

SCHEDULED MATTER

SUBJECT: ONE-YEAR EXCEPTION TO THE LICENSE AND DEVELOPMENT AGREEMENT FOR THE PORTERVILLE JUNIOR LIVESTOCK FAIR

SOURCE: COMMUNITY DEVELOPMENT DEPARTMENT

COMMENT: The Tulare County Junior Livestock Show and Community Fair ("Fair") Board has approached staff to request a one-year exception to the terms of the License and Development Agreement (Agreement) regarding the sale and consumption of alcoholic beverages during the fair. Section 11.3 *Addenda* allows the Agreement to be modified or amended at any time by mutual consent in the form of an Addendum to the Agreement. However, since the Fair is not absolutely sure of the changes needed to the Agreement, they are requesting approval of a one-year pilot program that would allow them to work directly with the Police Chief on revised provisions. The main objectives the Fair would like to accomplish are identified as follows:

1. Allow sales and consumption of alcohol outside the established Adult Refreshment Area with screening of consumers and issuance of a wrist band to show legal ability to buy and consume alcoholic beverages;
2. Prevent the consumption of alcoholic beverages in the Kiddy Land area;
3. Provide security to the satisfaction of the Police Chief; and
4. Amend the agreement after the one-year exception to account for sales and consumption provisions at the fair and other events.

The Fair did propose allowing under age fairgoers in the Adult Refreshment Area but staff has concerns with making that concession at the Fair. This would be more applicable at events within the multi-purpose building or special events where there is not a specified Adult Refreshment Area set apart from the main event. The provisions outlined above generally address where and how the sales and consumption of alcohol may occur and whether the area must be restricted to persons of 21 years of age and older. Terms and conditions of the Agreement, as per Exhibit B - "Right to Sell Alcoholic Beverages," include provisions that limit alcohol sales and consumption to the designated Adult Refreshment Area. The Agreement recognizes alcohol sales only during the fair, but not during other events. The Fair acknowledges the need to expand Exhibit B to include other activities that occur throughout the year; however, the Fair is most immediately requesting a one-time trial of extending the sale and consumption area beyond the Adult Refreshment Area with approval of the Police Chief. If successful and by agreement with the police department, the Fair will request a permanent modification to the Agreement.

RECOMMENDATION: That the City Council consider the Fair Board's request, and if agreeable:

- 1) Authorize the Police Chief to work directly with the Fair for a one-year exception to the provisions of the Agreement for the sale and consumption during the Fair; and
- 2) Request Staff to bring forth an Addendum to the License and Development Agreement to include sale of alcohol during events not related to the annual fair and potentially modifying alcohol sales and consumption areas beyond the Adult Refreshment Area during the fair and other events.

ATTACHMENT: License and Development Agreement

LICENSE AND  
DEVELOPMENT AGREEMENT  
(Porterville, California)

THIS PROPERTY LICENSE AND DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of this 10<sup>TH</sup> day of December 2009, by and between the CITY OF PORTERVILLE (the "City"), a municipal corporation, and TULARE COUNTY JUNIOR LIVESTOCK SHOW AND COMMUNITY FAIR ("Fair"), with respect to the following:

WHEREAS, the City is the owner of an approximate 37± acres of land, located in the City of Porterville, County of Tulare, State of California, more particularly described on Exhibits A-1 and A-2 attached hereto and depicted as the "Property." The Property is currently a part of the Porterville Municipal Airport.

WHEREAS, the Fair desires an exclusive License for the approximate 15 acres of land depicted on Exhibit A-1, and referenced as Parcel 1, to develop as a Fairplex (community fair); and

WHEREAS, the Fair desires to utilize the approximate 10 acres of land depicted on Exhibit A-2, and referenced as Parcel 2, to be used for parking, staging, and a carnival midway during the period of May 1 through June 1 annually, and used throughout the year by the Fair for general uses until such time as the City begins construction, development, or usage of the property whereas the terms of use by the Fair will be modified, but not be unduly limited or eliminated. Such development will be mutually complementary; and

WHEREAS, the City is willing to enter into a License with the Fair under the terms and conditions set forth below.

ACCORDINGLY IT IS AGREED:

**PART 1**  
**LICENSE, TERM, OPTION TO EXTEND, HOLDOVER, ASSIGNMENT,**  
**SUBLICENSING**

**1.1 License.**

The Fair will obtain a License of the Premises located in the City of Porterville, County of Tulare, California, depicted on Exhibit A-1, from the City on the terms and conditions set forth below.

**1.2 Licensee's Usage Date and Terms**

The Fair will be entitled to exclusive use of Parcel 1 of the Premises on the date to be mutually agreed upon by the Fair and the City. If the Fair commences utilization of the Premises on other than the first day of a calendar month, the initial term will consist of the unexpired portion of the calendar month in which the Fair holds the license of the

Premises plus fifty (50) full years from the first day of the calendar month immediately following. The anniversary date will be the first day of the first full month of the term.

**1.3 Licensee's Option to Extend Term**

Provided Fair is not then in default of this License at maturity of the initial term, the Fair is granted the option to extend this License for a period of two (2) fifty (50) year extensions. In the event the property is not released from FAA obligations at the end of the initial term, said extensions may be subject to Federal approval.

**1.4 Assignment and Sublicensing**

The Fair may not assign this Agreement to any organization, nor shall the Fair grant any sublicenses inconsistent with the uses allowed in Section 3.1, without the prior written consent of the City, which consent will not be unreasonably withheld.

**PART II  
LICENSE FEE**

**2.1 Amount**

The Fair will pay the following License Fee to the City for the exclusive use and occupancy of the Property.

**2.1.1 Annual License Fee**

**2.1.1.1 Tier 1**

The Fair acknowledges that the property is under the purview of the Federal Aviation Administration (FAA) and, as such, commands an annual license fee equal to fair market value for the property. Therefore, until such time as the land is released from FAA obligations, the annual license fee shall be the sum of \$13,500. In the event the Fair takes use of the Property on a day other than the first day of the month, the annual license fee shall include payment of \$37.00 per day for any unexpired portion of the calendar month in which the Fair has possession of the Property. License Fees shall be paid in annual installments on the anniversary date.

The City agrees to provide annual license fee assistance in an amount not to exceed \$13,500 during the license period of the Fair. The assistance is provided from the Porterville Municipal Airport fund as a credit against the debt owed from the Airport to the City. Said assistance shall be available to the Fair for a period not to exceed ten (10) years or until such time as the Fair either (a) purchases the property from the City or (b) is no longer operating at the site.

**2.1.1.2 Tier 2**

Upon release of the property from FAA purview, the annual license fee shall be reduced to \$1.00 per year for the remainder of the term of this License and any extensions thereof. Said reduction shall be effective upon the first

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anniversary date following the release from the FAA. There shall be no proration nor shall there be any refund of license fees.

**2.1.2 Place of Payment**

The Fair will pay all license fees at the City of Porterville Finance Department, located at 291 North Main Street, Porterville, California 93257

**PART III  
USE OF PREMISES**

**3.1 Allowed Uses**

The Fair and the Fair's sublicensees will use the Premises to:

- Provide a venue for junior exhibitors of livestock, agricultural products, handicrafts, and other artistic works; and
- Provide a source of community entertainment, as well as a showplace for local businesses, civic groups, and youth groups; and
- Provide a venue for local community groups to participate in community service.

The Fair will use the Premises in compliance with all laws, ordinances, and other governmental regulations now in force or which may hereafter be in force relating thereto, including, but not limited to all building, safety, and public health requirements and regulations. Additionally, at no profit to the Fair, the Fair will make every effort to support the use of the fairgrounds by all community oriented and/or non-profit organizations. These organizations may include, but are not limited to, 4-H Clubs, Future Farmers of America Chapters, Comision Honorifica Mexicana-Americana, Inc., and other community service organizations.

**3.2 Prohibited Uses**

Fair will not commit or permit the commission of any acts on the Property that:

1. Increase the City's existing rates for, or causes the cancellation of any fire, casualty, liability, or other policy of Lessor insuring the Premises or its contents; or
2. Violate or conflict with any law, statute, ordinance, or governmental rule or regulation, where now in force or hereafter enacted, applicable to the Premises; or
3. Constitute waste on the Premises, or the maintenance of a nuisance as defined by the laws of California; or
4. Adult oriented business or residual uses will not be allowed.

