado).

**ATTACHMENTS:**

1. Draft Resolution of Support - Senate Bill 559 (Hurtado)
2. Senate Bill 559 (Hurtado) Bill Text

**Appropriated/Funded:**

**Review By:**  
Department Director:

Final Approver: John Lollis, City Manager

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE,  
IN SUPPORT OF SENATE BILL 559 (HURTADO); DEPARTMENT OF WATER  
RESOURCES: GRANT: FRIANT-KERN CANAL

WHEREAS, the United States Bureau of Reclamation operates the federal Central Valley Project and the Department of Water Resources operates the State Water Project to supply water to persons and entities in the state; and

WHEREAS, the Friant-Kern Canal is a 152-mile long canal that is the main water conveyance on the east side of the San Joaquin Valley and also the primary delivery mechanism for water that is used for groundwater recharge; and

WHEREAS, in recent years, an increase in groundwater pumping in lands that do not have surface water supply and are not served by the canal has caused massive land subsidence that has affected the canal's ability to convey water, and in some areas the canal has dropped in elevation an average of one inch per month since 2014; and

WHEREAS, the canal's has lost approximately 60% of its carrying capacity, about 1,200 cubic feet per second, through a portion of the canal that should be capable of carrying at least 3 times as much; and

WHEREAS, in 2017, more than 300,000 acre-feet of water was not delivered to recharge groundwater aquifers in some of California's most critically overdraft basins as a result of the loss of capacity in the canal; and

WHEREAS, limitations on canal deliveries will further challenge the San Joaquin Valley's ability to meet the goals of California's Sustainable Groundwater Management Act (SGMA) of 2014; and

WHEREAS, more than 100 rural communities in the San Joaquin Valley have contaminated domestic water, while many others have seen their wells go dry; and

WHEREAS, the Friant-Kern Canal is a key facility for delivering water to recharge groundwater aquifers relied on by some of California's most vulnerable communities;



and

WHEREAS, \$400 million would be appropriated from the State's General Fund to the Department of Water Resources for the purposes of restoring the Friant-Kern Canal to its full capacity; and

WHEREAS, the Department of Water Resources shall provide a grant of \$400 million to the Friant Water Authority to restore the capacity of the Friant-Kern Canal;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Porterville that it supports Senate Bill 559 (Hurtado).

This Resolution shall take effect from and after the date of its passage and adoption by this Council.

PASSED, APPROVED, AND ADOPTED this 7<sup>th</sup> day of May, 2019.

---

Martha A. Flores, Mayor

ATTEST:

John D. Lollis, City Clerk

By: \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk

**Introduced by Senator Hurtado**  
**(Principal coauthor: Senator Borgeas)**

(Principal coauthors: Assembly Members Arambula, Mathis, and Salas)

February 22, 2019

---

An act relating to water, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 559, as introduced, Hurtado. Department of Water Resources: grant: Friant-Kern Canal.

Under existing law, the United States Bureau of Reclamation operates the federal Central Valley Project and the Department of Water Resources operates the State Water Project to supply water to persons and entities in the state.

This bill would appropriate \$400,000,000 to the department for the purposes of restoring the Friant-Kern Canal to its full capacity. The bill would require the department to make a grant of \$400,000,000 to a specified joint powers authority to restore the capacity of the canal.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. (a) The Legislature finds and declares as follows:
- 2 (1) The Friant-Kern Canal is the main water conveyance feature
- 3 on the east side of the San Joaquin Valley and also the primary
- 4 delivery mechanism for water that is used for groundwater
- 5 recharge.
- 6 (2) In recent years, an increase in groundwater pumping in lands
- 7 that do not have surface water supply and are not served by the

1 canal has caused massive land subsidence that has affected the  
2 canal's ability to convey water. In some areas, the canal has  
3 dropped in elevation an average of one inch per month since 2014.

4 (3) The canal's carrying capacity has lost about 1,200 cubic feet  
5 per second of carrying capacity through a portion of the canal that  
6 should be capable of carrying at least 3 times as much.

7 (4) In 2017, more than 300,000 acre-feet of water was not  
8 delivered to recharge groundwater aquifers in some of California's  
9 most critically overdrafted basins as a result of the loss of capacity  
10 in the canal.

11 (b) Four hundred million dollars (\$400,000,000) is hereby  
12 appropriated from the General Fund to the Department of Water  
13 Resources for the purposes of restoring the Friant-Kern Canal to  
14 its full capacity.

15 (c) The Department of Water Resources shall provide a grant  
16 of four hundred million dollars (\$400,000,000) to the Friant Water  
17 Authority to restore the capacity of the Friant-Kern Canal.



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Consider a Resolution of Support for the 2020 Census

**SOURCE:** City Manager's Office

**COMMENT:** The League of California Cities has requested its member cities to consider adopting Resolutions of Support for the upcoming 2020 Census, given the significant role the Census plays in the appropriation of both federal, state and local government funding.

For the City Council's information and reference, the Tulare County Board of Supervisors have entered into an agreement with the Tulare County Association of Governments (TCAG) to facilitate the 2020 Census in Tulare County. A regional Complete County Committee (CCC) is being formed comprised of an elected official representing the County and Cities, which as the City's representative to TCAG, Mayor Flores will be serving as the CCC representative. It is anticipated that a local committee will also be established in support of the CCC, which Mayor Flores would serve as the Chair.

