

Regular Council Meeting

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FRESNO CITY COUNCIL

CITY OF FRESNO
CITY CLERK'S OFFICE



Supplement Packet

ITEM(S)

2-M (ID 24-1370)

Actions pertaining to the purchase of El Dorado Park: 1. Adopt a finding that the project is exempt from CEQA pursuant to the Commonsense Exemption set forth in the CEQA Guidelines 15061(b)(3). 2. Approve a Real Property Purchase and Sale Agreement and Escrow Instructions between the City of Fresno and Wesley United Methodist Church for the purchase of El Dorado Park. 3. Approve an Agreement and Covenant between the City of Fresno and Wesley United Methodist Church.

Contents of Supplement: Revised Purchase and Sale Agreement

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

REAL PROPERTY PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

THIS REAL PROPERTY PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this "Agreement") is made and entered into this 3rd day of October, 2024 (the "Effective Date"), by and between (i) WESLEY UNITED METHODIST CHURCH, a California nonprofit religious benefit corporation ("Seller"), and (ii) the CITY OF FRESNO, a California municipal corporation ("Buyer"), with Fidelity National Title Company, Fresno, California, as escrow holder ("Escrow Holder"). Seller and Buyer are sometimes collectively referred to in this Agreement as the "Parties" or singularly as a "Party" or by their individual names.

RECITALS:

A. Seller is the owner of approximately 1.65 acres of real property and improvements located in the City of Fresno, County of Fresno, State of California, commonly known as Fresno County Assessor's Parcel Number 418-151-50s and 418141-51s (portions), including any and all improvements on the property and any landscaping, parking areas, appurtenant structures, and streets and sidewalks on the property (the "Real Property").

B. As part of this Escrow, as defined in Section 6.01 below, Buyer, in its status as a California municipal corporation exempt from the provisions of the Subdivision Map Act, shall cause to be recorded a lot split, in which the Real Property will be split into separate parcels in the configuration depicted in Exhibit A, attached hereto and incorporated herein by this reference: (i) the property to be retained by Seller (the "Church Property") and (ii) the property that subject of this Agreement (hereinafter known as the "Park Property") also as more specifically described in Exhibit "A".

C. Under this Agreement, Buyer is acquiring a half-interest in the Park Property. Moreover, upon the Close of Escrow, the Parties will execute, and the Escrow Holder shall record that certain Agreement and Covenant, which shall run with the land, allocates responsibility for the operational activities on the Park Parcel and allows each party with an option and right of first refusal as specified therein. The Agreement and Covenant is attached hereto as Exhibit "B" and incorporated herein by this reference.

D. Seller now desires to sell a one-half interest in the Park Property to Buyer, and Buyer now desires to purchase a one-half interest the Park Property from Seller, pursuant to the terms and subject to the conditions set forth in this Agreement. The Buyer and Seller shall own the Park Property as Tenants in Common.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, and the above Recitals which are incorporated into, and a part of the Agreement, Seller and Buyer hereby agree as follows:

SECTION I
AGREEMENT TO PURCHASE THE REAL PROPERTY

1.01 **Purchase and Sale of the Real Property.** Pursuant to the terms and subject to the conditions set forth in this Agreement, and in consideration of the payment of the Purchase Price (as defined in Section 1.02 of this Agreement), Seller shall sell a one-half fee simple title in and to the Park Property to Buyer as tenants in common, and Buyer shall purchase such one-half fee simple title as tenants in common and to the Park Property from Seller, at the Closing (as defined in Section 6.06 of this Agreement). For purposes of this Agreement, the Park Property shall include, but not be limited to, all of Seller's interests in the following:

- a. All buildings, structures, and improvements to the Park Property;
- b. All easements and rights-of-way relating to or appurtenant to the Park Property;
- c. All minerals, oils, gas and other hydrocarbons located on or under the Park Property not otherwise encumbered; and

1.02 **Purchase Price.** The purchase price to be paid by Buyer to Seller for the Park Property shall be Five Hundred Forty Thousand and 00/100 Dollars (\$540,000.00) (the "Purchase Price"). The Purchase Price constitutes the total consideration payable by Buyer to Seller for the Park Property.

1.03 **Payment of Purchase Price.** The Purchase Price shall be paid by Buyer to Seller as follows:

- a. The sum of Thirty Thousand and 00/100 Dollars (\$30,000.00) shall be deposited with Escrow Holder within fifteen (15) business days of the opening of Escrow (the "Deposit"). Subject to the terms and conditions of this Agreement, the Deposit shall be returned to Buyer in the event that Buyer does not approve the condition of the Park Property prior to the expiration of the Contingency Period as provided in Section 2.02 of this Agreement. The Deposit also shall be refundable to Buyer if the Escrow (as defined below) fails to close by the Closing Date (as defined below) on account of (i) the failure of any of the conditions precedent set forth in Section 5.02 of this Agreement, (ii) Seller's material breach of any other obligation hereunder or (iii) cancellation of this Agreement by Buyer in accordance with Sections 3.02(a) or 5.03 of this Agreement. If Escrow closes, then Escrow Holder shall apply the Deposit (and all interest earned thereon) against the Purchase Price. At Buyer's election, the Deposit shall be held in an interest-bearing account and all interest earned on the Deposit shall accrue to the benefit of Buyer.

b. Prior to the Closing, Buyer shall deposit with Escrow Holder the remainder of the Purchase Price, which is Five Hundred Ten Thousand and 00/100 Dollars (\$510,000.00) (the "Remainder Purchase Price").

1.04 **LIQUIDATED DAMAGES.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN THE EVENT THAT THE ESCROW FAILS TO CLOSE DUE TO A MATERIAL BREACH OF OR DEFAULT BY BUYER WHICH REMAINS UNCURED FOR FIVE (5) BUSINESS DAYS AFTER NOTICE OF THE SAME IS GIVEN TO BUYER IN WRITING, THEN SELLER SHALL RETAIN THE AMOUNT OF THE DEPOSIT AS LIQUIDATED DAMAGES, AND NOT AS A PENALTY AND AS SELLER'S EXCLUSIVE REMEDY AGAINST BUYER AT LAW OR OTHERWISE. THE AMOUNT OF SELLER'S ACTUAL DAMAGES IN THE EVENT OF BUYER'S BREACH OR DEFAULT WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO ASCERTAIN, AND THE AMOUNT SET FORTH ABOVE AS LIQUIDATED DAMAGES HAS BEEN AGREED UPON BY SELLER AND BUYER AFTER SPECIFIC NEGOTIATION. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS SECTION 1.04, THE PARTIES AGREE THAT THE AMOUNT SET FORTH ABOVE REPRESENTS A REASONABLE ESTIMATE OF THE ACTUAL DAMAGES WHICH SELLER WOULD INCUR IN THE CASE OF SUCH BREACH OR DEFAULT BY BUYER. BY INITIALING THE SPACES WHICH FOLLOW, SELLER AND BUYER SPECIFICALLY AND EXPRESSLY AGREE TO ABIDE BY THE TERMS AND PROVISIONS OF THIS SECTION 1.04 CONCERNING LIQUIDATED DAMAGES IN THE EVENT OF A DEFAULT BY BUYER.

Seller's Initials

JA

Buyer's Initials

1.05 **Possession.** Buyer acknowledges that it is currently in possession of the Park Property pursuant to that certain existing lease (the "Lease") between Buyer and Seller. Seller hereby agrees and acknowledges that Buyer will have the right to immediately non-exclusively possess the Park Property, following the Close of Escrow, subject to the Agreement and Covenant. Additionally, the existing Lease shall immediately terminate upon Closing.

SECTION II

PHYSICAL CONDITION OF THE PARK PROPERTY; INSPECTION

2.01 **Due Diligence Materials.** No later than five (5) business days following the Effective Date, Seller shall provide Buyer with access to or legible copies of all of Seller's files regarding the entitlement, development, physical condition, environmental history and management of the Park Property; the Leases; insurance policies for the Park Property for the last three (3) years; the latest three years' tax bills for the Park Property; any and all reports, documents, notices and disclosures concerning the environmental condition of the Park Property (the "Environmental Reports"); any and all reports, documents or disclosures concerning governmental matters; all as-built and other plans and blue-prints for the Park Property; all surveys and soils and engineering

reports for the Park Property; all litigation within the last five (5) years involving the Park Property; and all other documentation that materially affects the ownership and operation of the Park Property or which are reasonably requested by Buyer and are in Seller's possession (or in the possession of Seller's agents, affiliates or professionals (collectively, the "Due Diligence Materials").