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**PART IV  
DEVELOPMENT OBLIGATIONS**

**4.1 Development Assistance**

4.1.1 To assist with the relocation of the Fair to Parcel 1 of the City-owned property described on Exhibit A-1, the City agrees to provide financial assistance to the Fair from the proceeds of the sale of the Olive Street site upon which the Fairgrounds is currently located. Said assistance shall be the net proceeds from the property sale, exclusive of brokerage, escrow, and other related fees, and is subject to the terms and conditions set forth in this Agreement. The proceeds of the assistance may be utilized by the Fair for relocation, construction of facilities, and related costs. No portion of the assistance may be allocated to costs relating to the operation of the Fair.

4.1.2 It is anticipated that the Fair and the City will prepare an application for tax-exempt bonds through California Communities, or a similar organization, in an amount supportable by a capital fund raising campaign for the construction of facilities. Said amount of bonding shall not exceed Two Million Dollars (\$2,000,000.00).

**4.2 Development of Parcel 1 (Exhibit A-1)** Fair agrees to construct upon Parcel 1 those improvements that are related to fair activities. Improvements may be made in Phases as set forth below:

**Phase 1**

- Site Preparation
- Installation of On-Site Infrastructure
- Construction of Multipurpose Building #1
- Construction of Livestock Barn
- Construction of Rabbit Barn/Livestock Office
- Construction of Outdoor Stage (2)
- Construction of 100' x 200' Entertainment Area
- Storage for Pens, Panels, and Livestock Parking
- Preparation of Area for "Kiddie Land"
- Restroom (1)
- Ticket Booth(s)
- Concession Stands
- Bank of the Sierra Structure
- Fire Lanes
- Site Landscaping and Irrigation
- Parking Lot along Teapot Dome Avenue

**Phase 2**

- Construction of Livestock Barn
- Construction of Livestock Parking
- Pen and Panel Storage Area
- Restroom #2

### **Phase 3**

#### **Construction of Multipurpose Building #2**

- 4.2.1 Fair will submit plans for Project Review Committee review.
  - 4.2.2 Fair will submit complete plans for issuance of building permit for the initial phase within six (6) months from date of this Agreement.
  - 4.2.3 City Connection Fees (Impact Fees) including Trunk Line Sewer Fees, Treatment Plant Fees, Sewer Connection Charges, Water Trunk Fees, Water Connection Fees, Street Light Fees, Storm Drainage Fees, Fire Hydrant Fees, Transportation Impact Fees, Frontage Improvement Valuation Threshold, and Park Impact Fees will be calculated for the project. Said fees shall be deferred while the site remains under the ownership of the City. In the event that the Fair acquires ownership of the site, fees shall become due and payable to the City. Furthermore, Fair shall have the option to enter into a Development Fee Payment Plan for the payment of said fees.
  - 4.2.4 Fair will be responsible for all fees related to the issuance of a building permits, with the exception of those fees identified in Section 4.2.3 above. Fair shall have the option to enter into a Development Fee Payment Plan for the payment of said fees.
  - 4.2.5 Fair will be responsible for utility connections and associated fees.
  - 4.2.6 Concurrent with the Agreement, Fair will apply for an alcohol agreement, which shall not be unreasonably withheld. Fair desires to utilize an "Adult Refreshment Area" concept to keep the consumption of alcohol within contained areas and away from the general public. A copy of said agreement is included as Exhibit B.
  - 4.2.7 City hereby agrees to expedite the issuance of the building permit for the Project in order that the building permit or comments will be available within fourteen (14) days of submittal of complete building plans, inclusive of electrical and plumbing plans.
  - 4.2.8 City will provide water and sewer services to the property boundary.
  - 4.2.9 City will make every effort to obtain approval for the release of land from the purview of the Federal Aviation Administration within twelve months from the date of this Agreement. All fees and expenses related to the FAA release will be the responsibility of the City.
- 4.3 **Development of Parcel 2 (Exhibit A-2)**
- 4.3.1 City anticipates developing Parcel 2 for shared use by the City, Fair, and other public/governmental use. Future use may include a training/entertainment center.
  - 4.3.2 City will provide the Fair exclusive use of all or a portion of Parcel 2 for the thirty-day period surrounding the annual fair, and may be used by the Fair throughout the year for general uses until such time as the City begins construction, development, or usage of the property. Fair will provide insurance pursuant to Section 7 of this Agreement for the use of this parcel.

4.3.3 In conjunction with development of Phase I by the Fair, Fair may perform site improvements to Parcel 2. Site work is subject to reimbursement to the Fair upon future development of Parcel 2 by the City, or within four (4) years from the date of the completion of mutually agreed upon improvements, whichever occurs first.

4.3.4 City will install curb, gutter, sidewalk, and street paveout along Teapot Dome Avenue.

**4.4 Other Obligations**

4.4.1 City agrees to allow the Fair use of a portion of City's Sports Complex as indicated on Exhibit C located on Scranton Avenue during the thirty-day period surrounding the fair week each year for overflow parking.

4.4.2 Fair will provide insurance pursuant to Section 7 of this Agreement for times that the Fair is utilizing the Sports Complex for overflow parking.

4.4.3 City will prepare and record parcel maps for Parcels 1 and 2 as shown on Exhibit A-1 and A-2.

4.4.4 Fair agrees to grant City access to drill a water well(s) as may be deemed necessary by the City. Location(s) of water well(s) will be mutually agreed upon by City and Fair and shall be situated so as not to interfere with Fair operations.

**PART V  
MAINTENANCE, REPAIR, AND UPKEEP**

**5.1 Licensee's Responsibilities**

Maintenance, repair, and upkeep of the grounds and buildings on Parcel 1 will be solely the responsibility of the Fair. All portions of Parcel 1 shall be kept free and clear of weeds and debris until developed.

**5.2 Licensor's Responsibilities**

Maintenance, repair, and upkeep of the grounds and buildings on Parcels 2 and 3 will be solely the responsibility of the City. All portions of Parcels 2 and 3 shall be kept free and clear of weeds and debris until developed.

**PART VI  
UTILITIES**

**6.1 Licensee's Responsibilities**

Fair shall be responsible for and will pay for all utilities and services furnished to the Property identified on Exhibit A-1, including gas, electricity, telephone, water, trash collection, and all related connection charges.

**6.2 Licensor's Responsibilities**

City shall be responsible for and will pay for all utilities and services furnished to the Properties identified on Exhibit A-2 and A-3, including gas, electricity, telephone, water, trash collection, and all related connection charges.



## PART VII INSURANCE

### 7.1 Licensee's Insurance

The Fair, at its own expense, shall procure and maintain, throughout the term of this License, public liability insurance including bodily injury and property damage insuring the Fair and the City with minimum coverage as follows:

- \$1,000,000 for personal injury for each person
- \$1,000,000 for personal injury or death of two or more persons in each accident or event.

The policy must contain, or be endorsed to contain, the following:

#### City of Porterville

The City of Porterville, its officers, employees, agents and subtenants must be covered as additional insured as respects liability arising out of activities performed by or on behalf of Lessee, and premises owned, occupied or used by Lessee. The coverage must contain no special limitations on the scope of protection afforded to the City, its officers, employees, or agents.

The Fair shall also procure and maintain, at its expense, throughout the term of this License, insurance against loss or damage to any structures constituting any part of the demised Premises, by fire and lightning, with extended coverage insurance.

The Fair will provide the City with a certificate or certificates of coverage showing the policy or policies are issued by insurers permitted to conduct business in the State of California.

The policy must not be suspended, voided, canceled, or reduced in coverage or in limits, except after 30 days prior written notice has been given to the City.

## PART VIII TERMINATION FOR CAUSE

### 8.1 Cause.

Either party may terminate this Agreement for cause without prejudice to any other right or remedy to which the terminating party may be entitled at law or under this Agreement. Cause for the purpose of this Agreement exists if a party:

- (a) is adjudged a bankruptcy; or
- (b) becomes insolvent or has a receiver appointed; or
- (c) makes a general assignment for the benefit of creditors; or

- (d) suffers any judgment which remains unsatisfied for 90 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement; or
- (e) materially breaches this Agreement.