**RECOMMENDATION:** That the City Council consider the Draft Resolution of Support for the 2020 Census.

**ATTACHMENTS:**

1. Draft Resolution of Support - Census 2020
2. Census 2020 California League of Cities Action Alert

**Appropriated/Funded:**

**Review By:**

Department Director:

Final Approver: John Lollis, City Manager

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORTERVILLE,  
IN SUPPORT OF THE 2020 CENSUS

WHEREAS, the U.S. Census Bureau is required by Article I, Section 2 of the U.S. Constitution to conduct an accurate count of the population every ten years; and

WHEREAS, the next enumeration will be April 1, 2020, and will be the first to rely heavily on online responses; and

WHEREAS, the primary and perpetual challenge facing the U.S. Census Bureau is the undercount of certain population groups; and

WHEREAS, the challenge is amplified in California, given the size of the state and the diversity of communities; and

WHEREAS, California has a large percentage of individuals that are considered traditionally hard to count; and

WHEREAS, these diverse communities and demographic populations are at risk of being missed in the 2020 Census; and

WHEREAS, California receives nearly \$77 billion in federal funding that relies, in part, on census data; and

WHEREAS, a complete and accurate count of California's population is essential; and

WHEREAS, the data collected by the decennial Census determines the number of seats each state has in the U.S. House of Representatives and is used to distribute billions of dollars in federal funds to state and local governments; and

WHEREAS, the data is also used in the redistricting of state legislatures, county boards of supervisors and city councils; and



WHEREAS, the decennial census is a massive undertaking that requires cross-sector collaboration and partnership in order to achieve a complete and accurate county; and

WHEREAS, California's leaders have dedicated a historic amount of funding and resources to ensure every Californian is counted once, only once and in the right place; and

WHEREAS, this includes coordination between tribal, city, county, state governments, community-based organizations, education, and many more; and

WHEREAS, U.S. Census Bureau is facing several challenges with Census 2020, including constrained fiscal environment, rapidly changing use of technology, declining response rates, increasingly diverse and mobile population, thus support from partners and stakeholders is critical; and

WHEREAS, the City of Porterville, in partnership with other local governments, the State, businesses, schools, and community organizations, is committed to robust outreach and communication strategies, focusing on reaching the hardest-to-count individuals;

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Porterville recognizing the importance of the 2020 U.S. Census and supports helping to ensure a complete, fair, and accurate count for all Californians.

This Resolution shall take effect from and after the date of its passage and adoption by this Council.

PASSED, APPROVED, AND ADOPTED this 7<sup>th</sup> day of May, 2019.

---

Martha A. Flores, Mayor

ATTEST:  
John D. Lollis, City Clerk

By: \_\_\_\_\_  
Patrice Hildreth, Chief Deputy City Clerk

## **ACTION ALERT!!**

### **SUPPORT**

## **Send a City Resolution to Recognize the Importance of the 2020 U.S. Census “Be Counted California”**

### **Background:**

California cities can play an active role in helping to make the 2020 U.S. Census fair and accurate, especially for historically undercounted populations: racial and ethnic minorities, young children and renters. The 2010 census undercounted 95,000 (or 0.26 percent of) California residents. Though the overall count was an improvement from the previous undercounts (2.74 percent in 1990 and 1.52 percent in 2000), the rate of undercounted populations remains consistently high, and that has many cities concerned about getting an accurate account in the upcoming census. One of the main implications of a miscount is the loss of annual federal and state funding for local government as well as philanthropic funding for social programs and services. In addition, one or more Congressional seats given to California could be lost.

Obtaining an accurate and complete count poses challenges due to several factors. The housing affordability crisis has forced more Californians to move into hard-to-count unconventional housing and overcrowded dwellings or to become homeless. For the first time, the Census is a digital census and more than 75 percent of California households will be receiving an invitation to complete their census form online, even though many households lack broadband or digital literacy.

The California Census Office is hosting a kick-off event on April 2, 2019 at the State Capitol in Sacramento to jump-start the public awareness of the 2020 Census and they have requested for the League to encourage its members to adopt a resolution recognizing the importance of the 2020 U.S. Census.

### **ACTION:**

Adopt a city proclamation or resolution supporting the 2020 U.S. Census.  
*Sample resolution attached.*

### **Quick Facts**

#### **Why is the 2020 Census important?**

- Every Californian counts
- It's about fair representation
- It's about fair share of funding
- It's your civic duty
- It's about redistricting
- You are the expert – your responses help
- Your data are confidential

#### **How is the Census data used?**

- To advocate more resources for community members.
- To ensure public safety and plan new schools and hospitals.
- To decide where to open companies and businesses, which create jobs.
- By law, the U.S. Census Bureau cannot share the data with immigration or law enforcement agencies or allow it to determine eligibility for government benefits.

### **Tips for Building Complete Count Partnerships**

California has made a historic commitment to the 2020 Census by investing over \$100 million to help ensure a complete count. With more than \$70 million directly allocated for county, tribal and community based organizations, the state is taking special care to reach hard-to-count communities. And philanthropic organizations, such as the California Endowment and the Irvine Foundation, made a \$20 million commitment in 2017–18 to support local and regional census work by allocating funding and sustaining coordinated efforts like the Census Policy Advocacy Network. Aside from forming local census complete count committees, cities should consider partnering with federal and state agencies, tribal governments, counties and community-based organizations and tap into existing initiatives.

### **Resources to Help Identify Your Hard-to-Count Populations**

- [\*\*\*2020 Census Maps: California's Hard-to-Count Communities\*\*\*](#). The Public Policy Institute of California projects the likelihood of nonresponse rates for individual hard-to-count groups.
- [\*\*\*2010 Census Participation Rates\*\*\*](#). This U.S. Census Bureau map shows participation rates in the 2010 and 2000 censuses.
- [\*\*\*California Hard-to-Count Index Map\*\*\*](#). This map provides demographic information in addition to the Hard-to-Count Index.

For more information, visit [www.census.gov/2020resources](http://www.census.gov/2020resources) or <https://census.ca.gov/resources>.



## CITY COUNCIL AGENDA – MAY 7, 2019

**SUBJECT:** Receipt of Letter of Resignation from Vice Mayor Ward and Consideration of Options to Fill Vacancy

**SOURCE:** City Manager's Office

**COMMENT:** In a letter dated May 7, 2019, Vice Mayor Brian Ward submitted his letter of resignation from the City Council with an effective date of July 17, 2019. A copy of Vice Mayor Ward's letter is attached hereto. For Council's consideration concerning available options for filling Vice Mayor Ward's seat, staff herein provides information on relevant provisions in the City's Charter and Municipal Code, as well as a summary of historical appointment processes undertaken by previous Councils.