2.02 **Inspection of the Park Property.** Subject to the terms of Section 2.03 below, at all reasonable times prior to the expiration of the Contingency Period, Seller shall provide Buyer, and Buyer's agents, employees, consultants, and representatives (collectively "Buyer's Agents"), with reasonable access to the Park Property, and each portion thereof, to allow Buyer or Buyer's Agents, or both, to investigate, inspect, and to conduct such tests upon the Park Property, and each portion thereof, as Buyer deems necessary or advisable, in Buyer's sole discretion, including, without limitation, completing environmental assessments on the Park Property ("Buyer's Inspections"). Buyer shall conduct all inspections of the Park Property in a manner so as not to unreasonably interfere with the Tenants. Buyer agrees that its inspection of the Park Property shall be conducted so as to cause a minimum of disturbance to the operation of the businesses on the Park Property. Buyer shall restore the Property to its condition immediately prior to such investigation. Buyer shall repair any damage to the Property caused by any of its inspections. Buyer and Buyer's Agents shall complete the Buyer's Inspections prior to the expiration of the Contingency Period (as defined below). In the event Buyer fails to approve the condition of the Park Property on or before the thirtieth (30th) day after the Effective Date (the "Contingency Period"), Buyer shall be entitled to a full refund of the Deposit. During the Contingency Period, Buyer shall have the sole, absolute and unfettered right and option to terminate this Agreement and to cancel the contemplated transaction for any reason.

2.03 **Notice and Insurance.** For all inspections of the Park Property, including any invasive testing (which Buyer shall not be permitted to perform unless Buyer obtains Seller's prior written consent, which Seller may grant or deny in its reasonable discretion), Buyer shall provide Seller with not less than one (1) full business day prior notice by telephone or email of Buyer's entry onto the Park Property, and Seller shall be entitled to be present at such inspection. For all physical testing of the Park Property to be completed by Buyer's consultants, Buyer shall submit to Seller a Certificate of Insurance or other evidence of insurance satisfactory to Seller evidencing that Buyer's consultant has named Seller as an additional insured on its general liability insurance policies on a primary and non-contributory basis, with a combined single limit liability amount of not less than \$1,000,000, and have secured and maintained any necessary workers' compensation and employer's liability insurance in accordance with the provisions of California law. The obligations set forth herein shall survive any termination of this Agreement.

2.04 **Buyer's Indemnification of Seller.** Buyer shall indemnify, defend, and hold Seller, and Seller's employees, agents, successors, and assigns, and each of them, and the Park Property, harmless from and against any and all claims, demands, losses, costs (excluding personnel time arranging for access to the Park Property or

coordinating access with the tenant), expenses, damages, recoveries, deficiencies, liabilities, and liens (including, without limitation, the defense thereof and all reasonable attorneys', paralegals', and other professionals' fees and costs) that may arise, result from or be attributable to the acts or omissions of Buyer or Buyer's Agents, or both, in performing or preparing the Buyer's Inspections.

2.05 **Third Party Reports.** Buyer shall be responsible for all costs associated with any third party reports, including, without limitation, environmental assessments, that Buyer arranges to be performed during the Contingency Period. If this Agreement is terminated, Buyer, at Buyer's cost, will promptly return to Seller all the Due Diligence Materials furnished to Buyer or its agents or consultants by Seller. Buyer shall also provide Seller with copies of all studies and surveys conducted on the Park Property commissioned by Buyer.

2.06 **Property Condition.**

a. **"As-Is" Property Condition.** Buyer acknowledges and agrees that except as otherwise expressly provided in this Agreement, to the maximum extent permitted by law, the sale of the Park Property is made on an "As Is," "Where Is" condition and basis with all faults, and that Seller has no obligation to make repairs, replacements, or improvements thereto. The Purchase Price and the terms and conditions set forth herein are the result of arms-length bargaining between entities familiar with transactions of this kind. Buyer further acknowledges and agrees that, except as otherwise expressly provided in this Agreement, Seller has not made, does not make, and specifically negates and disclaims, any representations, warranties, promises, covenants, agreements, or guaranties of any kind or character whatsoever, whether express or implied, oral or written, past, present or future, of, as to, concerning, or with respect to: (a) the value of the Park Property; (b) the suitability of the Park Property for any and all activities and uses which Buyer may conduct thereon, including the possibilities for future development of the Park Property; (c) the habitability, merchantability, marketability, or fitness for a particular purpose of the Park Property; (d) the manner, quality, state of repair or lack of repair of the Park Property; (e) the nature, quality or condition of the Park Property, including, without limitation, the water, soil and geology; (f) the compliance of or by the Park Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority or body; (g) the manner or quality of the construction or materials, if any, incorporated into the Park Property; (h) compliance with any environmental protection, pollution or land use laws, rules, regulations, orders or requirements; (i) the presence or absence of Hazardous Substances, as defined in Section 4.01(f) below, at, on, under or adjacent to the Park Property; (j) the content, completeness or accuracy of any materials obtained by Buyer in its investigation of the Park Property, including, without limitation, any title report issued by the Escrow Holder; (k) the conformity of any improvements on the Park Property, if any, to any plans or specifications of the Park Property, including any plans and specifications that may have been or may be provided to Buyer; (l) the conformity of the Park Property to past, current or future applicable zoning or building

requirements; (m) deficiency of any drainage; (n) the fact that all or a portion of the Park Property may be located on or near an earthquake fault line; (o) the land use status of the Park Property, zoning status, subdivision status under the California Subdivision Map Act or the subdivision ordinances of the City, or the status of any other governmental entitlement; (p) any documents pertaining to the Park Property provided by Seller to Buyer, except for the completeness of such Park Property documents; or (q) with respect to any other matter.

b. Buyer acknowledges that Buyer is conducting its own investigation of the Park Property, and, except for the express representations and warranties contained in this Agreement, Buyer is relying solely on such investigations, inspections and evaluations of such Park Property in making its decision to consummate the transaction contemplated by this Agreement, and not on any information provided or to be provided by Seller. Buyer hereby expressly acknowledges that Buyer shall be solely responsible for determining the status and condition of the Park Property, including land use, zoning, building and other governmental regulations, and physical, geological and environmental conditions. Except as expressly provided for in this Agreement or any written amendment or supplement hereto executed and delivered by Seller, Seller shall not be liable or bound in any manner by any oral or written statements, representations or information pertaining to the Park Property, or the operation thereof, furnished by any real estate broker, agent, employee or any other person.

c. **Release**. Buyer, on behalf of itself and its agents, heirs, successors and assigns, hereby waives, releases, acquits and forever discharges and releases Seller of and from any and all claims, actions, causes of actions, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which Buyer or any of Buyer's heirs, successors, or assigns now has or which may arise in the future on account of or in any way related to or in connection with any past, present or future aspect, feature, characteristic, circumstance or condition arising out of or in connection with the Park Property (including, without limitation, the items listed in Section 2.06(a) and (b) above), and Buyer specifically waives the provisions of California Civil Code section 1542 which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

BUYER'S INITIALS

SECTION III
CONDITION OF TITLE TO THE PARK PROPERTY

3.01 **Condition of Title to Park Property.** Seller agrees to convey fee simple title in and to the Park Property to Buyer. Title shall be conveyed by Seller to Buyer by grant deed, subject to the items enumerated in this Section 3.01. Buyer shall accept title to the Park Property subject to the following exceptions (the "**Permitted Exceptions**"):

- a. The lien for current Park Property taxes, special utility district taxes and other similar assessments, if any, not yet due;
- b. The lien for supplemental taxes and assessments resulting from the change in ownership created by the sale of the Park Property to Buyer;
- c. All other exceptions to title reflected on the preliminary title report (the "**Preliminary Report**"), except as provided in Section 3.02 of this Agreement.

3.02 **Preliminary Report.**

a. **Title Review.** Seller shall obtain and deliver to Buyer the Preliminary Report to be prepared by Escrow Holder, together with legible copies of all documents shown as title exceptions therein, within ten (10) days of the Effective Date. Buyer may make objections to any exception to title reflected in the Preliminary Report, provided such objections are made to Seller in writing within thirty (30) days of the Effective Date. If Buyer fails to notify Seller, in writing, of Buyer's approval of all exceptions to title by such date, Buyer shall be deemed to have objected to title to the Park Property, in which event this Agreement shall be terminated, and the Deposit returned to Buyer.

b. **Removal of Exceptions.** If Buyer timely objects to any exception to title set forth in the Preliminary Report, then, within ten (10) days of receiving Buyer's timely objection, Seller shall elect in writing to Buyer to either (i) cause the exception to be removed of record; (ii) obtain the appropriate endorsement of the policy of title insurance to be issued by Escrow Holder to Buyer insuring against the exception (in a manner acceptable to Buyer); or (iii) terminate the sale of the Park Property to Buyer pursuant to this Agreement, unless Buyer elects to take title to the Park Property subject to such exception. Seller shall, however, not have the foregoing rights with regard to any deeds of trust or other mechanics' or monetary liens on the Park Property, all of which shall be repaid in full, reconveyed and removed from title by Seller prior to the Closing Date. If necessary to insure around the exception, Seller may choose a new national title company reasonably satisfactory to Buyer.