**8.2 Notice to Defaulting Party.**

For any of the above occurrences except item (e), termination may be effected upon written notice by the terminating party specifying the date of the termination. Upon a material breach, the Agreement may be terminated only after the failure of the defaulting party to remedy the breach to the satisfaction of the non-defaulting party within 90 calendar days of delivery of a written notice specifying the nature of the breach. If the breach is not remedied within that 90-day period, the non-defaulting party may terminate this Agreement by delivering a further written notice specifying the date of the termination. If the nature of breach is such that it cannot be cured within the 90-day period, the defaulting party may deliver a written proposal to the non-defaulting party within that period which sets forth a specific means to resolve the default. If the non-defaulting party consents to that proposal in writing, which consent will not be unreasonably withheld, the defaulting party will immediately embark on its plan to cure. If the default is not cured within the time agreed, the non-defaulting party may terminate after delivering a written notice specifying the date of termination.

**8.3 Delivery of Notices**

Notices given under Section 8.2 will be deemed delivered as provided in Section 9 below.

**8.4 Ownership of Improvements**

Upon termination of this Agreement, City shall have the option of purchasing any structures, fixtures, signs, or other improvements made upon the site by Fair over the term of this Agreement. City agrees to reimburse Fair for those improvements being purchased by City an amount determined to be the appraised value at the termination period, less the original financial assistance provided to Fair as stated in Section 4.1 of this Agreement. Fair shall be responsible for the removal of all structures, fixtures, signs, and other improvements not acquired by City and shall restore the premises to the same condition as that existing prior to the erection or installation of improvements. Should the Fair fail or refuse to remove improvements, City may do so at Fair's sole cost and expense.

**8.5 Obligations Surviving Termination**

Termination of this Agreement will not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities.

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**PART IX  
NOTIFICATIONS**

9.1 All notices or other communications required or permitted hereunder shall be in writing, and may be personally delivered or sent by United States registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

To City:	City of Porterville 291 N. Main Street Porterville, CA 93257 Attn: City Clerk
To Fair:	Tulare County Junior Livestock Show and Community Fair P.O. Box 369 Porterville, CA 93258 Attn: President

subject to the right of a party to designate a different address for itself by notice similarly given. Any notice so given by United States mail shall be deemed to have been given on the second business day after the same is deposited in the United States mail as above provided. Any notice not so given by registered or certified mail shall be deemed given upon receipt of the same by the party to whom the same is given.

**PART X  
AIRPORT DISCLOSURE STATEMENT**

**10.1 Notice of Airport in Vicinity:** The subject property is presently located in the vicinity of an airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise, vibration, or odors). Individual sensitivities to those annoyances can vary from person to person. Fair may wish to consider what airport annoyances, if any, are associated with the property before completing this transaction and determine whether they are acceptable.

**10.2 Notice of Intent to Record Restrictive Covenant:** It is the intent of the City of Porterville to record a Restrictive Covenant upon all City-owned property within the Airport Development Area concurrent with this Agreement. A draft of said Covenant is shown as Exhibit D.

**PART XI  
MISCELLANEOUS PROVISIONS**

**11.1 Quiet Enjoyment**

Upon payment of the license fees and the performance of all the terms, covenants, and conditions by the Fair to be performed as herein provided, the Fair will be allowed to

peaceably and quietly hold and enjoy the premises during the term of this license, or any extended term thereof.

#### **11.2 Surrender**

The Fair will peaceably surrender use of the Premises upon the expiration or other termination of this License, and will return the Premises to the City in as good a condition as when received, reasonable wear and tear and damage from the elements excepted, except for so much of said Premises as may be injured or destroyed by fire earthquake or other casualty not the fault of the Fair.

#### **11.3 Addenda**

This Agreement may be modified, amended, or terminated at any time by mutual consent in writing of the parties hereto in the form of an Addendum to the Agreement.

#### **11.4 Entire Agreement Represented**

This Agreement represents the entire understanding between the City and the Fair 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, waived, or repealed without the written consent of both parties.

#### **11.5 Headings**

Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the headings.

#### **11.6 Interpretation**

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.

#### **11.7 No Third Party Beneficiaries**

Unless specifically set forth, the parties to this Agreement do not intend to provide any third party with any benefit or enforceable legal or equitable right or remedy.

#### **11.8 Governing Law**

This Agreement will be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. Any litigation arising out of this Agreement will be brought in Tulare County California. The City waives the removal provisions of California Code of Civil Procedure Section 394.

#### **11.9 Waivers**

The failure of either party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment will not be considered to be a waiver of any preceding breach of the Agreement by the other party.

#### **11.10 Exhibits and Recitals**

All Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

#### **11.11 Conflict with Laws or Regulations; Severability**

This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulations governing its subject, the conflicting provision will 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 will continue in full force and effect. If either party, exercising its sole discretion, elects to defend this Agreement against a third party suit alleging any invalidity in this Agreement, they must do so at their own expense.

**11.11.1 Legal Fees** In the event that an action shall be instituted by either party hereto for the enforcement of any of its rights or remedies in or under this Agreement, the party in whose favor judgment shall be rendered therein shall be entitled to recover from the other party all costs and expenses incurred by said prevailing party in said action, including reasonable attorney's fees as fixed by the court therein.

#### **11.12 Further Assurances**

Each party will execute any additional documents and will perform any further acts which may be reasonably required to affect the purposes of this Agreement. The Fair will, on request by the City, execute appropriate estoppels certificates and attornments in favor of any trust deed holders or encumbrances.

#### **11.13 Assurances of Non-discrimination**

The Fair will not discriminate in employment or the performance of the Work or in the provision of services called for under this Agreement on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.

The Fair herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, and this License is made and accepted upon and subject to the following conditions:

That there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein licensed nor shall the lessee himself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein licensed.

**11.14 Licensor's Right to Enter to Inspect and Post**

The Fair will permit the City and its agents to enter upon the Premises at all reasonable times for the purpose of posting notices of non-responsibility for alterations or additions made by the Fair, or for the purpose of inspecting the Premises.

**11.15 Brokers**

All negotiations relative to this Agreement have been carried out directly by representatives of the City and the Fair without the participation of brokers, and each party represents to the other that there are no unpaid broker's fees in connection with this Agreement.

**11.16 Successors and Assigns**

This Agreement is binding on and will inure to benefit the successors and assigns of the parties, but nothing in this section shall be construed as consent by the City to any sublicense or assignment by the Fair if such consent is otherwise required by the terms of this Agreement.

**11.17 Representations of Authority**

Each party executing this Agreement represents and warrants to the other parties that the party has full power and authority to execute and deliver this Agreement in the manner contemplated hereby and that this Agreement is binding upon the party in accordance with its terms.

**11.18 Venue**

If either party initiates an action to enforce the terms hereof or declare rights hereunder, the parties agree that the venue thereof shall be the County of Tulare, State of California. Fair hereby waives any rights it might have to remove any such action pursuant to California Code of Civil Procedure Section 394.

**11.19 Counsel**

The parties represent and warrant that this Agreement has been freely negotiated and has been reviewed by each party's respective legal counsel.

**11.20 Duplicate Originals**

This Agreement will be executed in duplicate originals.

**11.21 Time is of the Essence**

Time is of the essence for this Agreement.

**PART XII  
REPRESENTATIONS AND WARRANTIES OF CITY**

City hereby makes the following representations and warranties to and agreements with Fair, which are true as of the date hereof, which shall be true as of the date of the License, which are not intended to replace or limit in any manner any express or implied warranty provided under the applicable law and which, except to the extent they relate to events or

circumstances occurring or arising after the License, shall survive the License. Fair shall be entitled to rely upon said representations and warranties notwithstanding Fair's inspections and investigations:

12.1 As of the date of License, City has complied or will comply with all applicable federal, state or local laws, regulations, ordinances or orders and has completed all proceedings or other actions necessary to complete the License and all of the transactions contemplated by this Agreement and the Annual License Fee reflects the fair market License value of the Property as of the date of this Agreement. There are no unrecorded liens or encumbrances affecting the Property and no person or entity has any right, title or interest in or to the Property other than City.