The City Charter sets forth provisions for filling vacancies on the City Council. Section 16 provides that vacancies shall be filled by appointment by the Council, and that the appointee shall hold office until the next general municipal election. The next general election in the City will take place on November 3, 2020, which is also the date on which Council Member Ward's term expires. The City Charter further holds that in the event the City Council does not fill the vacancy within thirty (30) days, the vacancy shall be filled by the Mayor. Given the effective date of Vice Mayor Ward's resignation is July 17, 2019, the Council would have until August 16, 2019 by which to fill the vacancy, or the Mayor would have the authority to do so.

In the past, processes to fill Council vacancies have been as streamlined as accepting Council nominations and appointing an individual upon a majority vote. Other methods have included soliciting requests for appointment for a defined time period; appointing an ad hoc committee comprised of two (2) Members of Council to create a short list of potential appointees; and conducting a public interview process at a special City Council Meeting after which a majority vote of the Council selects the appointee. The Council could choose to proceed with one of these options, devise a new option, or select any hybrid thereof.

Unique from previous Council appointments, this process will be the first to take place subsequent to commencing the transition from at-large to by-district representation. Municipal Code Sections 2-1.3 and 2-1.4 set forth the provisions establishing City Council districts and the staggered implementation of the transition. As Council will recall, by-district representation in Districts 1 and 2 was implemented in November 2018, and the remaining district elections for Districts 3, 4 and 5 are scheduled to take place during the November 2020

election cycle. Vice Mayor Ward currently resides within the boundaries of District 5 which has not yet held its first by-district election. Pursuant to Section 3.1b of the stipulated judgment in the California Voters Rights Act litigation that gave rise to the transition from at-large to by-district elections, if a vacancy occurs after the judgment is fully adopted, but before the transition of the district-based system, the vacancy shall be filled in accordance with the City's regulations and applicable state law. Municipal Code Section 2-1.4 (B) states that no term of any member of the City Council that commenced prior to the effective dates for district elections shall be affected. Thus, while it is not a requirement to appoint an individual who resides in District 5, the Council may wish to consider doing so. Appointing an individual from within District 5 would be consistent with the City Council's previous action to implement on a more accelerated timeline than was required, and could further protect the City from any potential CVRA claims.

RECOMMENDATION: That the City Council provide direction on the process to fill the Council seat to be vacated by Vice Mayor Brian Ward, for a term to expire in November 2020.

ATTACHMENTS:

1. Vice Mayor Ward Resignation Letter
2. City Charter
3. Municipal Code Sections 2-1.3 & 2-1.4
4. Stipulated Judgment

Appropriated/Funded:

Review By:

Department Director:

Final Approver: John Lollis, City Manager



May 7, 2019

To the Mayor, Members of Council, City Manager, City Attorney and the Esteemed Residents of Porterville:

I am writing to inform you of my decision to resign my seat from the city council effective July 17th from the City Council.

As most of many of you already know, due to personal and family health issues, I am in the process of moving my family out of the area. I have given serious consideration to taking this step over the course of the last year and it is with a heavy heart that I leave such a great community, with so many wonderful people and friends.

I believe strongly that the City Council, City Manager, City Attorney and the many dedicated city employees will continue to work diligently to make this a community one can be proud to call home. I have great trust that the City Council and City Manager's office will continue to work to resolve very difficult challenges facing the city, such as homelessness, water issues, animal shelter, roads., etc.

My family and I have been proud to call Porterville home over the past 14 years and are deeply saddened to be leaving. I would like to thank the City Council for the opportunities to serve in the capacity of Vice-Mayor and to the residents for the opportunity to serve them since 2008. I will treasure the relationships and friendships I have been blessed to establish while I've lived here. Despite some of the big challenges that we have faced over the years as a community, it has been a rewarding experience. Despite the late nights & sporadic frustrations, working with both my gifted colleagues & the city's professional staff has been a true pleasure. I strongly encourage the current and future City Council's to stay away from district tribalism and focus on the needs of all of the community using a measured and non-political approach. Again, it has been an honor and a privilege to have served the residents of Porterville, worked with so many talented city staff members and members of the City Council. Your support and assistance over the years is something I shall always remember and cherish.

Kind Regards,



---

Brian Ward  
Council Member-  
City of Porterville

## PORTERVILLE, CALIFORNIA

### CITY CHARTER

#### **Sec. 1. Name Of City; Perpetual Succession.**

The municipal corporation now existing and known as the "City Of Porterville" shall remain and continue a body politic and corporate, as at present, in fact and in law, by the name of the "City Of Porterville," and by such name shall have perpetual succession.

##### **Sec. 1.1. City Motto.**

"In God We Trust" shall be designated as the official motto of the city of Porterville. (6-24-2008)

#### **Sec. 2. Boundaries.**

The boundaries of the city of Porterville shall continue as now established until changed in some manner authorized by law.

#### **Sec. 3. Rights And Liabilities Of Cities; Prior Contracts, Liabilities, Etc., Continued In Effect.**

The city of Porterville shall remain vested with and continue to have, hold, and enjoy, all property, rights of property, and rights of action of every nature and description, now pertaining to said municipality, and is hereby declared to be the successor of the same. No right, liability, pending suit or prosecution on behalf of, or against, the city shall be affected by the adoption of this charter. All contracts entered into by the city prior to the taking effect of this charter shall continue in full force and effect.