3.03 **Title Insurance.** At the Close of Escrow and as a condition to Buyer's obligation to purchase the Park Property, the Escrow Holder shall commit to

issue, and to deliver to Buyer, the Escrow Holder's standard coverage CLTA Owner's Policy of Title Insurance insuring title to the Park Property in Buyer in the condition set forth in Section 3.01 above and with liability in the amount of the Purchase Price (the "Title Policy"). Buyer may elect to obtain an ALTA Owner's Policy and shall be responsible for paying any difference for the premium of such Title Policy. The Title Policy shall be subject only to the approved exceptions to title as evidenced by a title commitment. Seller will deliver to the Escrow Holder such reasonable owner's affidavit as the Escrow Holder may reasonably request.

SECTION IV **COVENANTS, WARRANTIES, AND REPRESENTATIONS**

4.01 **Covenants, Warranties, and Representations of Seller.** Seller hereby makes the following covenants, representations, and warranties and acknowledges that Buyer's execution of this Agreement has been made, and Buyer's purchase of the Park Property will be made, in material reliance by Buyer on such covenants, representations, and warranties. As used in this Agreement, "to the best of Seller's knowledge", "to Seller's knowledge," or other words to such effect, shall mean the actual knowledge of Pastor Robin Mathews-Johnson who is the person most knowledgeable and familiar with the Seller's representations and warranties within this Section 4.01, excluding constructive knowledge or duty of inquiry or investigation. These covenants, representations and warranties shall survive the closing of Escrow:

a. **Free and Clear Owner With Authority To Sell.** Seller is, or will be as of the Closing, the owner of the Park Property, free and clear of all liens and encumbrances except the Leases and those encumbrances disclosed in the Preliminary Report and approved by Buyer in accordance with Section 3.02 herein. In addition, Seller has, or will have as of the Closing, full authority to sell, convey, and transfer the Park Property as provided in this Agreement and to carry out Seller's obligations under this Agreement. Additionally, all equipment and personal property described in Schedule 1 to the Bill of Sale are free and clear of all liens and encumbrances or will be free and clear of encumbrances as of the Closing and that Seller shall full authority to sell, convey, and transfer the equipment and personal property described in Schedule 1 to the Bill of Sale, as provided in this Agreement and to carry out Seller's obligations under this Agreement.

b. **No Violation.** Seller's execution of this Agreement and performance of Seller's obligations under this Agreement will not violate any agreement, option, covenant, condition, obligation or undertaking of Seller, nor will such execution violate any law, ordinance, statute, order or regulation.

c. **Eminent Domain.** Seller has no notice of any pending or threatened proceeding in eminent domain, condemnation or otherwise that would affect the Park Property or any portions thereof, nor does Seller know of any facts that may give rise to such actions or proceedings.

d. **Liens**. Seller has no knowledge of any liens or encumbrances on or claims to or covenants, conditions and restrictions, easements, rights of way or other matters affecting the Park Property, except as are indicated in the Preliminary Report, or as set forth in Schedule 4.01(d) to this Agreement.

e. **Litigation/Violation Notices**. There are no actions, suits, claims, legal proceedings or other matters pending or, to Seller's knowledge, threatened before any court or governmental entity of or relating to the Park Property, Seller or Seller's ownership, operation or sale of the Park Property. To Seller's knowledge, other than matters disclosed in the Due Diligence Materials, Seller has not received any notice from any governmental or quasi-governmental authority either that the Park Property or the use thereof materially violates any statutes, ordinances, orders or regulations affecting any portion of the Park Property.

f. **Hazardous Substances**. To Seller's knowledge, the Park Property is free from Hazardous Substances (as defined below) and is not in violation of any Environmental Laws (as defined below). Except as set forth in Schedule 4.01(f) to this Agreement, Seller has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Park Property are or have been in violation of any Environmental Law, or informing Seller that the Park Property is subject to investigation or inquiry regarding Hazardous Substances on the Park Property or the potential violation of any Environmental Law. There is no monitoring program required by the Environmental Protection Agency (EPA) or any similar state agency concerning the Park Property. Except as set forth in Schedule 4.01(f) to this Agreement, to Seller's knowledge, no toxic or hazardous chemicals, waste, or substances of any kind have ever been spilled, disposed of, or stored on, under, or at the Park Property, whether by accident, burying, drainage, or storage in containers, tanks, holding areas, or by any other means. Seller has provided to Buyer all information, records, and studies maintained by Seller in connection with the Park Property concerning Hazardous Substances.

As used in this Agreement, "**Environmental Laws**" means all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance (as later defined), or pertaining to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations relate to Hazardous Substances on, under, or about the Park Property), occupational or environmental conditions on, under, or about the Park Property, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USCS " 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USCS " 6901 et seq.]; the Clean Water Act also known as the Federal Water Pollution Control Act (FWPCA)

[33 USCS " 1251 et seq.]; the Toxic Substances Control Act (TSCA) [15 USCS " 2601 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 USCS " 1801 et seq.]; the Insecticide, Fungicide and Rodenticide Act [7 USCS §§ 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 USCS " 6901 et seq.]; the Clean Air Act [42 USCS " 7401 et seq.]; the Safe Drinking Water Act [42 USCS " 300f et seq.]; the Solid Waste Disposal Act [42 USCS " 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USCS " 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 USCS " 11001 et seq.]; the Occupational Safety and Health Act [29 USCS " 655, 657]; the California Underground Storage of Hazardous Substances Act [H & S C " 25280 et seq.]; the California Hazardous Substances Account Act [H & S C " 25300 et seq.]; the California Hazardous Waste Control Act [H & S C " 25100 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [H & S C " 24249.5 et seq.]; the Porter-Cologne Water Quality Act [Wat C " 13000 et seq.], together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect or later enacted that pertains to occupational health or industrial hygiene (and only to the extent that the occupational health or industrial hygiene laws, ordinances, or regulations related to Hazardous Substances on, under, or about the Park Property), or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water, or land use.

As used in this Agreement, "Hazardous Substances" includes, without limitation:

(a) Those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste," or "pollutant or contaminant" in CERCLA, RCRA, TSCA, HMTA, or under any other Environmental Law;

(b) Those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or by the Environmental Protection Agency (EPA), or any successor agency, as hazardous substances [40 CFR Part 302];

(c) Other substances, materials, and wastes that are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and

(d) Any material, waste, or substance that is

- (i) a petroleum or refined petroleum product,
- (ii) asbestos,
- (iii) polychlorinated biphenyl,

(iv) designated as a hazardous substance pursuant to 33 USCS 1321 or listed pursuant to 33 USCS 1317,

(v) a flammable explosive, or

(vi) a radioactive material.

g. **Hazardous Substances Disclosures**. Seller has disclosed to Buyer all information, records, and studies in Seller's possession in connection with the Park Property concerning Hazardous Substances.

h. **Performance**. Seller shall timely perform and comply with all covenants and agreements, and satisfy all conditions, that Seller is required to perform, comply with or satisfy under this Agreement.

i. **FIRPTA**. Seller is not a foreign person as defined in Section 1445 of the Internal Revenue Code.

j. **Utilities**. To Seller's knowledge, all water, sewer, gas, electric, telephone, and drainage facilities and all other utilities required by law and by the normal operation of the Park Property are installed across public property or within valid easements to the property lines of the Park Property, are all connected with valid permits, and are adequate to service the Park Property and to permit full compliance with all legal requirements.

k. **Licenses and Permits**. Seller has obtained all licenses, permits, easements, and rights-of-way required from all governmental authorities having jurisdiction over the Park Property or from private parties to permit the Park Property to be used in its current manner. Seller accesses the Park Property from public roads.

l. **Works of Improvement**. At the Closing there shall be no outstanding contracts made by Seller for any improvements to the Park Property that have not been fully paid for and that Seller shall cause to be discharged all mechanics' and materialmen's liens arising from any labor or materials furnished prior to the Closing which involve the Park Property.

m. **Records**. All of the documents, instruments, and records prepared by Seller and provided to Buyer by Seller shall contain true, accurate, and complete information. All third-party documents, instruments, and records provided by Seller to Buyer, shall be true and correct copies.

n. **No Misrepresentations**. Seller knows of no facts nor has Seller misrepresented any fact which would prevent Buyer from operating the Park

Property after the Closing in the manner in which the properties are currently being used and operated.

o. **No Violations of Law.** Other than as disclosed in Schedule 4.01(o) to this Agreement, to Seller's knowledge, no condition on the Park Property violates any health, safety, fire, zoning, environmental, sewage, building, or other federal, state, or local law, code, ordinance or regulation.

4.02 **Covenants, Warranties, and Representations of Buyer.** Buyer hereby makes the following covenants, representations, and warranties and acknowledges that Seller's execution of this Agreement has been made, and Seller's sale of the Park Property will be made, in material reliance by Seller on such covenants, representations, and warranties. These covenants, representations and warranties shall survive the closing of Escrow:

a. **Authority to Buy.** Buyer has the authority to enter into this Agreement, to purchase the Park Property, to pay the Purchase Price, and to carry out the terms of this Agreement as set forth in this Agreement.

b. **No Violation.** Neither Buyer's execution of this Agreement nor any provision contained herein does, nor at the Close of Escrow shall, violate any covenant, agreement or contract to which Buyer is a party or which affects the Park Property.

c. **Litigation.** To Buyer's knowledge, there are no actions, suits, claims, legal proceedings, or other matters pending or threatened against Buyer before any court or governmental entity which would materially impact Buyer's ability to complete the transaction contemplated by this Agreement.

d. **Performance.** Buyer shall timely perform and comply with all covenants and agreements, and satisfy all conditions, that Buyer is required to perform, comply with or satisfy under this Agreement.