12.2 City has not received notice of, nor does City have any knowledge of, any pending or threatened action of governmental proceeding in eminent domain, zoning change or other proposed change, nor does City know of any fact which might give rise to any such proceeding, nor does City know of any other type of existing or intended use of any adjacent or nearby real property which might adversely affect the use of the Property for Fair purposes.

12.3 There are not presently pending any assessments by any governmental entity or public utility (other than for annual ad valorem real property taxes) of any nature with respect to the Property or any part of the Property. No property tax with respect to the Property is delinquent, and all requirements of all insurance policies with respect to the Property have been, and are being, fully complied with.

12.4 As of the date of the License, there shall be no easements, licenses, leases or tenancies of any type on the Property or any portion of the Property except those approved by Fair in accordance with this Agreement.

12.5 There are no encroachments upon the Property or any portion of the Property or any easement, appurtenance or other interest in the Property except those existing utilities above and below ground surface that are to remain in service. No improvements located on the Property encroach upon any property adjacent to the Property or upon any easement, building setback line, appurtenance or other interest in real property except as shown on the Preliminary Title Report, dated July 7, 2009, and shown as Exhibit E.

12.6 There are no liens or encumbrances against the Property for work performed or commenced or material supplied with respect to the Property, nor can there be claimed against the Property any such lien.

12.7 There is no suit or arbitration, bond issuance or proposal for bond issuance, proposals for public improvement assessment, pay-back agreement, paving agreement, road expansion or improvement agreement, utility moratorium, use moratorium, improvement moratorium, license fee increase moratorium, or legal, administrative or other proceeding or governmental investigation or requirement, formal or informal, existing or pending or threatened which affects the Property or which adversely affects

Fair's ability to develop the Property for Fair purposes, or which imposes any other charge or expense upon, or relating to, the Property which has not been disclosed to Fair in writing prior to the date of this Agreement, or, in the case of any such requirement, fully complied with.

12.8 City has no knowledge, nor has City received notice of any environmental rule, order or regulation which would adversely affect the commercial development on the Property .

12.9 This Agreement is a valid obligation of City and is binding upon City in accordance with its terms.

12.10 This Agreement, when executed by City, shall have been duly and properly executed and neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement will constitute:

(i) a default or an event which with notice or the passage of time or both would constitute a default under, or a violation or breach of, any indenture, license, lease, franchise, mortgage, deed of trust or other instrument or agreement to which City is a party or by which City, or City's property, including without limitation, the Property, may be bound, or

(ii) an event which would permit any party to any agreement or instrument affecting the Property or affecting City's ability to perform its obligations under this Agreement to terminate it, or permit the holder of any indebtedness to accelerate its maturity, or

(iii) a violation of any statute, order, rule or regulation applicable to City or any portion of the Property.

12.11 After the date of this Agreement, City shall not undertake any work on the Property which may result in the creation of a mechanic's lien on the Property or any portion of this Property.

12.12 City has no knowledge of any adverse geological or soil condition affecting the Property.

12.13 No portion of the Property lies within a flood plain designated by the federal, state or local government.

### PART XIII FIRST RIGHT OF REFUSAL

13.1 In the event the City obtains the release of land from purview of the Federal Aviation Administration and desires to sell the released land, Fair shall have the First Right of Refusal for Parcel 1 and Parcel 2.



**13.2 Purchase Price**

The purchase price shall be established by the fair market value of the land at the time of the transaction as set forth in an appraisal obtained by the City from a licensed appraiser.

**13.3 Lapse of Option**

If at the time of offer of land for sale, the Fair is no longer operating upon Parcel 1, this First Right of Refusal shall automatically terminate.

**13.4 Purchase and Sale**

In the event the City makes an offer to sell the property, and the Fair accepts said offer, then the parties shall open an escrow (the "Option Escrow") with the Escrow Holder. The Escrow shall close fifteen days after the date of the exercise of the Option (the "Option Closing Date"). Prior to the Option Closing Date, City shall deposit a fully executed and acknowledged Grant Deed conveying the Property to the Fair. If the Option Escrow is in a position to close on the Option Closing Date (or as soon thereafter as is possible but in no event later than 30 days following the option Closing Date), Escrow Holder shall deliver to Fair the Grant Deed by depositing the same with the County Recorder of the County of Tulare, California, with instructions to record the same and thereafter to mail the same to Fair and shall deliver to City funds in the amount as agreed upon as the fair market value of the property. City shall bear the fee for recordation of the Grant Deed, one-half of the Escrow Holder's fee and any additional charges customarily charged to sellers in Tulare County. Fair shall bear the documentary transfer tax required, one-half of Escrow Holder's fee and any additional costs and charges customarily charged to buyers in Tulare County.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

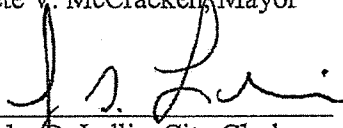
APPROVED AS TO FORM:

  
\_\_\_\_\_  
Julia Lew  
City Attorney

CITY:

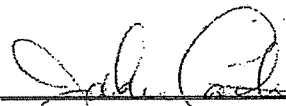
CITY OF PORTERVILLE  
a Municipal Corporation

BY:   
\_\_\_\_\_  
Pete V. McCracken, Mayor

BY:   
\_\_\_\_\_  
John D. Lollis, City Clerk

FAIR:

Tulare County Junior Livestock  
Show and Community Fair

BY:   
\_\_\_\_\_  
John Corkins, President

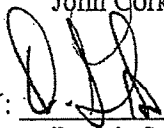
BY:   
\_\_\_\_\_  
Dennis Sexton,  
First Vice President

EXHIBIT A-1

Parcel 1

That portion of the Southeast quarter of Section 8, Township 22 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California, according to the Official Plat thereof, more particularly described as follows:

COMMENCING AT the Southwest corner of the Southeast quarter of said Southeast quarter of Section 8;

THENCE, North 00°35'50" East, along the west line of the Southeast quarter of said Southeast quarter, 25.00 feet, to a point in the north right of way line of Tea Pot Dome Avenue, said point also being the POINT OF BEGINNING;

THENCE, continuing North 00°35'50" East, 1,293.54 feet to the Northwest corner of the Southeast quarter of said Southeast quarter of Section 8;

THENCE, South 89°40'00" West, along the north line of the Southwest quarter of said Southeast quarter of Section 8, 1,282.90 feet, to a point in the east right of way line of West Street (60 feet wide);

THENCE, North 00°34'21" East, along said east right of way line, 30.00 feet, to the Southwest corner of Parcel 1 of Parcel Map No. 4834 as shown on map filed in Book 49 of Parcel Maps, at page 39 in the office of the County Recorder of said County;

THENCE, North 89°40'00" East, along the south line of Parcel 1 and Parcel 2 of said Parcel Map No. 4834, a distance of 720.93 feet;

THENCE, North 00°20'00" West, a distance of 50.00 feet;

THENCE, North 89°40'00" East, a distance of 100.00 feet;

THENCE, South 00°20'00" East, a distance of 50.00 feet;

THENCE, North 89°40'00" East, a distance of 982.02 feet;

THENCE, departing the south line of said Parcel Map No. 4834, South 00°35'50" West, 1,323.72 feet, to a point in the north right of way line of Tea Pot Dome Avenue;

THENCE, South 89°41'13" West, 520.03 feet, to the POINT OF BEGINNING.

EXCEPTING THEREFROM, the South 17 feet thereof for streets and public purposes.