#### **Sec. 4. General Powers Of City; Official Seal.**

The city of Porterville, by and through its council and other officials, shall have and may exercise all powers necessary or appropriate to a municipal corporation and the general welfare of its inhabitants, which are not prohibited by the constitution, and which it would be competent for this charter to set forth particularly or specifically; and the specifications herein of any particular powers shall not be held to be exclusive or any limitation upon this general grant of power. General powers of the city include, but are not limited to, the powers necessary or appropriate to promote the health, welfare and education of its inhabitants. The city shall have and use a common seal and the official seal hereinbefore adopted and now in use by said city shall continue to be the official seal of said city. (3-4-2003)

##### **Sec. 4.1. Intergovernmental Powers.**

The city may exercise and perform any of its functions and may participate in the financing thereof, jointly or in cooperation, by agreement or otherwise, with any one or more states or any agency of California, or any governmental jurisdiction or nonprofit corporation thereof, or the United States or any of its agencies or instrumentalities. (3-4-2003)

**Sec. 4.2. Liberal Interpretation.**

The powers of the city under this charter shall be construed liberally in favor of the city, and the specific mention of particular powers in the charter shall not be construed as limiting in any way any of the powers granted by this charter. (3-4-2003)

**Sec. 5. When Elections To Be Held; Special Elections; Procedure For Elections For Local Improvements Or Levies Of Assessment Or Bonded Indebtedness.**

General municipal elections shall be held in said city at the same time as the general election for federal offices in the state of California under and pursuant to the general laws of the state of California governing elections in charter cities, so far as the same may be applicable, and except as herein otherwise provided. All other municipal elections that may be held by authority of this charter or of general law shall be known as special municipal elections, and shall be held, substantially as in this charter provided for general municipal elections; providing, however, that special elections to authorize any municipal or local public improvement, or the levy of assessment therefor, or to create a municipal bonded indebtedness, shall be held in conformity with any general law of the state relative thereto under which any such proceeding is instituted by the council, in case such general law provides for the procedure and manner of holding elections thereunder. (4-6-1971; 4-5-1977; 3-4-2003; 7-1-2014)

**Sec. 6. Initiative, Referendum And Recall.**

Ordinances may be initiated, or the referendum exercised on ordinances passed by the council, under and in accordance with the constitution and general laws of the state. Any elective officer may be recalled from office under and pursuant to the provisions of the constitution and general laws, provided that a special election shall be held at the same time as the recall election, in accordance with the constitution and general laws of the state, for the purpose of electing officers to fill the place or places of the officers sought to be recalled. (4-6-1971; 3-4-2003)

**Sec. 7. Elective Officers To Be Residents.**

In order to be eligible to hold any elective office in the city of Porterville, a person must be a resident and elector therein, and shall have resided in said city for at least thirty days next preceding the filing of their nominating papers, or equivalent declaration or candidacy, and be an elector at the time of said filing. (4-6-1971; 4-5-1977; 3-4-2003)

**Sec. 8. Elective Officers.**

The elective officers of the city of Porterville shall be five councilmen, who shall be elected from the city at large at a general municipal election therein.

**Sec. 9. Legislative Body; Composition; Election; Term; Compensation; Ineligibility For Other City Office; President Of Council; Vice-President; Installation Of Newly Elected Officers; Powers To Be Exercised By Council.**

The legislative body of the city shall consist of five persons elected at large, which body shall be known as the council.

The members of the council shall be elected by the qualified voters of the city at a general municipal election to be held in the said city at the same time as the general election for federal offices for the state of California. They shall hold office for the period of four (4) years from and after the Monday next succeeding the day of their election and until their successors are elected, and qualified; provided the respective terms of any council member presently serving or elected at the time of the adoption of this amendment shall be extended one additional year to the even-numbered year following the expiration of their respective terms. (3-4-2003; 7-1-2014)

The members of the council shall each receive the sum of twenty dollars (\$20.00) for each council meeting actually attended; the mayor shall receive the sum of twenty-five dollars (\$25.00) for each meeting of the council actually attended, provided, however, that the members of the council shall not receive compensation for more than seven meetings in any one calendar month. In addition, the council shall be reimbursed for necessary expenses incurred for authorized city business. (4-6-1971)

The members of the council shall not be eligible to any other office or employment with the city.

The council shall reorganize at its next meeting following each municipal election and shall choose one of their number to serve as president of the council to be known as mayor. At this time the council shall also choose one of their number to serve as vice-president, and he/she shall act as mayor pro tempore in case of the absence, sickness or other disability of the mayor. The mayor and mayor pro tempore shall serve a two year term, but either may be removed at any time by a majority vote of the council. If the council removes the mayor prior to the expiration of his/her term pursuant to this provision, the council shall choose one of their number to serve as mayor until the next organizational meeting. (3-4-2003)

The council shall meet at its usual meeting place on the first Monday after any municipal election, duly canvass the returns and declare the result thereof, and install the newly elected officers, if any.

All powers granted to and vested in the city of Porterville by law or by the provisions of this charter, shall, except as herein otherwise provided, be exercised by the council to be designated the "Council Of The City Of Porterville." The council shall be the governing body of the city and subject to the express limitations of this charter shall be vested with all the powers necessary or convenient for a complete and adequate system of municipal government, consistent with the constitution of the state. (4-6-1937)

Amendment note - The third paragraph of § 9 was amended April 6, 1971. Formerly said section allowed each council member the sum of \$5.00 for each meeting actually attended, for not more than two meetings in any one month.

### **Sec. 9.1. Public Participation.**

The council shall continue to encourage the organization of and communication with representative neighborhood groups throughout the city to encourage citizen participation, to seek advice and input and to provide information to the public relative to city matters and affairs. (3-4-2003)

### **Sec. 10. Time And Place Of Council Meetings; Meetings To Be Open To Public; Council To Adopt Rules For Conduct Of Its Own Proceedings.**

The council shall provide by ordinance for the time and place of holding its meetings. Special

meetings shall be called in accordance with the provisions of general law. There shall be at least one (1) regular meeting in each month. Any regular meeting may be adjourned to a date and hour certain, and such adjourned meeting shall be a regular meeting for all purposes. (4-6-1971)

Except for special meetings with the legislative bodies of other political subdivisions, or informational meetings held within a community in accordance with the Brown act where no action is to be taken, all meetings of the council shall be held at or on publicly-owned facilities, unless by reason of fire, flood, or other disaster, or lack of seating capacity, the public-owned facilities cannot be used for that purpose, and all meetings shall be open to the public. The council shall adopt rules for conducting its proceedings and may punish its members or other persons present at any meeting for disorderly conduct. (4-2-1963; 3-4-2003; 7-1-2014)

Amendment note - The first paragraph of § 10 was amended April 6, 1971, by changing the manner of calling special meetings. Formerly the council provided by ordinance "the manner in which its special meetings may be called." The second paragraph of § 10 was amended March 4, 2003 to allow meeting outside city hall.