SECTION V **CONDITIONS PRECEDENT**

5.01 **Conditions Precedent to Seller's Obligation to Perform.** Seller's obligation to perform as set forth in this Agreement is hereby expressly conditioned on satisfaction of each and every one of the following conditions precedent:

a. Buyer shall have performed each of the acts to be performed by it under this Agreement, including, without limitation, depositing the Deposit, the Remainder Purchase Price, and the Buyer's share of the Closing Costs (as defined in Section 6.05 below) into the Escrow by the Closing Date.

b. Each of Buyer's representations and warranties set forth in Section 4.02 hereof shall be true at the Close of Escrow as if affirmatively made at that time.

c. The executed Agreement and Covenant.

d. Buyer shall pay any and all past due rent for the Property in full. Such payments shall not offset the Purchase Price. Seller shall provide the Escrow Holder with a final total for the unpaid rent, which must be paid in full seventy-two hours prior to the Closing of Escrow.

The foregoing conditions are solely for the benefit of Seller, any or all of which may be waived by Seller in its sole discretion.

5.02 Conditions Precedent to the Buyer's Obligation to Perform.

Buyer's obligation to perform as set forth in this Agreement is hereby expressly conditioned on satisfaction of each and every one of the following conditions precedent:

a. Seller shall have performed every act to be performed by it under this Agreement, including without limitation, depositing into the Escrow a grant deed conveying the Park Property to Buyer (the "Grant Deed").

b. Seller shall have deposited into the Escrow, at least two (2) business days before the Closing Date, two (2) fully-executed (by Seller) originals of the Assignment and Assumption.

c. The executed Agreement and Covenant.

d. Each of the representations and warranties of Seller contained in Section 4.01 or elsewhere in this Agreement shall be true at the Close of Escrow as if affirmatively remade at that time.

e. The Escrow Holder shall be committed to issue the Title Policy as set forth in Section 3.03 hereof in the condition set forth in Section 3.01 above.

f. Buyer's delivery of a metes and bounds description of the Park Property consistent with the depiction in Recital B.

The foregoing conditions are solely for the benefit of Buyer, any or all of which may be waived by Buyer in Buyer's sole discretion.

5.03 Eminent Domain; Damage and Destruction.

a. If, prior to the Closing Date, the Park Property is the subject of any eminent domain or condemnation proceedings, whether actual or threatened, temporary or permanent, partial or total (collectively, a "Condemnation")

Action”), and such Condemnation Action would, in Buyer’s reasonable judgment, adversely affect the use of the Park Property in any way or result in the diminution in value of the Park Property by more than Fifty Thousand and No/100 Dollars (\$50,000.00), then Buyer may, in its sole and absolute discretion, either: (i) terminate this Agreement as provided in Section 5.03 (which shall require the return of the Deposit), or (ii) close the transaction contemplated herein, in which event Seller shall assign to Buyer all of Seller’s right, title and interest with respect to such Condemnation Action and any awards, damages or other compensation arising from such Condemnation Action. Unless or until Buyer has exercised its right to terminate this Agreement, Seller shall take no action with respect to such Condemnation Action without the prior written consent of Buyer.

b. If the Park Property, or any part thereof, is materially damaged or destroyed and not restored to the reasonable satisfaction of Buyer prior to the Closing Date, Buyer may terminate this Agreement, in which case the Deposit shall be returned to Buyer and except as may otherwise be provided in Sections 2.04 and 2.05 of this Agreement, neither Party shall have any further obligation to the other. If Buyer, however, elects to complete the purchase of the Park Property, all proceeds of insurance paid or payable to Seller by reason of the damage or destruction (plus the amount of any applicable deductible or the cost of repairing any uninsured portion of the loss) shall be paid over or assigned by Seller to Buyer (or in the alternative, and at Buyer’s election, be credited towards the Purchase Price). As used above, “materially damaged or destroyed” shall mean damage or destruction costing more than \$50,000 to repair or replace.

SECTION VI **ESCROW**

6.01 **Establishment of Escrow**. The Parties shall establish an escrow for purposes of consummating the purchase and sale of the Park Property pursuant to this Agreement with the Escrow Holder: Fidelity National Title, Fresno, California, Attn: Valerie Budzik (the “Escrow”). Prior to the Close of Escrow, a copy of this Agreement shall be deposited with the Escrow Holder and shall constitute escrow instructions to the Escrow Holder concerning this transaction, subject to the provisions of the Escrow Holder’s standard escrow instructions and conditions for acceptance of the Escrow, but only to the extent that such standard escrow instructions and conditions impose no additional obligations or liabilities on the Parties, and further subject to the terms and conditions set forth in this Agreement. In the case of conflict between this Agreement and such standard escrow instructions and conditions, this Agreement shall control unless otherwise agreed, in writing, by Buyer and Seller.

6.02 **Deposits into Escrow**. The Parties shall make the following deposits into the Escrow at or prior to the Close thereof:

a. **Seller’s Deposits**. The Seller shall deposit the following documents and instruments into the Escrow prior to the Close:

(i) An executed and acknowledged original of the Grant Deed;

(ii) Seller's affidavit as contemplated by Sections 18662 and 18668 of the California Revenue and Taxation Code (the "Withholding Affidavit");

(iii) Seller's affidavit of non-foreign status as contemplated by Section 1445 of the Internal Revenue Code of 1986, as amended (the "FIRPTA Affidavit");

(iv) The executed Agreement and Covenant; and

(v) Such other instruments, documents and declarations as are reasonably necessary and customary to carry out the intent of this Agreement or as may otherwise be requested by Escrow Holder.

b. **Buyer's Deposits.** Buyer shall deposit the following funds and documents into Escrow prior to the Close:

(i) The Deposit;

(ii) The Remainder Purchase Price;

(iii) A Preliminary Change in Ownership Report;

(iv) Buyer's share of the Closing Costs; and

(v) The executed Agreement and Covenant.

6.03 **Prorations.** To the extent such items are not paid by Tenants, Seller shall be responsible for any supplemental assessments or reassessments made to the extent attributable to any period prior to the Closing Date, and Buyer shall be responsible for reassessments made to the extent attributable to any period after the Closing Date. To the extent such items are not paid by Tenants, Buyer shall pay any supplemental taxes assessed pursuant to the laws of the State of California resulting from the sale of the Park Property to Buyer. The Escrow Holder shall prorate any insurance, taxes, and operating expenses relating to the Park Property that are not obligations to be paid by Tenant, to the extent attributable to any period prior to the Closing Date to Seller, and to Buyer for all periods thereafter. The parties shall prorate through Escrow, as of the Closing Date any and all rents payable under the Leases ("Rent"). Pursuant to such proration, Buyer shall receive a credit at the Closing equal to the amount of Rent allocable to the day of Closing and any period thereafter, but only to the extent that the same have actually been paid to and received by Seller as of the Closing Date. The parties shall promptly adjust between themselves and prorate outside of Escrow any Rents received after the Closing.

All rights to Rents which are unpaid as of the Closing Date allocable to any period prior to Closing ("Delinquent Rent") shall be and remain the property of Seller, and Buyer shall have no obligation to collect the Delinquent Rent; provided, however, that after the Closing Date, Buyer shall cooperate with Seller, at no expense to Buyer, with regard to the collection of the same. Rent received from Tenants by Buyer after the Closing Date shall be first applied to any current rent then due, and any balance to Delinquent Rent. Delinquent Rent subsequently paid to Buyer shall be paid by Buyer to Seller promptly upon receipt (less all reasonable costs and expenses incurred by Buyer in connection with the collections of the same). Seller shall promptly pay to Buyer any Rents received by Seller after the Closing Date which relates to a period on or after the Closing Date. In the event that Buyer or Seller receives any portion of the Rents allocable to the other Party, then such amounts shall be paid-over to the other Party within no more than ten (10) days after they are received.

6.04 **Title Insurance**. At the Closing, the Escrow Holder shall commit to provide or issue, effective as of that date, the Title Policy as set forth in Section 3.03 and Section 3.04 of this Agreement.

6.05 **Costs and Expenses**. Closing costs (the "Closing Costs") shall be borne by the Parties as follows:

- a. The premium for the CLTA Title Policy and documentary transfer taxes, if any, shall be shared equally by Buyer and Seller;
- b. Recording fees and document preparation fees shall be paid by Buyer;
- c. Escrow fees shall be paid one-half (1/2) by Seller and one-half (1/2) by Buyer; and
- d. All other Closing Costs shall be paid by the parties in the manner customary in Fresno County.

Each Party shall bear its own legal and accounting fees and costs.

