

Recording requested by and
When recorded return to:

City of Merced, a California Charter
Municipal Corporation
678 W. 18th Street
Merced, CA 95340

(Space Above For Recorder's Use)

(RECORD AT NO FEE PURSUANT TO
CA GOVERNMENT CODE SECTION 27383)

AGREEMENT FOR USE OF EASEMENT

THIS AGREEMENT FOR USE OF EASEMENT ("**Agreement**") is made this _____ day of _____, 2018, by and between PORGES PROPERTIES I, LLC, a California Limited Liability Company ("**Owner**") and the CITY OF MERCED, a California Charter Municipal Corporation ("**City**"). Owner and City are sometimes referred to collectively herein as the "**Parties**" and individually as a "**Party**."

RECITALS:

The following recitals are a substantive portion of this Agreement:

A. Owner holds fee title to the real property at and commonly known as 930 West 16th Street, Merced, California, APN 031-173-004, and more specifically described on the attached Exhibit "A" (the "**Property**").

B. City holds a 40-foot sewer and storm drain easement as described on the attached Exhibit "B" (the "**Easement**").

C. Owner desires to construct and maintain certain improvements within the Easement, including lighting, landscaping, concrete, and a parking lot (the "**Improvements**").

NOW, THEREFORE, in furtherance of the foregoing Recitals, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Owner and City hereby agree as follows:

1. Grant of Right and Nature of Agreement. City grants Owner the right to construct and maintain the Improvements within the City Easement, as set forth more specifically in Exhibit "C" attached hereto. In so doing, and notwithstanding anything to the contrary in this Agreement, or pursuant to the course of dealings between the Parties, City expressly does not and shall not abandon the Easement or waive any rights thereunder, and Owner, its heirs, successors, and assigns derive no basis for a claim of prescriptive, contractual, or other rights to utilize the Easement except as expressly provided herein. This grant of permission is limited to Owner constructing, maintaining and using the Improvements in the Easement, and does not constitute a deed or grant of any other real property interest by City.

2. Use of the Easement; Cessation of Interference. This grant of permission shall be subject to and subordinate to the prior continuing right of City to use the Easement for the public services described in Exhibit "B". Any construction, maintenance or use of the Improvements (or of any further Improvements approved by City) shall not interfere with City's use of the Easement. If at any time, City reasonably believes that Owner's construction, maintenance or use of the Improvements interferes with City's use of the Easement as specified herein, City shall provide written notice to Owner of such interference. Owner shall work with City and remedy such interference by ceasing the interfering activities or removing or repairing the particular Improvements causing such interference within thirty (30) days of receipt of City's notice, unless such remedy takes longer than thirty (30) days in which case Owner shall commence such remedy within thirty (30) days and diligently prosecute it to completion. If Owner fails to remedy such interference as provided herein, City may (a) take steps to remedy the interference and Owner shall reimburse City's reasonable expenses for taking such steps within thirty (30) days of receipt of City's invoice for such expenses, or (b) terminate this Agreement on thirty (30) days' advance written notice. Upon termination of this Agreement, Owner shall remove all Improvements from the Easement and restore the Property to its natural state as it existed prior to the installation of Improvements by Owner.

3. Damage to the Easement. Owner shall be solely responsible for any damage Owner or its employees, representatives or contractors cause to

City streets, sidewalks, curbs, utilities, or other City owned property due to the installation, maintenance, repair, or removal of Owner's Improvements in the Easement, and shall repair, replace, and restore in kind the said damaged facilities at its sole expense.

4. Owner's Maintenance of Improvements. Owner shall be solely responsible for any maintenance and/or repairs to the Improvements except maintenance or repairs necessary due to damage caused solely by City or its employees, representatives or contractors. Owner shall maintain the Improvements and surrounding area in good and safe condition and free from damage, to the reasonable satisfaction of City.

5. City's Maintenance of Easement. City shall maintain the sewer and storm drain located within the Easement in good condition in compliance with all laws, regulations, statutes, ordinances and codes. City shall provide at least 24-hours' notice to Owner prior to replacing pipes or other improvements in the Easement or undertaking major repairs that might interfere with Owner's business, but shall not be required to provide advance notice for routine inspections or maintenance or in an emergency. During any such on-site work, City will cooperate with Owner and make diligent efforts to minimize any interference with Owner's business operations on the Property. If removal of some or all of the Improvements is necessary in order for City to perform maintenance, repairs or replacements within the Easement, Owner shall be solely responsible for the removal and replacement of any such Improvements, except that if the need for such maintenance, repairs or replacements is caused by the negligence of City or its agents, representatives or contractors, City will reimburse Owner for the costs of removing and replacing parking lot and driveway improvements and landscaping, but not any other costs, including lighting, pipelines, electrical, and buildings.

6. Hazardous Materials. Owner agrees that Owner shall not bring onto the Easement, or store or dispose of on the Easement, nor knowingly allow others to bring onto, store or dispose on the Easement, any hazardous material of any kind. Notwithstanding the foregoing, Owner may store or use standard business materials normally used in Owner's type of business, in compliance with all laws, regulations, statutes, ordinances and codes.

7. Insurance Requirements. Owner shall maintain a Commercial General Liability insurance policy against claims and liabilities for personal injury, death, or property damage providing protection in the minimum

amount of: one million dollars (\$1,000,000.00) for bodily injury or death to any one person for any one accident or occurrence and at least one million dollars (\$1,000,000.00) for property damage.

7.1 City, its officers, officials, employees, agents, and volunteers, are to be covered as additional insureds on Owner's Commercial General Liability insurance policy.