### **Sec. 11. Quorum; Compelling Attendance At Meetings.**

A majority of the council shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and postpone the consideration of or action upon, pending business in like manner. Attendance at meetings of absent members of the council may be compelled in such manner and under such penalties as may be prescribed by ordinance.

### **Sec. 12. How Council Acts On Legislative Matters; Resolutions; Records Of Votes; Requirement That All Members Vote; How Ordinances Headed; Ordaining Clause; Ordaining Clause Of Ordinances Passed By Initiative; When Ordinances To Be Passed; Publication; Effective Date Of Ordinances; Certain Matters Required To Be Passed By Ordinance; Repeal Of Ordinances; Revision Of Ordinances; Ordinances To Be Signed By Mayor And Attested By Clerk.**

The council shall act in legislative matters by ordinance or resolution only. Other action of the council, unless herein otherwise provided, may be taken by resolution, motion, or order.

The ayes and noes shall be taken upon the passage of all ordinances and resolutions and entered upon the record of the proceedings of the council. Upon the request of any member of the council, the ayes and noes shall be taken and recorded upon any vote. All members present at any meeting must vote; provided that no such member of the council shall cast a vote when to do so would be contrary to the applicable provisions of state law, including the laws pertaining to conflict of interest. (3-4-2003)

No ordinance or resolution shall be passed without receiving the affirmative votes of at least three members of the council.

Each ordinance shall be headed by a brief title which shall indicate the purport thereof.

The ordaining clause of all ordinances adopted by the council shall be, "The Council of the City of Porterville do ordain as follows:"

The ordaining clause of all ordinances passed by the vote of the electors of the city, through the



exercise of the initiative shall be, "The People of the City of Porterville do ordain as follows:"

No ordinance shall be passed by the council at any time other than at a regular meeting, and until its publication, in a manner and for a time period as determined and set forth by ordinance. (7-1-2014)

Except an ordinance calling or otherwise relating to an election, no ordinance passed by the council of the city of Porterville, except when otherwise specially required by the laws of the state, and except an ordinance for the immediate preservation of the public peace, health or safety, which contains a declaration of, and the facts constituting its urgency and is passed by a four-fifths ( $\frac{4}{5}$ ) vote of the council, and no ordinance granting a franchise, shall go into effect before thirty (30) days from its final passage.

Except as otherwise provided by general law, or this charter, no action providing for the granting of any franchise, or for the establishing or changing fire zones, or for the imposing of any penalty, shall be taken except by ordinance. (3-8-1983)

No ordinance, or portion thereof, shall be repealed except by ordinance. No ordinance shall be revised, reenacted or amended by reference to its title only; but the ordinance to be revised or reenacted, or the section or sections thereof to be amended, or the new section or sections to be added thereto shall be set forth and adopted according to the method provided in this section for the enactment of ordinances, and such revision, re-enactment, amendment, or addition, shall be made by ordinance only.

All ordinances shall be signed by the mayor and attested by the city clerk.

### **Sec. 13. Legislative Officers; Administrative Officers; Other Officers And Commissions; Consolidation Of Offices.**

The legislative officers of the city of Porterville shall consist of five (5) members of the council, one of whom shall act as mayor. In addition, there shall be the following administrative officers who shall be appointed by the council: a city manager, a city attorney and a city clerk.

The council may, by ordinance provide for such other officers as deemed necessary and the council may further establish by ordinance commissions deemed by it to be necessary or proper to aid in the orderly administration of the city of Porterville.

All members of commissions and legislative committees shall be appointed by the council. The council may appoint members to other boards or committees. Administrative officers may appoint members to temporary administrative committees. (3-4-2003)

The council may, at any time, when in its judgment, the interest of the city so demands, by a four-fifths ( $\frac{4}{5}$ ) vote thereof, consolidate by ordinance two or more city administrative offices and place the same in charge of one such officer. (4-2-1963; 4-6-1971; 3-8-1983)

### **Sec. 14. Official Bonds; Where Filed.**

When in this charter not otherwise prescribed, the council shall determine which officers shall give bonds for the faithful performance of their official duties, and shall fix the amount of said bonds. Such officers before entering upon their official duties, shall execute a bond to the city in the penal sum

required, which bond shall include any other office of which they may be ex-officio incumbent. Said bonds shall be approved by the council, filed with the city clerk, and paid for by the city; provided, however, that the bond of the city clerk when approved as aforesaid shall be filed with the city treasurer. Nothing in this section shall prevent the authorization or furnishing of a blanket bond to assure the honesty or faithful performance of any of its officers or employees. (3-4-2003)

#### **Sec. 15. Oath Of Office.**

Every officer and employee of the city, before entering upon the duties of his/her office shall take and subscribe the oath of offices as provided for in the constitution of the state, and shall file the same forthwith with the city clerk. (4-6-1971; 3-4-2003)

#### **Sec. 16. Vacancies In Office; When Offices Declared Vacant.**

A vacancy in any legislative office, from whatever cause arising excluding any vacancy created due to a successful recall election, shall be filled by appointment by the council, such appointee to hold office until the next general municipal election, when a successor shall be chosen by the electors for the unexpired term; provided, that if the council fails to agree or for any other reason does not fill such vacancy within thirty days after the same occurs, then such vacancy shall be filled by the mayor; provided, however, that if for any reason the seats of a majority of the council shall become vacant, then the city clerk shall call a special election at once to fill the vacancies for the unexpired terms, and the same shall be conducted substantially in the manner provided for general municipal elections. (3-4-2003)