6.06 **Closing Date**. Unless otherwise agreed by the Parties in writing, the Close of Escrow shall occur no later than thirty (30) days after the expiration of the Contingency Period, subject to the Escrow Holder's prior receipt of all funds and documents as required under Section 6.02, and satisfaction of all other conditions precedent to Closing, unless waived. As used herein, the terms "Close," "Closing" and "Closing Date" shall be synonymous with the term Close of Escrow.

6.07 **Inability to Close**. In the event Close of Escrow is unable to occur by the Closing Date due to the fault of Escrow Holder, the Close of Escrow shall be subject to one automatic extension of up to ten (10) calendar days at either Party's election.

6.08 **Procedure for Closing**. The Escrow Holder shall Close the Escrow by doing the following:

- a. Pay from funds deposited by Seller or otherwise distributable to Seller, all claims, demands and liens necessary to place title to the Park Property in the condition set forth in Section 3.01, as approved by the Parties in accordance with Section 3.02;
- b. Pay Seller's share of the Closing Costs from funds deposited by Seller or otherwise distributable to Seller;
- c. Pay from funds deposited by Buyer, Buyer's share of the Closing Costs;
- d. Record the Agreement and Covenant;
- e. Deliver a copy of Buyer's and Seller's respective closing statements for this Escrow to the respective Parties;
- f. Deliver a copy of the FIRPTA Affidavit, the Withholding Affidavit, one original each of the Bill of Sale and Assignment and Assumption to Buyer;
- g. Deliver one original of the Bill of Sale and Assignment and Assumption to Seller;
- h. Unless otherwise instructed by Seller unilaterally, deliver the Deposit and the Cash Down Payment, less payments and other charges that are chargeable to Seller as authorized hereunder;
- i. Deliver any remaining funds held in the Escrow to Buyer; and
- j. Deliver to Buyer the original and two (2) copies of the Title Policy in the form set forth in Section 3.03 no later than thirty (30) days after the Closing Date, or at such other time as requested by Buyer's lender.

In addition to the documents and instruments to be delivered as herein provided, each of the parties hereto shall, from time to time at the request of the other party, execute and deliver to the other party such other instruments of transfer, conveyance and assignment and shall take such other action as may be reasonably required to effectively carry out the terms of this Agreement.

SECTION VII **MISCELLANEOUS**

7.01 **Survival and Indemnity.** The Parties agree that the respective representations, warranties, covenants, indemnities, and agreements made by each Party pursuant to this Agreement, or any document delivered pursuant to this Agreement, shall survive the Closing for a period of twelve (12) years unless provided for otherwise in this Agreement or otherwise expressly agreed to in writing by the Parties.

7.02 **Indemnification of Seller.** Buyer shall indemnify, defend, and hold harmless Seller, and Seller's successors and permitted assigns, and each of them, against and in respect of any or all claims, demands, losses, costs, expenses, obligations, liabilities, and damages of every nature (including, without limitation, the investigation and/or defense thereof, and reasonable attorneys', paralegals', and other professionals' fees and costs) that any of them shall incur or suffer that arise out of or result from (i) any debts, liabilities, responsibilities or obligations relating to the Park Property arising or accruing after the Closing, or (ii) any actual breach of any representation, warranty or covenant under this Agreement by Buyer.

7.03 **Indemnification of Buyer.** Seller shall indemnify, defend, and hold harmless Buyer, and Buyer's successors and permitted assigns, and each of them, against and in respect of any or all claims, demands, losses, costs, expenses, obligations, liabilities, and damages of every nature (including, without limitation, the investigation and/or defense thereof, and reasonable attorneys', paralegals', and other professionals' fees and costs) that any of them shall incur or suffer that arise out of or result from (i) any debts, liabilities, responsibilities or obligations relating to the Park Property arising or accruing on or before the Closing, or (ii) any actual breach of any representation, warranty or covenant under this Agreement by Seller.

7.04 **Broker.** Buyer and Seller each represent and warrant to and for the benefit of the other that such Party has not caused any liability for payment of any broker's commission or finder's fee to be incurred with respect to the transaction which is the subject of this Agreement, and both Buyer and Seller agree to indemnify and save the other Party harmless from and against any liability for such commission or fee.

7.05 **Attorneys' Fees.** In the event of any controversy, claim, or dispute between the Parties arising out of or relating to this Agreement or the breach thereof, the prevailing Party shall be entitled to recover from the other Party reasonable expenses, attorneys', paralegals', and other professionals' fees and costs.

7.06 **Notices.** All notices under this Agreement shall be in writing, and be either personally served, sent with return receipt requested by certified mail with postage prepaid, or sent by nationally recognized overnight courier service, and addressed to the respective Parties as follows:

To Buyer: City of Fresno
Attn: Aaron Aguirre, Parks Director
1515 E. Divisadero Street
Fresno, California 93721
(559) 621-2919

To Seller: Wesley United Methodist Church
Attn: Rev. Robin Mathews-Johnson, Pastor
1343 E. Barstow Avenue
Fresno, California 93710
(559) 224-1947

With a copy to: Kenneth J. Price, Esq.
Baker Manock & Jensen, PC
5260 N. Palm Avenue, Suite 201
Fresno, California 93704
(559) 432-5400

or to such other person or at such other place as a Party may from time to time designate by written notice to the other Party(ies). Notice given in the foregoing manner shall be deemed sufficiently given for all purposes hereunder on the date the same was personally delivered, deposited with the United States Postal Service, or deposited with a nationally recognized overnight courier service, except those notices of changes of address shall not be effective until actual receipt.

7.07 **Entire Agreement.** This Agreement and items incorporated herein contain all of the agreements of the Parties with respect to the matters contained herein, and no prior agreement or understanding pertaining to any such matter shall be effective for any purpose.

7.08 **Amendments.** No provisions of this Agreement may be amended or modified in any manner whatsoever except by an agreement in writing signed by duly authorized representatives of each of the Parties.

7.09 **Successors.** The terms, covenants, and conditions of this Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors and assignees of the respective Parties.

7.10 **Assignment.** There shall be no assignment by any party of its rights or obligations under this Agreement without the prior written approval of the other party. Any attempted assignment by a party, its successors or assigns, shall be null and void unless approved in writing by the other party.

7.11 **Governing Law; Venue.** This Agreement and all documents provided for herein and the rights and obligations of the Parties hereto shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of

California (without giving effect to its choice of law principles). The Parties further agree that exclusive venue and jurisdiction for all disputes arising under this Agreement shall be in the State and Federal Courts located in Fresno, California.

7.12 **Headings**. Headings at the beginning of each numbered Section, and Subsection of this Agreement are solely for the convenience of the Parties and are not a part of this Agreement.

7.13 **Confidentiality and Publicity**. Until and unless the Closing occurs, the Parties agree that, (a) except as otherwise provided or required by valid law, (b) except to the extent such Party considers such documents or information reasonably necessary to prosecute and/or defend any claim made with respect to the Property or this Agreement, and (c) except to the extent reasonably necessary to deliver such documents or information to the applicable Party's employees, paralegals, attorneys, lenders, accountants, property managers and/or consultants in connection with such persons evaluation of this transaction, each of Buyer and Seller and their respective members, managers, employees, officers, directors, agents, consultants and affiliates shall keep in strict confidence any confidential or proprietary matters respecting the other Party or the Park Property received by it in connection with this transaction. Neither Seller nor Buyer will issue any public announcements about this transaction without the prior written approval of the other Party, except as required by law.

7.14 **Time**. Time is of the essence of this Agreement. If any deadline or period terminates on a Saturday, Sunday or legal holiday, under the laws of the State of California, then the termination of such period shall be on the next succeeding business day.

7.15 **Counterparts and Further Cooperation**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. After the execution of this Agreement and the Close of Escrow, the parties shall continue to cooperate with one another in taking any further action or signing and delivering any further document or instrument which are reasonably required to effectuate the intent of this Agreement. However, after the Close of Escrow, the performance of any such cooperative action shall be at no cost to the party providing its cooperation.

7.16 **No Third Parties Benefited**. This Agreement is made and entered into for the benefit of Seller and Buyer, their successors and permitted assigns, and no other person or entity shall have any rights hereunder.