RESERVING THEREFROM, the Grantor's fee title interests in and to that portion more particularly described as follows:

COMMENCING AT the Southwest corner of the Southeast quarter of said Southeast quarter of Section 8;

THENCE, North 00°35'50" East, along the west line of the Southeast quarter of said Southeast quarter, a distance of 1,273.53 feet to the POINT OF BEGINNING;

THENCE, continuing North 00°35'50" East, 20.00 feet, to the Northwest corner of the Southeast quarter of said Southeast quarter of Section 8;

THENCE, South 89°40'00" West, along the north line of the Southwest quarter of said Southeast quarter of Section 8, 1,282.90 feet, to a point in the east right of way line of West Street (60 feet wide);

THENCE, North 00°34'21" East, along said east right of way line, 30.00 feet, to the Southwest corner of Parcel 1 of Parcel Map No. 4834 as shown on map filed in Book 49 of Parcel Maps, at page 39 in the office of the County Recorder of said County;

THENCE, North 89°40'00" East, along the south line of Parcel 1 and Parcel 2 of said Parcel Map No. 4834, a distance of 720.93 feet;

THENCE, North 00°20'00" West, a distance of 50.00 feet;

THENCE, North 89°40'00" East, a distance of 100.00 feet;

THENCE, South 00°20'00" East, a distance of 50.00 feet;

THENCE, North 89°40'00" East, a distance of 982.02 feet;

THENCE, departing the south line of said Parcel Map No. 4834, South 00°35'50" West, a distance of 50.01 feet;

THENCE, South 89°40'00" West, 520.03 feet to the POINT OF BEGINNING.

CONTAINING: 653,400 sq. ft., (15 acres)

**BASIS OF BEARING** for the parcel described herein is the south line of the Southeast quarter of said Section 8, taken as: **North 89°41'13" East** per Record of Survey recorded in Book 21 of Licensed Surveys, at page 68, Tulare County Records.

**END OF DESCRIPTION**

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: Michael K. Reed  
Michael K. Reed, Licensed Land Surveyor

Date: 9/25/2009



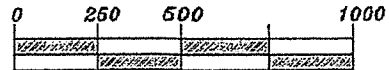
# PARCEL 1 PLAT



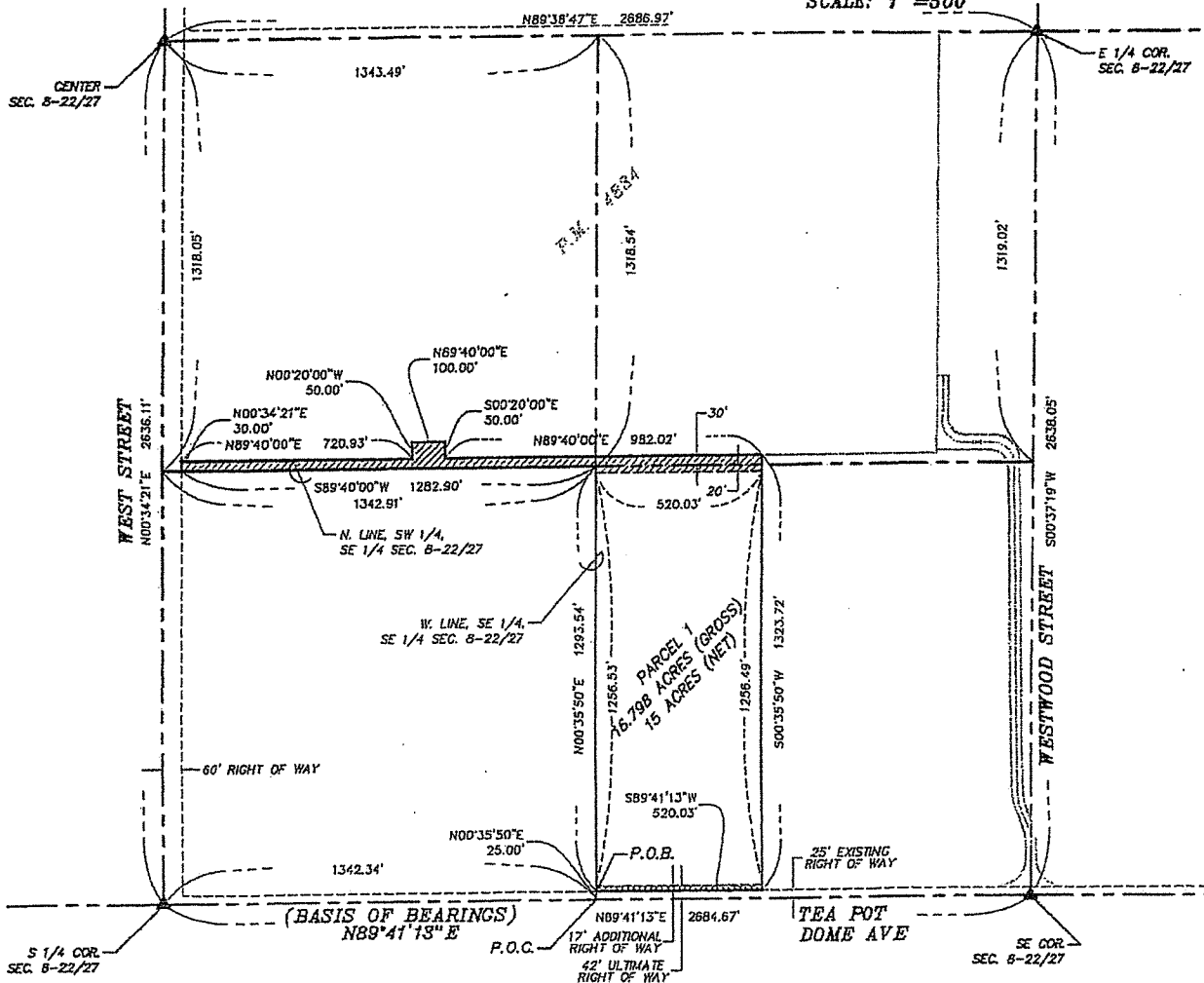
RESERVATION AREA



RIGHT OF WAY AREA



SCALE: 1"=500'



**CITY OF PORTERVILLE**  
 ENGINEERING DIVISION  
 201 N. MAIN ST. PORTERVILLE, CALIFORNIA 93257 550 782-7462

PORTION OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER SECTION 8, TOWNSHIP 22 SOUTH, RANGE 27 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE CITY OF PORTERVILLE, COUNTY OF TULARE, STATE OF CALIFORNIA

OWNER: CITY OF PORTERVILLE  
 APN: POR. 302-110-075  
 AREA: 653,400 S.F.  
 ACRES: 15 (NET)  
 DRAWN BY: JB  
 CHK'D BY: DB

EXHIBIT A-2

Parcel 2

That portion of the Southeast quarter of Section 8, Township 22 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California, according to the Official Plat thereof, more particularly described as follows:

**COMMENCING AT** the Southwest corner of the Southeast quarter of said Southeast quarter of Section 8;

**THENCE**, North  $00^{\circ}35'50''$  East, along the west line of the Southeast quarter of said Southeast quarter, 25.00 feet, to a point in the north right of way line of Tea Pot Dome Avenue;

**THENCE**, North  $89^{\circ}41'13''$  East, along said north right of way, a distance of 520.03 feet to the **POINT OF BEGINNING**;

**THENCE**, North  $00^{\circ}35'50''$  East, 1,323.72 feet to a point in the south line of Parcel 2 of Parcel Map No. 4834, recorded in Book 49 of Parcel Maps, at page 39 in the office of the County Recorder of said County;

**THENCE**, North  $89^{\circ}40'00''$  East, along the south line of Parcel 2 and Parcel 3 of said Parcel Map No. 4834, a distance of 346.65 feet;

**THENCE**, departing the south line of said Parcel Map No. 4834, South  $00^{\circ}35'50''$  West, 1,323.85 feet, to a point in the north right of way line of Tea Pot Dome Avenue;

**THENCE**, South  $89^{\circ}41'13''$  West, 346.64 feet, to the **POINT OF BEGINNING**.

**EXCEPTING THEREFROM**, the South 17 feet thereof for streets and public purposes.

**RESERVING THEREFROM**, the Grantor's fee title interests in and to the North 50 feet thereof.

CONTAINING: 435,600 sq. ft., (10 acres)

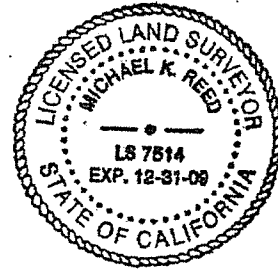
**BASIS OF BEARING** for the parcel described herein is the south line of the Southeast quarter of said Section 8, taken as: **North 89°41'13" East** per Record of Survey recorded in Book 21 of Licensed Surveys at page 68, Tulare County Records.