If, without permission from the city council, any legislative officer of the city shall remove from the city or absent himself/herself therefrom for more than forty-five (45) days consecutively, or shall fail to attend five (5) consecutive regular city council meetings unless prevented from attending by sickness (but in no case for a period exceeding ninety (90) days), his/her officer shall thereupon become vacant. If for said forty-five (45) day period any legislative officer shall willfully fail or refuse to perform the duties of his office, though able to do so, or shall fail to qualify, or shall resign, or be convicted of a felony or a crime of moral turpitude, or be adjudged mentally incompetent, his/her office shall thereupon become vacant. (3-4-2003; 7-1-2014)

#### **Sec. 17. Appointment And Removal Of Officers And Employees; Grounds Of Removal; Hearing Prior To Removal.**

Except as may be otherwise in this charter provided, the affirmative vote of three (3) members of the council shall be required for the appointment of or the removal of any administrative officer for cause. "For cause" includes, but is not limited to, refusal to perform the duties of his/her office, being adjudged mentally incompetent, or being convicted of a felony or crime of moral turpitude. The administrative officer is entitled to a hearing before the council on the validity of the grounds providing the basis for removal for cause. (3-8-1983; 3-4-2003)

The council may remove any of its administrative officers at its pleasure, without cause stated or at hearing had, by the affirmative vote of four members cast in favor of such removal, and the determination of the council in such matters shall be final and conclusive. (3-8-1983)

Editor's note - Prior to its complete restatement by an amendment adopted March 8, 1983, § 17 had been amended February 5, 1935, and April 6, 1971.

## **2-1.2: BY-DISTRICT ELECTIONS FOR CITY COUNCIL:**

- A. Members of the City Council shall be elected by-district in five (5) single-member districts. One member of the City Council shall be elected from each district by the voters of that district alone. Each member of the City Council shall serve a four-year term until his or her successor is qualified.
- B. The City Council member elected to represent a district must reside in that district and be a registered voter in that district, and any candidate for City Council must reside in, and be a registered voter in, the district in which he or she seeks election at the time nomination papers are issued. (Ord. 1845, 5-15-2018)

## **2-1.3: CITY COUNCIL DISTRICTS ESTABLISHED:**

- A. The boundaries and identifying number of each of the five (5) City Council districts shall be as described on the City Council District Map which is on file in the City as exhibit A, and incorporated by this reference.
- B. The City Council districts described in subsection A of this section shall continue in effect until they are amended or repealed in accordance with law. The boundaries of the City Council districts shall be reapportioned from time to time as required by applicable law. (Ord. 1845, 5-15-2018)

## **2-1.4: IMPLEMENTATION OF BY-DISTRICT ELECTIONS:**

- A. The by-district system of elections shall be implemented, beginning at the general Municipal election held in November 2018, as follows:
  - 1. Members of the City Council shall be elected in Districts 1 and 2 beginning at the general Municipal election in November 2018, and every four (4) years thereafter; and
  - 2. Members of the City Council shall be elected in Districts 3, 4, and 5 beginning at the general Municipal election November 2020, and every four (4) years thereafter.
- B. No term of any member of the City Council that commenced prior to the effective date of this section shall be affected by the adoption of sections [2-1.1](#) through [2-1.5](#) of this article. (Ord. 1845, 5-15-2018)

12/19  
07

FILED  
TULARE COUNTY SUPERIOR COURT  
VISALIA DIVISION

DEC 19 2017

STEPHANIE CAMERON, CLERK  
BY: Farm China

MARGUERITE MELO (SBN 167782)  
JOHN J. SARSFIELD (SBN138971)  
LAW OFFICE OF MELO AND SARSFIELD LLP  
4216 S. Mooney Blvd PMB 136  
Visalia, CA 93277  
Telephone: 559 732 3000  
Fax: 559 732 3005

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF TULARE

|                         |                                  |
|-------------------------|----------------------------------|
| JOHN DURAN AND ROSEMARY | ) Case No. VCU 271986            |
| DURAN,                  | )                                |
|                         | ) JOINT STIPULATION FOR ENTRY OF |
| Plaintiffs,             | ) FINAL JUDGMENT AND JUDGMENT;   |
| vs.                     | ) <del>PROPOSED</del> ORDER.     |
|                         | )                                |
| CITY OF PORTERVILLE,    | )                                |
|                         | )                                |
| Defendant.              | )                                |
|                         | )                                |
|                         | )                                |
|                         | )                                |
|                         | )                                |
|                         | )                                |
|                         | )                                |

This Joint Stipulation for Entry of Final Judgment and Final Judgment ("Final Judgment") is entered by Plaintiffs John Duran and Rosemary (Plaintiffs) and Defendant City of Porterville (Defendant). For purposes of this Final Judgment, Plaintiffs and Defendant shall be referred to collectively as "Parties" and individually as "Party." The Parties have stipulated and consented to the entry of this Final Judgment prior to taking any proof, and without trial or adjudication of any fact or law herein. The Parties have agreed to settle the above-captioned matter without further litigation, as set forth below:

///  
///  
///

I  
INTRODUCTION

This matter arises from a lawsuit filed by Plaintiffs alleging a violation of the California Voting Rights Act (CVRA), Election Code Sections 14025 to 14032, by Defendant. As set forth in the Complaint filed concurrently herewith (the "Complaint"), Plaintiffs allege that Defendant violated and continues to violate the applicable sections of the CVRA by instituting and maintaining an "at large" voting system for electing members of the Porterville City Council.

Defendant City of Porterville denies any such violation is or has occurred, but in the interest of saving tax payer funds, agrees to this stipulated settlement and entry of judgment.