[SIGNATURES FOLLOW ON NEXT PAGE.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

BUYERS:

CITY OF FRESNO
a California municipal corporation

By: _____
Georgianne A. White
City Manager

APPROVED AS TO FORM
ANDREW JANZ
City Attorney

By: _____ 10/28/24
Angela M. Karst Date
Senior City Deputy Attorney

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

SELLERS:

WESLEY UNITED METHODIST
CHURCH, a California nonprofit religious
benefit corporation

By: _____
Name: Paige M. Addington
Title: Chairperson, Leadership Council

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____

EXHIBIT "A"

Legal description of the Park Property

EXHIBIT "A"

APN 418-151-50 & 51 (portions)

Those portions of Parcel "A" and Parcel "B" of Lot line Adjustment No. 2006-22 as described in that grant deed recorded October 24, 2006 as Instrument No. 2006-0226185, Official Record Fresno County, lying in Section 11, Township 13 South, Range 20 East, Mount Diablo Base and Meridian, in the City of Fresno, County of Fresno, State of California, more particularly described as follows:

BEGINNING at the Southwest corner of said Parcel "B"; thence North $0^{\circ}35'26''$ East, on the West line of said Parcels "A" and "B", a distance of 202.92 feet; thence South $89^{\circ}44'10''$ East, leaving said West line, a distance of 27.33 feet; thence South $1^{\circ}50'40''$ West, a distance of 20.01 feet; thence North $89^{\circ}57'13''$ East, a distance of 52.99 feet; thence South $0^{\circ}09'10''$ East, a distance of 70.08 feet; thence South $87^{\circ}46'09''$ East, a distance of 20.30 feet; thence South $2^{\circ}13'11''$ West, a distance of 19.78 feet; thence North $89^{\circ}59'18''$ East, a distance of 201.81 feet; thence South $55^{\circ}06'55''$ East, a distanced of 81.86 feet; thence North $89^{\circ}12'20''$ East, a distance of 52.14 feet; thence South $89^{\circ}53'24''$ East, a distance of 220.05 feet to the East line of said Parcels "A" and "B"; thence South $0^{\circ}28'54''$ West, on said East line, a distance of 77.06 feet to the Southeast corner of said Parcel "B"; thence North $89^{\circ}53'24''$ West, on the southerly line of said Parcel "B", a distance of 602.34 feet; thence North $1^{\circ}14'06''$ East, continuing on said southerly line, a distance of 30.07 feet; thence North $89^{\circ}52'49''$ West, continuing on said southerly line, distance of 40.26 feet to the **POINT OF BEGINNING**.

Containing an area of 1.65 acres, more or less.

TOGETHERWITH access to all driveways and parking facilities located on Parcel "A" of said Lot line Adjustment No. 2006-22.





INDICATES AREA TO BE GRANTED TO THE CITY
OF FRESNO FOR PUBLIC PARK PURPOSES,
CONTAINING AN AREA OF 1.65 ACRES +/-



1"=100'

REF.& REV. 2022-055 15-A-10100 PLAT 1658	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS	PROJ. ID. <u>PC00242</u> RES TYPE <u> </u> FUND NO. <u>22702</u> ORG. NO. <u>179901</u>	
	GRANT DEED	DR. BY <u>J.A.C.</u> CH. BY <u>J.A.C.</u> DATE <u>JUNE 2, 2022</u> SCALE <u>1" = 100'</u>	SHEET NO. <u>1</u> OF <u>1</u> SHEETS

EXHIBIT "B"

Agreement and Covenant

Recording Requested by and
When Recorded Mail To:

City Clerk
City of Fresno
2600 Fresno Street
Fresno, CA 93721-3603

NO FEE - GOVERNMENT CODE 6103

CITY OF FRESNO
Public Works Department

AGREEMENT AND COVENANT

This Agreement and Covenant (Covenant) is made and entered into this 3rd day of October, 2024 (the "Effective Date") by and between the CITY OF FRESNO, a municipal corporation (City), and Wesley United Methodist Church, a California nonprofit corporation (Church) (collectively, the Parties or Covenantors).

RECITALS

- A. The Church is the owner of that certain real property in the City of Fresno, County of Fresno, State of California, commonly known as 1343 E. Barstow Avenue and more particularly described in Exhibit A hereto (the Church Property).
- B. Pursuant to a Purchase and Sale Agreement dated October 3, 2024, the City has purchased a one-half interest, from the Church, in that certain real property adjacent to the Church Property, in the City of Fresno, County of Fresno, State of California, more particularly described in Exhibit B hereto (the Park Parcel).
- C. The City operates and intends to continue to operate the Park Parcel as a public park benefitting the surrounding El Dorado neighborhood.
- D. The Parties now desires to formalize their respective rights and responsibilities relating to the Park Parcel and the Church Property (collectively, the Subject Properties) following the City's purchase of a one-half interest in the Park Parcel.

COVENANTS, CONDITIONS, AND RESTRICTIONS

NOW, THEREFORE, in consideration of the foregoing recitals, which recitals are contractual in nature, and incorporated herein by this reference, the mutual covenants herein contained, and such other and further consideration as is hereby acknowledged, the Parties agree as follows:

- 1. **Access Easement in favor of Park Parcel.** The Church Property shall be burdened with and be subject to an access easement running with the land for the benefit of the Park Parcel, to be used for ingress and egress over and through the private driveway(s) and parking lot located on the Church Property.
- 2. **Park Parcel.** The following rights and obligations shall apply to the Park Parcel.

- a. **Operation and Improvements.** City shall develop and operate the Park Parcel for public recreation programming offered by the City's Parks, After School, Recreation and Community Services Department (PARCS) or another pertinent City department. The Church shall have the right to approve improvements, such as buildings, fencing, and changes of play areas, on the Park Parcel as well as extraordinary signage to be posted thereon; such approval shall not be unreasonably withheld.
 - b. **Community Outreach.** City shall conduct community outreach concerning future improvements and operations at the Park Parcel; such outreach shall include input from neighborhood residents and the Church for so long as the Church owns the Church Parcel.
 - c. **Maintenance.** City shall provide and pay for all maintenance, operations, cleaning, repairs, and improvements to the Park Parcel.
 - d. **Security.** City shall provide security for the Park Parcel as may be necessary and appropriate, in its sole discretion, (including, but not limited to the use of surveillance systems, park rangers and/or public or private means of security). The City shall have the right to install security cameras on the Park Parcel. The Church shall, upon request, receive access to video footage of the security cameras from the City, subject to applicable City policies. City shall act in good faith when it receives a request for video footage. If the City denies any such request, it shall provide a reason for such denial.
 - e. **Utilities.** All utilities, including electricity, gas, water, sewer, and garbage, serving the Park Parcel shall be paid by the City. As of the Effective Date of this Covenant, it is unclear whether or not the electricity and gas, if any, serving the Park Parcel are separately metered. If they are not separately metered, the parties will work in good faith with Pacific Gas & Electric to separately meter the electricity and gas serving the Park Parcel and the costs directly associated with such work shall be split evenly by the parties. If such split fails to occur between the parties by the first anniversary of the Effective Date, the parties will negotiate a mutually acceptable amount of the City's monthly reimbursement from the City to the Church for such electricity and gas costs..
3. **Parking Lot.** The following rights and obligations shall apply to the Parking Lot.
- a. **City Use of Park Parcel.** Except as otherwise provided herein, City and its invitees shall have full and free use the Parking Lot in association with the Park Parcel.
 - b. **Exclusive Use by the Church.** The Church shall have the right to exclusive use of the parking lot for all California State University, Fresno football regular season and football bowl games each year hosted at the Stadium. The Church shall provide written notice to the City no less than 20 days prior to its election of exclusive use on a game day. For all use exclusive uses, the Church shall post notices, in consultation with the City,

notifying the public of the unavailability of the Parking Lot for public parking associated with the Park Parcel.

- c. **Maintenance.** The Church shall, at its sole cost, keep the parking lot in good order and repair. The Church shall be responsible for all parking lot and driveway maintenance, including repairs, surface care and parking space striping.
 - d. **Reseal Within 12 Months.** Within 12 months of the recordation of this Covenant the Church shall perform one repair, reseal, and restripe the driveways and Parking Lot. Should the Church fail to repair, reseal, and stripe the driveways and parking lot, then the City may elect to make such repairs and invoice the Church for such costs. The Church shall, within 30 days or receipt of invoice, reimburse the City for the amount set forth in the invoice.
4. **Option; Right of First Refusal.** In the event either Party desires to sell, transfer, or convey its interest in the Park Parcel, or any portion thereof, such Party shall have the right to sell, transfer or convey its interest, or any portion thereof, only after complying with the following requirements:
- a. In the event a Party desires to sell an interest in the Park Parcel it shall give written notice of such intent to sell to the other Party, the non-selling Party, (the Notice of Intent to Sell), and the other Party shall have the option to purchase such interest at the then-appraised value, as determined by a qualified appraiser acceptable to both City and the Church. If the non-selling Party elects to exercise its option to purchase, it shall give the selling Party written notice of such election within sixty (60) days after receipt of the Notice of Intent to Sell. If the non-selling Party fails to exercise its option within such sixty day period, (a) the selling Party shall be free to solicit and accept an offer to sell the Park Parcel or interest therein at the then-appraised value or greater, at any time within ninety days after expiration of the sixty day period, and (b) the non-selling Party shall, upon request, deliver to the selling Party a written acknowledgement of its failure to exercise its option and the selling-Party's right to sell the Park Parcel or interest therein pursuant to this section.
 - b. In the event a Party desires to sell the Park Parcel, or any portion of its interest in the Park Parcel, and has received an acceptable bona fide offer to purchase the property or such interest (the Offer), the selling Party shall give Notice of Intent to Sell to the non-selling Party, together with an executed copy of the Offer setting forth all of the terms of the proposed purchase and identifying the prospective purchaser. The non-selling Party shall have the right to purchase the Park Parcel or such interest on the same terms and conditions as set forth in the Offer. If the non-selling Party elects to exercise its right, it shall give selling Party written notice of such election within sixty (60) days after receipt of the Notice of Intent to Sell. If the non-selling Party fails to exercise its right within such sixty day period, (a) the selling Party shall be free to accept an offer to sell the Park

Parcel or interest therein on the terms set forth in the Offer at any time within ninety days after the expiration of such sixty day period, and (b) the non-selling Party shall, upon request, deliver to the selling Party a written acknowledgement of the non-selling Party's failure to exercise the option and the selling Party's right to sell the Park Parcel or interest therein pursuant to this section.