**END OF DESCRIPTION**

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: Michael K. Reed  
Michael K. Reed, Licensed Land Surveyor

Date: 9/25/2009







**EXHIBIT B**  
**RIGHT TO SELL ALCOHOLIC BEVERAGES**

The City of Porterville, a Charter Law City and Municipal Corporation (the "City") and the Tulare county Junior Livestock and Community Fair, Inc. a California Corporation (the "Fair"), having entered into a License Agreement, dated December 10, 2009, do hereby agree to the following:


The City hereby agrees to permit the sale of alcoholic beverages in conjunction with the Annual Fair and other events held at the fairgrounds during each year for the term of the License Agreement by and between the City and the Fair, with the following conditions:


1. Alcohol sales shall be allowed only with proper permitting through the Department of Alcoholic Beverage Control (ABC). Alcohol sales shall be subject to all local, county, and state laws and regulations.
2. That the location and screening of the alcohol sales area shall be maintained at the location(s) established and utilized by the Fair.
3. That the alcohol sales area be designated as an "Adult Refreshment Area" or similar terms, without reference to alcohol. Admittance to the "Adult Refreshment Area" shall be restricted to individuals 21 years of age, or older, and no beverages will be permitted to leave the "Adult Refreshment Area" to be consumed outside the area at any time, and no alcoholic beverage containers of any sort shall be allowed to be brought into the "Adult Refreshment Area".
4. Fair shall utilize security personnel, whether by private contractor or by City Police personnel under separate agreement, at its own cost and expense, with the decision of whether to hire private security personnel or city Police personnel to be at the sole discretion of the Board of Trustees for Fair, and it being further understood that City will not be responsible for the payment of said services.
5. Any agreements or contracts between Fair and carnival operators shall include a provision prohibiting carnival workers or personnel from using the "Adult Refreshment Area" during the course of their work.
6. Notwithstanding annual insurance requirements set forth in the License Agreement, the Board of Trustees for Fair shall procure or cause to be procured, Liquor Liability insurance coverage of not less than One Million Dollars (\$1,000,000) per occurrence, naming the City of Porterville, its officers, employees, agents, and volunteers as "Additional Insured" against all claims arising out of, or in connection with, the sale of alcoholic beverages in conjunction with the Annual Fair. Evidence of coverage shall be presented in

the form of an original Certificate of Insurance to the City's Risk Manager each year, prior to the commencement of the Annual Fair.

Dated: December 10, 2009

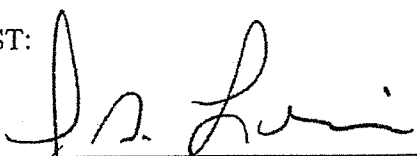
BOARD OF TRUSTEES OF TULARE COUNTY  
JUNIOR LIVESTOCK SHOW AND COMMUNITY FAIR, INC.

BY:   
\_\_\_\_\_  
John Corkins, President

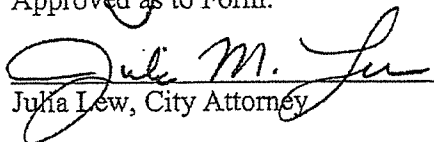
BY:   
\_\_\_\_\_  
Dennis Sexton, First Vice President

CITY OF PORTERVILLE

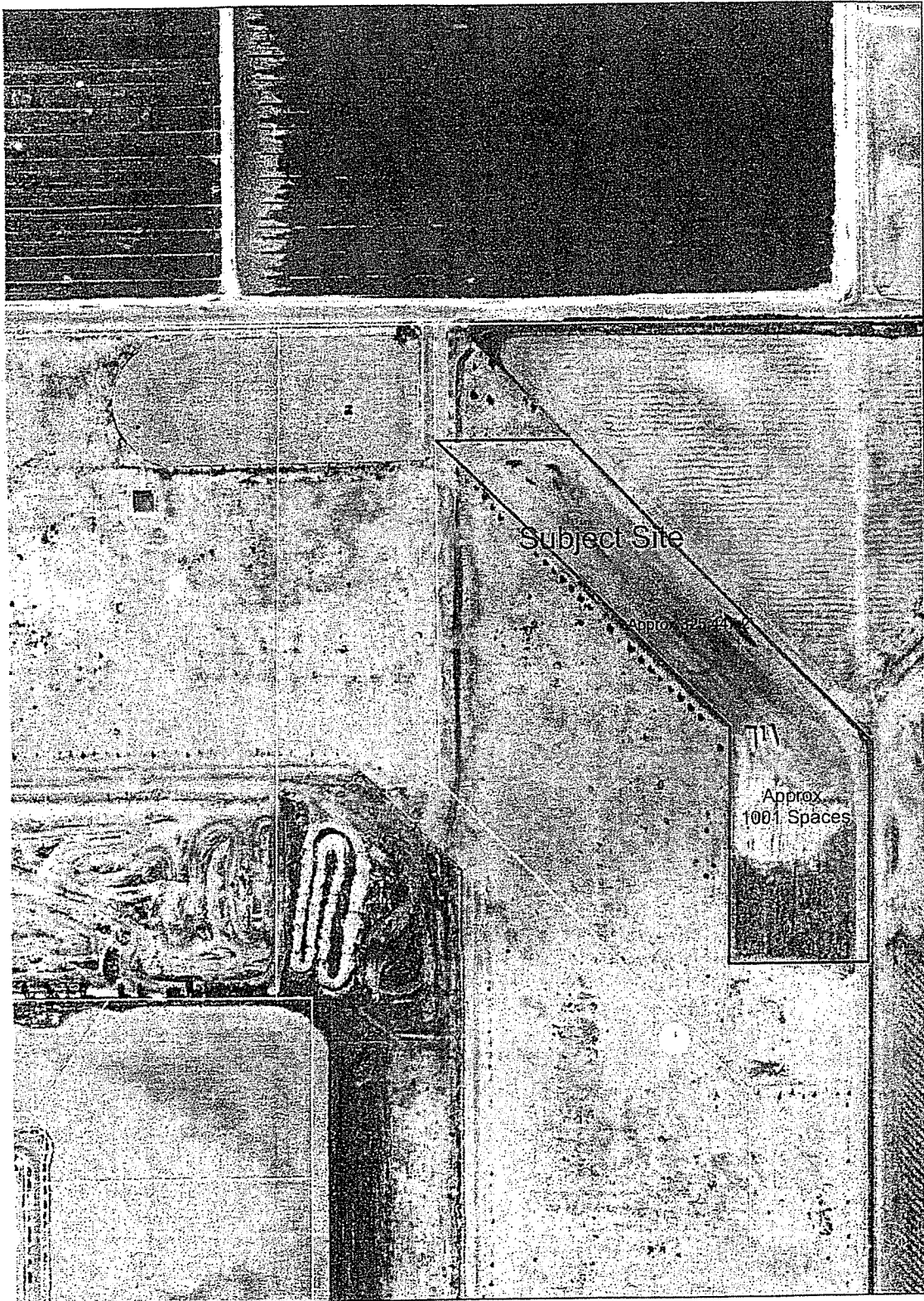
BY:   
\_\_\_\_\_  
Pete V. McCracken, Mayor

ATTEST:   
\_\_\_\_\_  
John Lollis, City Clerk

Approved as to Form:

  
\_\_\_\_\_  
Julia Lew, City Attorney

# EXHIBIT C



**EXHIBIT D**  
**RESTRICTIVE COVENANT**  
**AGREEMENT**

**WHEREAS**, the City of Porterville owns that certain lot or parcel of real property located and situated in Tulare County, California, which said property is more particularly described in Exhibit A attached hereto and incorporated herein by reference and which property is located within the area of the Airport Development Zone and Airport Safety Zone and is exposed to noise and hazards associated with aircraft overflight; and

**WHEREAS**, the City of Porterville desires to develop the property described in Exhibit A for commercial, industrial or economic development uses; and

**WHEREAS**, the City of Porterville does hereby grant a perpetual right and covenant for the free and unobstructed flight of aircraft (being defined as any contrivance now or hereafter used for flight in the air) in and through the airspace over and in the vicinity of the property described in Exhibit A attached hereto, including jet-powered air carrier aircraft in landing and take-off operations and other flight activities associated therewith, together with the right to cause such noise, vibrations, odors, vapors, particulates, smoke, dust or other effects may be inherent in the operation of aircraft of all types.