The Parties have engaged in settlement negotiations prior to the filing of this Final Judgment. In those settlement negotiations, Plaintiffs were represented by Marguerite Melo, Esq. and John Sarsfield, Esq. of the Law Offices of Melo and Sarsfield, LLP and Defendant was represented by Julia Lew, Esq. of the Law Offices of McCormick, Kabot, Jenner & Lew, PC. The Parties have agreed to settle this matter without litigation pursuant to the terms of this Final Judgment. Towards this end, Plaintiffs have filed the Complaint simultaneously with the lodging of this Final Judgment and a motion for approval of this Final Judgment.

Plaintiffs believe that the resolution embodied in this Final Judgment is fair and reasonable, that the terms of the Final Judgment are appropriate, and that the entry of this Final Judgment is in the best interests of both Plaintiffs and the voting public. This Final Judgment is neither an admission nor a denial by Defendant regarding any issue of law or fact alleged in the Complaint in this matter nor of any violation of law.

///

///

///

///

///



**II.**  
**FINAL JUDGMENT (INCLUDING INJUNCTION)**  
**PURSUANT TO STIPULATION; (PROPOSED) ORDER**

The Parties, after opportunity for review by their respective counsel, hereby stipulate and consent to the entry of this Final Judgment as set forth below.

**1. DEFINITIONS:**

“At-large voting system” refers to a method of voting wherein all eligible voters of a jurisdiction may cast a ballot for each and every open elected office or “seat.” A candidate for office in this system need only be a resident within the entire jurisdiction. Defendant presently employs an “at-large voting system” for electing City Council members. “District-based election system” refers to a method of voting wherein only members residing within the designated geographic subdivision within the jurisdiction may cast a ballot for a representative, who himself/herself must also be a resident of that same geographic subdivision.

**2. JURISDICTION:**

The Parties stipulate and agree that the Superior Court of California, County of Tulare, has subject matter jurisdiction over matters alleged in this Complaint and personal jurisdiction over the Parties to this Final Judgment.

**3. INJUNCTIVE RELIEF:**

Pursuant to Election Code Sections 14025-14032, Defendant is permanently forthwith enjoined from utilizing an “at-large voting system” for electing members of the Porterville City Council. Further, Defendant is to immediately take all necessary steps to implement, and shall implement, a “district-based voting system” for all future elections to the Porterville City Council.

///

///

1       **3.1     SPECIFIC INJUNCTIVE PROVISIONS:**

2  
3       **3.1.a.** Defendant is to commence transition from an “at-large voting system” to a “district-based  
4 voting system” as defined above, forthwith. The transition period, at minimum, shall require the  
5 City Council to create, pursuant to the principles of the U.S. Voting Rights Act, the CVRA, and  
6 this Stipulation, districts which protect the voting rights of designated groups of minority voters,  
7 as represented by Plaintiffs. Prior to adopting the new boundaries of the district-based voting  
8 system, Defendant shall hold public hearings on the proposed boundaries and shall consider the  
9 input of Plaintiffs, as well as the public as a whole, consistent with the applicable provisions of  
10 the California Election Code. However, final decision as to the establishment of the boundaries  
11 of the newly drawn districts shall rest solely with Defendant, subject to judicial review as  
12 described below.  
13

14       **3.1.b.** Defendant shall adopt and publish its new district boundaries for election to City Council  
15 no later than December 31, 2018. Additionally, the transition to district-based elections will  
16 progress as follows: the first City Council seats currently scheduled for election following entry  
17 of this Final Judgment are set for November 2020. Defendant shall have the transition to  
18 district-based elections completed for these first City Council seats so that the voting in the  
19 November 2020, shall be pursuant to a district-based voting system. The remaining Council  
20 seats currently scheduled for election following the entry of this Final Judgment are set for  
21 November 2022. Defendant shall have the transition to district-based elections completed for  
22 these remaining City Council seats so that the voting in the November 2022 shall be pursuant to  
23 a district-based voting system. Thereafter, voting shall be conducted pursuant to a district-based  
24 voting system. In the event that an absence in a Council seat occurs after this stipulation is fully  
25 adopted but prior to the transition of the district-based system, any such vacancy shall be filled in  
26 accordance with the City’s regulations and applicable State law. If feasible, Defendant may  
27  
28

1 adopt an earlier transition date, that allows for transition to by-district elections starting with the  
2 November 2018 election.

3  
4 **3.1.c.** Defendant shall pay, pursuant to the applicable provisions of the CVRA, Plaintiffs'  
5 attorneys an amount of \$10,000.00 in satisfaction of all attorneys fees, costs, and expert's costs/  
6 fees incurred in researching, filing, negotiating, and settling this matter.

7  
8 **4. RESERVATION OF JURISDICTION**

9 The Parties agree that the Court shall retain jurisdiction for a period of not less than ten  
10 years from the date of the filing of this Final Stipulation to resolve, in an expedited fashion, any  
11 disputes between the Parties arising out of the implementation of this Final Stipulation.

12 Plaintiffs may file a motion with the Court pursuant to this section to seek enforcement of this  
13 Final Stipulation, or to challenge the boundaries adopted by Defendant pursuant to Paragraph  
14 3.1a above. In the event that Plaintiffs prevail in any such dispute or motion, Plaintiffs shall be  
15 entitled to further reasonable attorneys fees and costs, to include, but not limited to, expert fees  
16 and costs. It is the intent of the Parties to avoid any further litigation and to conserve as much as  
17 possible, tax-payer resources in the event of a dispute.