5. **General Provisions.**

- a. **Covenant to Benefit Public.** The conditions of this Covenant are intended to benefit the public and public properties as well as properties appurtenant. Accordingly, City shall have the right to enforce this Covenant by any legal or equitable means including enforcement against such person or persons in actual possession of the Subject Properties who directly or through any agent violate the terms of this Covenant.
- b. **No Third-Party Beneficiaries.** The rights, interests, duties, and obligations defined within this Covenant are intended for the specific parties hereto as identified in the preamble of this Covenant. Notwithstanding anything stated to the contrary in this Covenant, it is not intended any rights or interests in this Covenant benefit or flow to the interest of any third parties, nor shall the right of City be transferable in any manner to any person other than to a successor municipal corporation whose geographic boundaries include the Subject Properties.
- c. **Indemnification. Indemnification and Insurance.** The Church shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the City, the Church or any other person, and from any and all claims, demands and actions in law or equity (including attorneys fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts or omissions of the Church or any of its officers, officials, employees, agents, invitees, park visitors or volunteers in the performance of this Covenant.

The City shall indemnify, hold harmless and defend the Church and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the City, the Church or any other person, and from any and all claims, demands and actions in law or equity (including attorneys fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts or omissions of City's or any of its officers, officials, employees, agents, invitees, park visitors or volunteers in the performance of this Covenant provided nothing herein shall constitute a waiver by City of governmental immunities including California Government Code section 810 et seq.

This section shall survive termination or expiration of this Covenant.

In the event of concurrent negligence on the part of the City or any of its officers, officials, employees, agents, invitees, park guests or volunteers, and Church or any of its officers, officials, employees, agents or volunteers, the liability for any and all such claims, demands and actions in law or equity for such losses, fines, penalties, forfeitures, costs, and damages shall be apportioned under the State of California's theory of comparative negligence as presently established or as may be modified hereafter.

At all times, the Church and the City (and contractors performing work in any portion of the Park Parcel during the performance of such work), shall severally maintain or cause to be maintained in full force and effect an "Occurrence Based" commercial general liability insurance policies covering Park Parcel. The City's insurance shall be the primary policy for all claims occurring on the Park Parcel, including for any current and new structures constructed on the Park Parcel, except for claims that may occur during a Church sponsored event on the Park Parcel, or from claims arising from the negligence and/or willful misconduct of the Church or its successor, parishioners, visitors, guest as follows:

(1) Terms of Insurance. The Church's policy or policies, and any successor of either the Church and the City not otherwise self insured, shall be maintained with an insurance company or companies having an AM Best's Rating of at least B+ and a financial rating of VIII or better (or a comparable standard under an international rating system), including coverage for any accident resulting in bodily injury to or the death of any person and consequential damages arising therefrom, and property damage, in an amount not less than \$5,000,000, as such amount is adjusted to pursuant hereto, per occurrence. Each party shall name the other as additional insured for any policy required herein. With respect to each party who is an "additional insured" such policy shall: (a) provide that such policy shall not be canceled without the insurer endeavoring to provide the kind of notice that would be otherwise provided under the applicable ACCORD certificate; (b) provide for severability of interests; and (c) provide that an act or omission of one of the insureds or additional insureds that might otherwise void or reduce coverage shall not void or reduce the coverage as to the other insureds or additional insureds. A party that is to be identified as an additional insured need not be identified individually or by an endorsement to such policy, but may be identified as part of a class or group of parties granted additional insured status under such policy. Each party shall furnish to the other, upon written request, evidence that the insurance referred to in this Section 5(c)(1) is in full force and effect.

(2) Waiver of Subrogation. The Commercial General Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to City and Church and each of their officers, officials, agents, employees and volunteers.

(3) Self-Insurance. The City shall have the right to satisfy its insurance obligations hereunder by means of self-insurance to the extent of all or part of the insurance required hereunder. The City's self-insurance protection shall be deemed to include the waivers of subrogation required under Section 5(c)(2) (except to the extent ineffective against a third party insurer) and the City shall be liable for the defense and payment of any claims, liabilities and causes of action to the extent to which, but only to the extent to which, that would have been payable by a hypothetical third-party insurer providing the insurance required under this Agreement of Covenant, had the City obtained such insurance from a third-party insurer.

- d. **Covenants Running with the Land.** The covenants, agreements, promises, representations and warranties as set forth in this Covenant (i) shall constitute covenants running with the land as to the Subject Properties as defined in the applicable provisions of Sections 1457 et seq. of the California Civil Code, (ii) shall be in favor of and for the benefit of City and its property, (iii) shall be enforceable by City, and (iv) shall be binding on the Church, owner, lessee and their heirs, assignees, transferees, successors in interest and all parties and persons claiming under them. The Church consents to the Covenant being recorded as a covenant running with the Subject Properties.
- e. **Compliance With Law.** The Parties shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Covenant.
- f. **Waiver.** The waiver by either party of a breach by the other of any provision of this Covenant shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Covenant. No provisions of this Covenant may be waived unless in writing and signed by all parties to this Covenant. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.
- g. **Governing Law and Venue.** This Covenant and the documents referred to herein shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Covenant and any rights and duties hereunder shall be Fresno County, California.

- h. **Headings.** The section headings in this Covenant are for convenience and reference only and shall not be construed or held in any way to explain, modify, or add to the interpretation or meaning of the provisions of this Covenant.
- i. **Severability.** The provisions of this Covenant are severable. The invalidity or unenforceability of any one provision in this Covenant shall not affect the other provisions, which shall remain in full force and effect.
- j. **Interpretation.** The Parties acknowledge that this Covenant in its final form is the result of the combined efforts of the Parties and that, should any provision of this Covenant be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Covenant in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning. Accordingly, the Parties hereby waive the benefit of California Civil Code §1654 and any successor or amended statute, providing that in the case of uncertainty, language of the contract should be interpreted most strongly against the party who advised the uncertainty to exist.
- k. **Attorney's Fees.** If a party is required to commence any proceeding or legal action to enforce or interpret any term, covenant, or condition of this Covenant, the prevailing party in such proceeding or action shall be entitled to recover from the other party its/their reasonable attorney's fees and legal expenses.
- l. **Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- m. **Public Health, Safety and Welfare.** Nothing contained in this Covenant shall limit City's authority to exercise its police powers, governmental authority or take other appropriate actions to address issues of public health, safety and welfare as deemed appropriate by City in its sole determination and discretion.
- n. **Extent of Covenant.** Each Party acknowledges that they have read and fully understand the contents of this Covenant. This Covenant represents the entire and integrated agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, representations, or agreements, either written or oral. This Covenant may be modified only by written instrument duly authorized and executed by the Parties.
- o. **Release of Covenant.** This Covenant shall be released, and of no further effect, only upon a written and recorded determination by the City Manager of the City of Fresno, or designee, that the Covenant's continued existence and enforcement are no longer necessary.
- p. **Notices.** Any notice required or intended to be given to a party under the terms of this Covenant shall be in writing and shall be deemed to be duly

delivered the earlier of (a) actual receipt by personal delivery to the representative (as defined herein), as the case may be, or in lieu of such personal service, by way of Federal Express, DHL, or other similar courier addressed to such party at the appropriate address set forth herein, (b) three business days after the date of mailing (postage pre-paid return receipt requested). Either party may change its address for the purpose of this Paragraph by giving written notice of such change to the other

City Representative:

Aaron Aguirre, Parks Director
1515 E. Divisadero Street
Fresno, CA 93721
Tel: (559) 621-2919

Church Representative:

Rev. Robin Mathews-Johnson, Pastor
1343 E. Barstow Ave
Fresno, CA 93710
Tel: (559) 224-1947

- q. **Binding.** Once this Agreement is signed by all the parties, it shall be binding upon, and shall inure to the benefit of, the parties, and each party's respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives.
- r. **Assignment.** There shall be no assignment by any party of its rights or obligations under this Agreement without the prior written approval of the other party. Any attempted assignment by a party, its successors, or assigns, shall be null and void unless approved in writing by the other party.