This covenant shall be appurtenant to and shall run with the real property now owned and used for airport, commercial, industrial, or economic development purposes. This covenant and the burden thereof, together with all incidents and effects of or resulting from use and enjoyment thereof shall constitute a permanent burden and tenement upon the subject property which shall be binding upon and enforceable by the Porterville Municipal Airport.

**NOW THEREFORE**, if the real property is hereafter conveyed to an entity/individual not associated with the City of Porterville, an Avigation Easement shall be executed more particularly described in Exhibit B attached hereto and incorporated herein by reference.

**IN WITNESS WHEREOF**, the City of Porterville have hereunto set their hands and seals as of the date and year first above written.

---

John Lollis, City Manager  
Porterville, California

**ACKNOWLEDGMENT**

State of California  
County of Tulare

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

Personally appeared \_\_\_\_\_,  
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"

**Airport Parcel**

That portion of the Southeast quarter of Section 8, Township 22 South, Range 27 East, Mount Diablo Base and Meridian, in the City of Porterville, County of Tulare, State of California, according to the Official Plat thereof, more particularly described as follows:

**COMMENCING AT** the Southwest corner of the Southeast quarter of said Southeast quarter of Section 8;

**THENCE**, North  $00^{\circ}35'50''$  East, along the west line of the Southeast quarter of said Southeast quarter, 25.00 feet, to a point in the north right of way line of Tea Pot Dome Avenue, said point also being the **POINT OF BEGINNING**;

**THENCE**, continuing North  $00^{\circ}35'50''$  East, 1,293.54 feet to the Northwest corner of the Southeast quarter of said Southeast quarter of Section 8;

**THENCE**, North  $89^{\circ}40'00''$  East, along the north line of the Southeast quarter of said Southeast quarter, a distance of 866.68 feet;

**THENCE**, departing the north line of the Southeast quarter of said Southeast quarter, South  $00^{\circ}35'50''$  West, 1,293.84 feet, to a point in the north right of way line of Tea Pot Dome Avenue;

**THENCE**, South  $89^{\circ}41'13''$  West, 866.67 feet, to the **POINT OF BEGINNING**.

**CONTAINING:** 1,121,067 sq. ft., (25.74 acres)

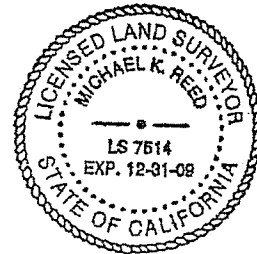
**BASIS OF BEARING** for the parcel described herein is the south line of the Southeast quarter of said Section 8, taken as: North  $89^{\circ}41'13''$  East per Record of Survey recorded in Book 21 of Licensed Surveys at page 68, Tulare County Records.

**END OF DESCRIPTION**

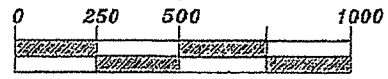
This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.

Signature: Michael K. Reed  
Michael K. Reed, Licensed Land Surveyor

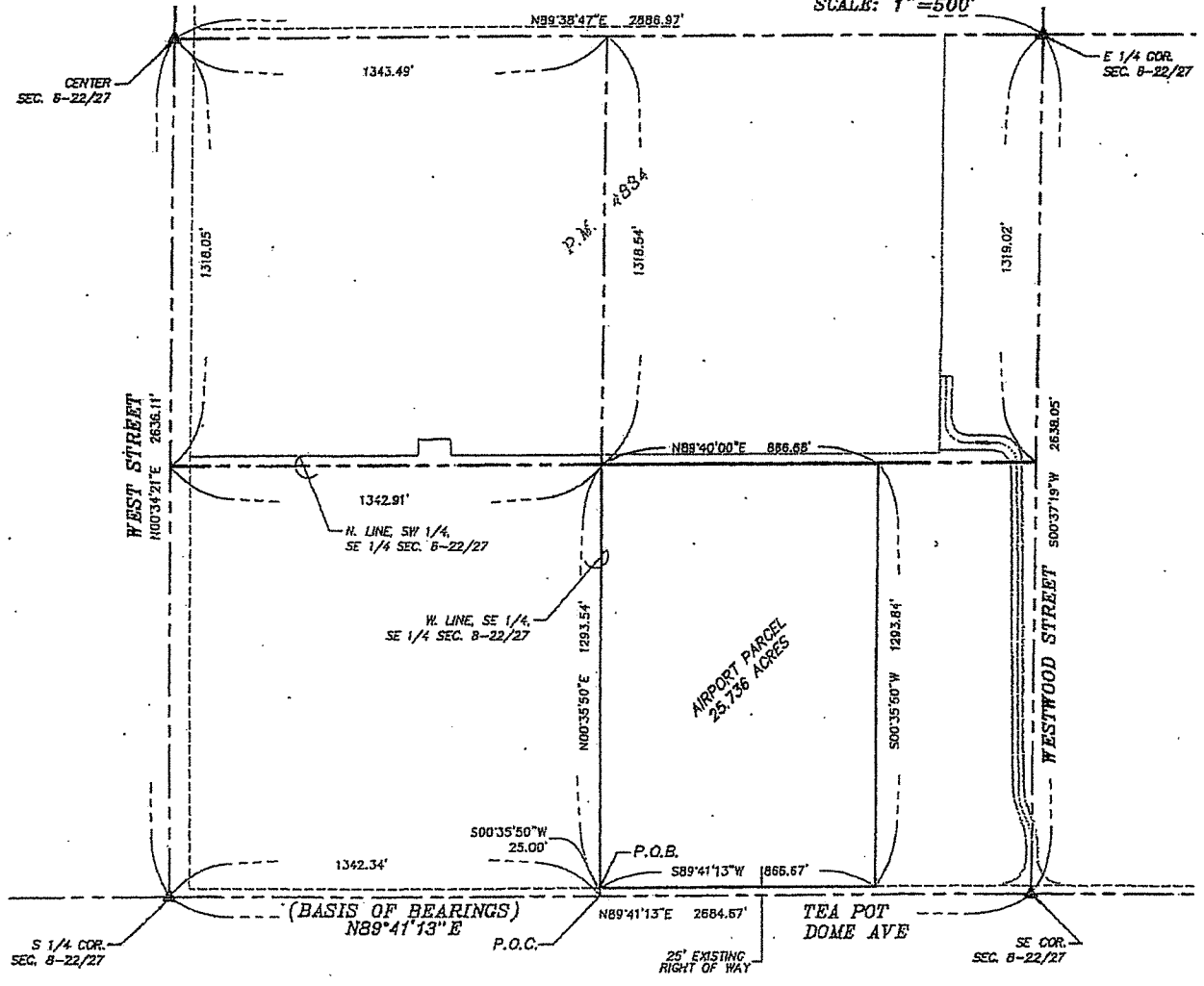
Date: 9/25/2009



# AIRPORT PARCEL PLAT



SCALE: 1"=500'



**CITY OF PORTERVILLE**  
**ENGINEERING DIVISION**  
 291 N. MAIN ST. PORTERVILLE, CALIFORNIA 93257 559 782-7402

PORTION OF THE SOUTHEAST QUARTER OF  
 THE SOUTHEAST QUARTER SECTION 8,  
 TOWNSHIP 22 SOUTH, RANGE 27 EAST,  
 MOUNT DIABLO BASE AND MERIDIAN, IN  
 THE CITY OF PORTERVILLE, COUNTY OF  
 TULARE, STATE OF CALIFORNIA

OWNER: CITY OF PORTERVILLE  
 APN: POR. 302-110-075  
 AREA: 1,121,067 S.F.  
 ACRES: 25.736 (GROSS)  
 DRAWN BY: JB  
 CHK'D BY: DB



**EXHIBIT "B"**

**GRANT OF AVIGATION EASEMENT**

RECITALS:

1.