18  
19  
20 **5. TERMINATION IN THE EVENT OF A CHANGE IN THE LAW**

21 In the event that the CVRA is repealed by the Legislature, the CVRA is amended in such  
22 a way that an at large voting system would be permitted in the City, the California Supreme  
23 Court issues a decision or other determination effectively invalidating it as applied to Charter  
24 Cities, or a State Supreme Court or Federal Court decision makes a ruling that changes the  
25 current interpretation of the CVRA as applied to Defendant and such ruling operates to permit an  
26 at large voting system in the City, Defendant may, but is not required to, revert to the "at-large  
27 voting system" presently in effect. However, before reverting back to such system, Defendant  
28

1 must file a notice with the Court, as well as serve Plaintiffs, through their counsel, under this  
2 case number, announcing its intent to revert back to the "at large voting system." In the event  
3 that there is a dispute as to whether the CVRA has been repealed, or whether a Court decision  
4 makes the CVRA inapplicable to Charter Cities or otherwise serves to permit the City to utilize  
5 an at large voting system, Plaintiffs may seek judicial review pursuant to Paragraph 4, above.  
6

7 **6. EFFECT OF JUDGMENT**

8 Except as expressly provided in this Final Judgment, nothing in this Final Judgment is  
9 intended nor shall it be construed to preclude Plaintiffs, or any member of the voting public from  
10 seeking further relief under the provisions of either the CVRA or the U.S. Voting Rights Act.  
11

12 **7. LIABILITY OF DEFENDANT**

13 Plaintiffs acknowledge that Defendant is not liable to them in any manner for any and all  
14 allegations giving rise to the allegations in this Complaint other than as described in this Final  
15 Stipulation.  
16

17 **8. APPLICATION OF FINAL JUDGMENT**

18 This Final Judgment shall apply to and be binding upon Plaintiffs and Defendants, and  
19 their successors and assigns.  
20

21 **9. AUTHORITY TO ENTER FINAL JUDGMENT**

22 Each signatory to this Final Judgment certifies that he or she is fully authorized by the  
23 Party he or she represents to enter this Final Judgment, to execute it on behalf of the Party  
24 represented, and to legally bind that party.  
25

26 ///

27 ///

10. **ABILITY TO INSPECT AND COPY RECORDS OR DOCUMENTS**

In the event of a dispute arising between the Parties as to the implementation of this Final Stipulation, or the termination in the event of a change in the law (See Paragraphs 4 and 5, above), on reasonable notice and subject to all of the defenses Defendant has to requests for documents made by subpoena or other formal legal process or discovery, Defendant shall permit Plaintiffs' counsel, or any duly authorized representative thereof, to inspect and copy Defendant's records and documents as they deem reasonably necessary to determine whether Defendant is in compliance with the terms of this Final Judgment. Nothing in this paragraph is intended to require access to or production of any documents that are protected from production or disclosure by the attorney-client privilege, attorney work-product doctrine, or any other privilege applicable to Defendant under the law.

11. **PAYMENT OF LITIGATION EXPENSES AND FEES**

Defendant shall pay its own attorney fees, expert witness costs and all other costs of litigation, investigation and any other fees and costs incurred in this matter.

12. **INTERPRETATION**

This Final Judgment was drafted equally by the Parties. The Parties agree that the rule of construction holding that ambiguity is construed against the drafting party shall not apply to the interpretation of this Final Judgment.

13. **COUNTERSIGN SIGNATURES**

This Final Judgment may be executed by the Parties in counterpart.

///

///

///



1 **14. ENTRY OF JUDGMENT JOINTLY REQUESTED**

2 The Parties jointly seek approval of this Final Judgment and have requested that the  
3 Court make a determination that the Final Judgment is fair and in the public interest.  
4

5 **15. INTEGRATION**

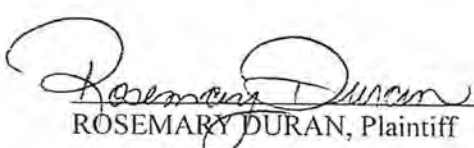
6 This Final Judgment constitutes the entire agreement between the Parties and may not be  
7 amended or supplemented except as provided for in the Final Judgment. No oral representations  
8 have been made or relied upon other than expressly set forth herein.  
9

10 **IT IS SO STIPULATED.**

11  
12 DATED: Dec. 18, 2017

13   
14 JOHN DURAN, Plaintiff

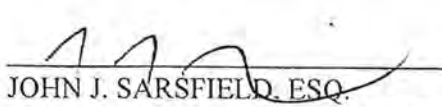
15  
16 DATED: Dec 18-2017

17   
18 ROSEMARY DURAN, Plaintiff

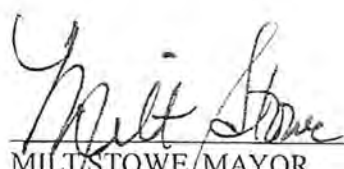
19  
20 DATED: 12/16/2017

21   
22 MARGUERITE MELO, ESQ.  
23 LAW OFFICES OF MELO AND SARSFIELD LLP  
24 ATTORNEYS FOR PLAINTIFFS

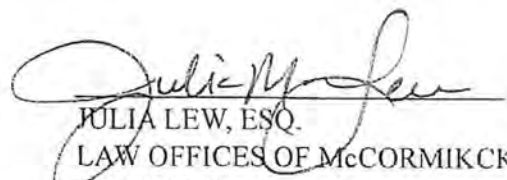
25  
26 DATED: 12/16/2017

27   
28 JOHN J. SARSFIELD, ESQ.  
LAW OFFICES OF MELO AND SARSFIELD LLP  
ATTORNEYS FOR PLAINTIFFS

1 DATED: 12/12/17

  
MILT STOWE, MAYOR  
ON BEHALF OF CITY OF PORTERVILLE  
DEFENDANT

2  
3  
4  
5 DATED: 12/13/17

  
JULIA LEW, ESQ.  
LAW OFFICES OF McCORMICK, KABOT, JENNER  
& LEW, PC.  
ATTORNEYS FOR DEFENDANT

6  
7  
8  
9  
10  
11 ~~PROPOSED~~ ORDER

12  
13 The Court finds that the above stipulation and its terms are fair and just, and approves  
14 this joint stipulation as requested by the Parties.

15 IT IS SO ORDERED.

16  
17 DATED: DEC 19 2017

18 By: NATHAN D IDE  
19 Judge of the Superior Court