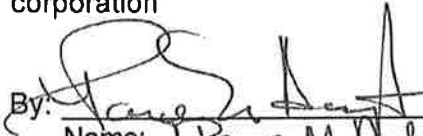
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS THEREOF, the Parties have caused their authorized agents to execute this Agreement:

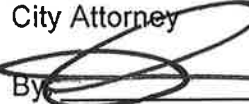
BUYER:
CITY OF FRESNO,
A California municipal corporation

SELLER:
WESLEY UNITED METHODIST CHURCH,
a California nonprofit religious benefit
corporation

By: _____
Georgeanne A. White
City Manager

By:  _____
Name: Paige M. Aldington
Title: Chairperson, Leadership Council

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By:  _____
Angela M. Karst
Deputy City Attorney

By: _____

Name: _____

Title: _____

(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

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 Fresno)

On October 3, 2024, before me, Tina L. Webb, Notary Public, personally appeared Paige M. Addington, 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

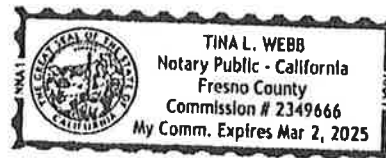


EXHIBIT A

The following described real property in the City of Fresno, County of Fresno, State of California, described as follows:

Parcel A of Lot Line Adjustment 2006-22, as Document Number 2006-0226185, of Official Records of Fresno County, and more particularly described as follows

Parcels A and B of Parcel Map 82-15 according to the map thereof recorded in Book 42 of Parcel Maps at Page 86, Fresno County Records

EXCEPTING therefrom that portion described as follows

BEGINNING at the Southeast corner of Parcel "A" of Parcel Map No 82-15, according to the Map thereof recorded in Book 42 of Parcel Maps at Page 86, Fresno County Records, thence North 00°29'48" East, along the East line of said Parcel "A", a distance of 76 00 feet, thence North 89°53'24" West, parallel with the South line of said Parcel "A", a distance of 272 94 feet, thence North 56°07'29" West, a distance of 82 76 feet, thence North 89°53'24" West, a distance of 200 00 feet, thence North 00°35'44" East, a distance of 20 00 feet, thence North 89°53'24" West, a distance of 20 00 feet, thence North 00°35'44" East, a distance of 70 60 feet, thence North 89°53'24" West, a distance of 53 00 feet, thence North 00°35'44" East, a distance of 20 00 feet, thence North 89°53'24" West, a distance of 27 00 feet to a point on the West line of said Parcel "A", thence South 00°35'44" West, along said West line of said Parcel "A" and along the West line of Parcel "B" of said Parcel Map, a distance of 202 60 feet to the most Westerly Southwest corner of said Parcel "B", thence South 89°53'24" East, along the boundary of said Parcel "B", a distance of 40 00 feet, thence South 00°35'44" West, along said boundary, a distance of 30 00 feet to the most Southerly Southwest corner of said Parcel "B", thence South 89°53'24" East, along the South line of said Parcel "B" and said Parcel "A", a distance of 602 26 feet to the POINT OF BEGINNING

Containing 4 53 Acres, more or less

APN: 418-151-50S

EXHIBIT B

EXHIBIT "B"

APN 418-151-50 & 51 (portions)

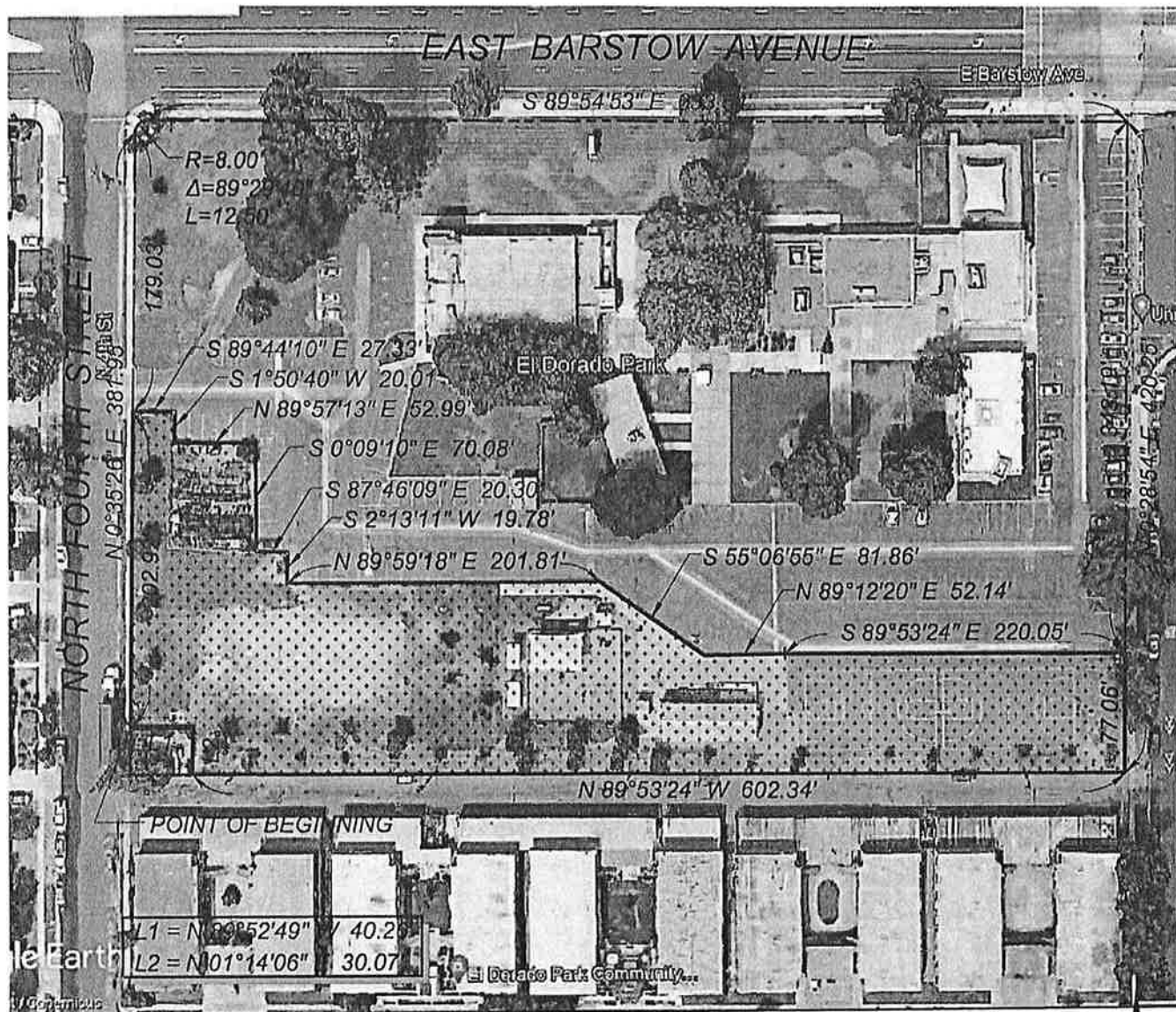
Those portions of Parcel "A" and Parcel "B" of Lot line Adjustment No. 2006-22 as described in that grant deed recorded October 24, 2006 as Instrument No. 2006-0226185, Official Record Fresno County, lying in Section 11, Township 13 South, Range 20 East, Mount Diablo Base and Meridian, in the City of Fresno, County of Fresno, State of California, more particularly described as follows:

BEGINNING at the Southwest corner of said Parcel "B"; thence North 0°35'26" East, on the West line of said Parcels "A" and "B", a distance of 202.92 feet; thence South 89°44'10" East, leaving said West line, a distance of 27.33 feet; thence South 1°50'40" West, a distance of 20.01 feet; thence North 89°57'13" East, a distance of 52.99 feet; thence South 0°09'10" East, a distance of 70.08 feet; thence South 87°46'09" East, a distance of 20.30 feet; thence South 2°13'11" West, a distance of 19.78 feet; thence North 89°59'18" East, a distance of 201.81 feet; thence South 55°06'55" East, a distance of 81.86 feet; thence North 89°12'20" East, a distance of 52.14 feet; thence South 89°53'24" East, a distance of 220.05 feet to the East line of said Parcels "A" and "B"; thence South 0°28'54" West, on said East line, a distance of 77.06 feet to the Southeast corner of said Parcel "B"; thence North 89°53'24" West, on the southerly line of said Parcel "B", a distance of 602.34 feet; thence North 1°14'06" East, continuing on said southerly line, a distance of 30.07 feet; thence North 89°52'49" West, continuing on said southerly line, distance of 40.26 feet to the **POINT OF BEGINNING**.

Containing an area of 1.65 acres, more or less.

TOGETHERWITH access to all driveways and parking facilities located on Parcel "A" of said Lot line Adjustment No. 2006-22.





1"=100'

REF. & REV. 2022-055 15-A-10100 PLAT 1658	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS	PROJ. ID. <u>PC00242</u> FUND NO. <u>22702</u> ORG. NO. <u>179901</u>	RES TYPE _____
	GRANT DEED	DR. BY <u>J.A.C.</u> CH. BY <u>J.A.C.</u> DATE <u>JUNE 2, 2022</u> SCALE <u>1" = 100'</u>	SHEET NO. <u>1</u> OF <u>1</u> SHEETS