\_\_\_\_\_ *(provide complete legal name of all owners of record subject property)*

\_\_\_\_\_ *(state identity of property owner – e.g., single man/woman, husband and wife, a corporation)*

("Grantor(s)"), is (are) the owner(s), as

\_\_\_\_\_ *(designate how title to property is held – e.g., joint tenants, community property)*

of the fee simple estate in and to that certain real property situated in the City of Porterville, State of California, described as

\_\_\_\_\_ *(provide street address and zip code of subject property)*

and more particularly described as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ *(provide complete legal description and assessor parcel number of subject property)*

("the Subject Property")

2. It is the desire of Grantor(s) to grant to the Porterville Municipal Airport, a division of the City of Porterville ("the Authority"), a local governmental entity organized under the laws of the State of California and possessing jurisdiction extending throughout the City of Porterville, an air and avigation easement, also known as a perpetual air, flight, or noise easement, on, upon, over, across, above the Subject Property, and to all of the airspace above the Subject Property, whereby Grantor(s) relinquishes certain rights relative to the Subject Property, as described in this Avigation Easement;

3. The purpose of this Avigation Easement, and its acceptance by the Authority, includes granting the Authority, its successors and assigns, an avigation easement permitting the unencumbered and unrestricted flight of aircraft to or from Porterville Municipal Airport ("PMA"), owned and operated by the Authority, without liability to the Authority, to the aircraft operator, or to any other person lawfully operating aircraft to or from PMA in the navigable airspace of the United States (as defined at 49 U.S.C.S. §40102(a)(30), and as that section of the United States Code (and

the referenced regulations) existed on the effective date of this Avigation Easement), and in accordance with relevant regulations of the United States of America and the State of California, pursuant to the authority granted to the Authority by the people and the State of California; and

4. This Avigation Easement is intended to benefit the Grantor(s), the Subject Property, the Authority, and all users of PMA, and shall be binding on Grantor(s) and all future owners, occupants and users of the Subject Property.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged:

#### WARRANTIES AND COVENANTS

Grantor(s) warrant(s) and covenant(s) to the Authority that as of the date hereof:

1. Grantor(s) hold(s) the entire fee simple interest in the Subject Property;
2. Grantor(s) shall not convey (his/her/their/its) interest in the Subject Property, or execute, deliver, comply or permit recordation of any interest in the Subject Property, or any lien or encumbrance against the Subject Property (or any interest therein) until the earlier of the following events: (i) this Avigation Easement has been properly executed by Grantor(s), accepted by the Authority, and recorded by the Tulare County Recorder; or (ii) thirty (30) days have elapsed after Grantor(s) have delivered Avigation Easement to the Authority, properly and fully executed and notarized, a complete and accurate application form, and true and correct copies of all associated documents identified in the instructions provided to Grantor(s) with this form of Avigation Easement.
3. If the person(s) executing this Avigation Easement is other than the Grantor(s), the person(s) executing this Avigation Easement, or his or her attorney, has represented in documentation separate from this grant, to the Authority that the person(s) is duly and lawfully authorized by Grantor(s) to relinquish certain rights relative to the Subject Property, as described in this Avigation Easement.
4. Grantor(s), individually and for the heirs, administrators, executors, tenants, guests, agents, successors, assigns, and other persons using the Subject Property with the implied or express consent of Grantor(s), hereby grant(s), convey(s) and assign(s) to the Authority, its successors and assigns, a perpetual non-exclusive avigation easement for the purposes of aircraft operations, aircraft sound and noise, aircraft avigation and flight, hazard and airspace in, to, over and upon the Subject Property of noise, vibration, fumes, fuel particles, dust, discomfort or other environmental effects incident to such aircraft operations and any and all resulting annoyance, inconvenience, or other interference with the use and enjoyment of the Subject Property and any consequent reduction in market value, all due to the operation or aircraft to and/or from PMA. For purposes of this Avigation Easement, the term "aircraft" shall mean any

contrivance now known or hereafter invented, used or designed for navigation or flight in the air.

5. This Avigation Easement is for the use of such airspace by any aircraft during operations at, on, to, or from PMA, present or future, in whatever form or type, including any future change to or increase in the PMA boundaries and/or in the volume or pattern of aircraft traffic or aircraft noise, by all existing or future types of aircraft, including the imposition on the surface of the Subject Property and on any and all structures on the Subject Property of such noise, vibration, fumes, fuel particles and other particulate matter, dust, discomfort or other environmental effects incident to such aircraft operations and any and all resulting annoyance, inconvenience, or other interference with the use and enjoyment of the Subject Property and any consequent reduction in market value.

6. It is expressly intended by Grantor(s) and the Authority that this Avigation Easement shall not supersede or impair any existing prescriptive, avigation, or other easements, rights, or interests of the Authority, or its predecessor in interest, in or applicable to the Subject Property, all of which easements, rights, interests, and any remedies related thereto are expressly reserved by the Authority.

7. In furtherance of this Avigation Easement, and rights herein granted, Grantor(s), and the heirs, agents, successors, and assigns of Grantor(s), hereby covenant at all times hereafter, that it/they will not take any action, cause or allow any electronic or other transmissions or emissions, or construct or grow any obstruction on the Subject Property which would conflict or interfere with or infringe on the Authority's rights herein granted.

8. Subject to the provisions set forth above in paragraph number 5, the rights, easements, benefits, restrictions, covenants and agreements granted herein, including this Avigation Easement, shall continue notwithstanding any increase or other change in the boundaries, volume of operations, noise, or pattern of air traffic at PMA. This Avigation Easement may not be modified, amended, terminated, or abandoned except by execution and delivery of an instrument executed and acknowledged by the Authority, or its agents, successors, and assigns, and Grantor(s) agree(s) that, in the absence of such an instrument, no conduct by the Authority, or its agents, successors and assigns, or increase, diminution, or change in use of this Avigation Easement, shall constitute an overburdening of this Avigation Easements or a termination or abandonment of this Avigation Easement.

9. The parties to this Avigation Easement acknowledge and agree that the easement, and all the rights, easements, benefits, restrictions, covenants and agreements set forth herein shall run with the land of the Grantor(s) and the Airport Authority, and any grantee, heir, agent, successor or assign of the Grantor(s) who acquires any estate or interest in or right to use the Subject Property shall be bound by this Avigation Easement for the benefit of PMA and the Airport Authority, and its agents, successors and assigns,

including, without limitation, the tenants and licensees of the Airport Authority, and all users of PMA.

10. Grantor(s), and the grantees, heirs, agents, successors, and assigns of Grantor(s) hereby fully waive and forever release, and covenant not to assert or bring any right or cause of action, which it or they might now have, or which it or they may have in the future, against the Airport Authority, its agents, successors, and assigns, or against the tenants, permittees, licensees, or users of PMA, caused by or relating to the use of this Avigation Easement or the exercise of rights under this Avigation Easement.

11. This Avigation Easement constitutes an enforceable restriction pursuant to the provisions of California law, including, but not limited to, Section 21652 of the California Public Utilities Code, and shall bind Grantor(s), and the heirs, agents, successors and assigns of Grantor(s), and each and all of them, and shall be appurtenant to, and for the benefit of the real property commonly known as PMA, which is more particularly described in Exhibit "A," attached hereto.

12. In the event that any one or more covenant, condition, right or other provision contained in this Avigation Easement is held to be invalid, void, or illegal by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Avigation Easement and shall in no way affect, impair, or invalidate any other covenant, condition, right or other provision contained in this Avigation Easement.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

GRANTOR(S):

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

(Grantor Acknowledgement)

ACKNOWLEDGMENT

State of California

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

Personally appeared \_\_\_\_\_,  
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)

**CERTIFICATE OF ACCEPTANCE**

In accordance with Section 27281 of the California Government Code, this is to certify that the interest in real property conveyed by this Grant of Avigation Easement, dated

\_\_\_\_\_ From: \_\_\_\_\_  
*(Month, Day, Year)* *(Grantor Name(s))*

To the CITY OF PORTERVILLE MUNICIPAL AIRPORTY AUTHORITY, a local government entity, with jurisdiction within the City of Porterville, is hereby accepted by the undersigned officer on behalf of the City of Porterville Municipal Airport Authority, and the Grantee consents to recordation thereof by its duly authorized officer.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2009.

Approved as to form:

By: \_\_\_\_\_  
*(Signature)*

Office of General Counsel

By: \_\_\_\_\_  
*(Signature)*

Name:  
Title:

(For use by City of Porterville Municipal Airport Authority)

**ACKNOWLEDGMENT**

State of California  
County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

Personally appeared \_\_\_\_\_,  
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  
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WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)