7.2 The Parties waive any and all rights of subrogation against each other, including their respective elected or appointed officials, boards, agencies, officers, agents, employees, and volunteers, which any insurer of a Party may acquire against the other Party.

7.3 For any and all claims related to this Agreement, Owner's insurance shall be primary unless claims, losses, costs, liabilities, expenses, judgments or damages arise out of the sole negligence of City or its employees, representatives or contractors.

7.4 Owner shall furnish City with copies of all policies or certificates as outlined herein, whether new or modified, promptly upon receipt. No policy subject to Owner's agreement with City shall be canceled or materially changed except after thirty (30) days' notice by the insurer to City. Certificates, including renewal certificates, may be mailed or delivered to the City at 627 W. 18th Street, Merced, California 95340.

8. Defense and Indemnification. Owner shall indemnify, protect, hold harmless, and defend City from any and all loss, cost, liability or expense, and from any judgments or damages to any person or property arising or resulting, directly or indirectly, from the condition of the Improvements, or in connection with the installation and/or maintenance of the Improvements. Notwithstanding the foregoing, Owner's indemnity and release herein shall not extend to losses, costs, liability, expense, judgments or damages arising out of the sole negligence of City or its employees, representatives or contractors, or arising from causes not related to Owner's Improvements.

9. Representations and Warranties. Owner hereby represents and warrants that Owner has full power and authority to execute and deliver this Agreement and to make and accept the obligations contemplated hereunder.

10. Compliance with Laws. Each of the Parties shall at all times comply fully with all applicable governmental laws, ordinances, rules, codes, regulations, and permit requirements pertaining to the use of the City Easement.

11. Waiver. The failure of any of the Parties or their successors to enforce any of the terms and provisions set forth herein shall not constitute a waiver of the right to enforce the same thereafter.

12. Entire Agreement. This Agreement constitutes the entire integrated agreement of the Parties with respect to the subject matter of this Agreement. This Agreement may not be amended or terminated except by a writing signed by authorized signatories of all Parties.

13. Construction. The section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Wherever the context hereof may so require, the singular shall include the plural and the masculine shall include the feminine and neuter. This Agreement shall be interpreted pursuant to its plain and ordinary meaning, as though prepared by both Parties, and in accordance with the laws of the State of California.

14. Successors and Assigns. The rights and obligations of the Parties hereunder shall be binding on and inure to the benefit of the Parties hereto and the successors and assigns of the Parties hereto. This Agreement, and the covenants, rights, duties, benefits and burdens described herein, constitute covenants running with the land that benefit and bind the Property, and each Party and their successors or assigns. If City vacates the City Easement in accordance with California law, then this Agreement shall terminate and be of no further force and effect, in which case Owner may use its Property unencumbered by the City Easement.

15. Recordation of Agreement. Either of the Parties may cause this Agreement or a memorandum thereof to be recorded in the Office of the County Recorder of Merced County, California.

16. Governing Law and Venue. The provisions of this Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue for any legal action arising out of this Agreement shall be the Superior Court of the County of Merced, California.

17. Attorneys' Fees. Should it become necessary to take steps to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its attorneys' fees and costs related to the enforcement of this Agreement.

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

IN WITNESS WHEREOF, the Parties have made and executed this Agreement on the day and year first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:


BY: K. Haep 2-6-18
City Attorney Date

ACCOUNT DATA:

By: _____
Verified by Finance Officer

OWNER:

PORGES PROPERTIES I, LLC, a
California limited liability company


_____, TRUSTEE
By: NORMAN B. PORGES, Trustee of
The Norman B. Porges 2003
Trust u/a/d 1/28/2003



By: EVAN PORGES, Trustee of
The Evan Porges Revocable
Trust u/a/d 8/18/2004

Taxpayer I.D. No. 20-1705464

ADDRESS: P.O.B. 3469
MODESTO, CA 95353

TELEPHONE: 209-549-9274

FAX: 209-549-1542

E-MAIL: eporges@primeshine.com

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 STANISLAUS)

On MARCH 7, 2018 before me, LYNETTE FANELLI, NOTARY PUBLIC,
Notary Public, personally appeared NORMAN B. FORGES,
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 Lynette Fanelli (Seal)



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 STANISLAUS)

On MARCH 7, 2018 before me, LYNETTE FANELLI, NOTARY PUBLIC,
Notary Public, personally appeared EVAN FORGES,
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 Lynette Fanelli (Seal)

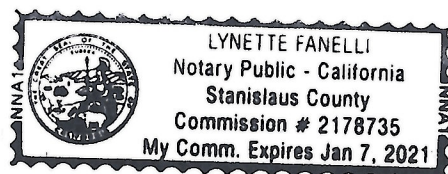


Exhibit "A"

All that certain real property described as follow:

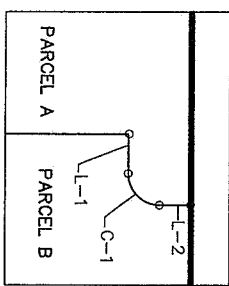
Parcel "D" as shown on the map entitled, "Parcel Map for Southern Pacific Transportation Company", recorded March 31, 1994 in Book 77 of Parcel Maps as Pages 7 and 8 in the Merced County Records.

Excepting therefrom all minerals and mineral rights reserved in the Quit Claim Deed recorded on 12/17/2004 as Document #2004-084549 in the Official Records of Merced County.

PAGE - 7

1" = 10'

DETAIL



PARCEL A

PARCEL B

REFERENCES

R-1 PARCEL MAP FOR SOUTHERN PACIFIC RAILROAD, VOL. 59

R-2 RECORD OF SURVEY FOR SOUTHERN PACIFIC RAILROAD, BK. 20, SURVEY NO. 4, MERCEDES COUNTY RECORDS

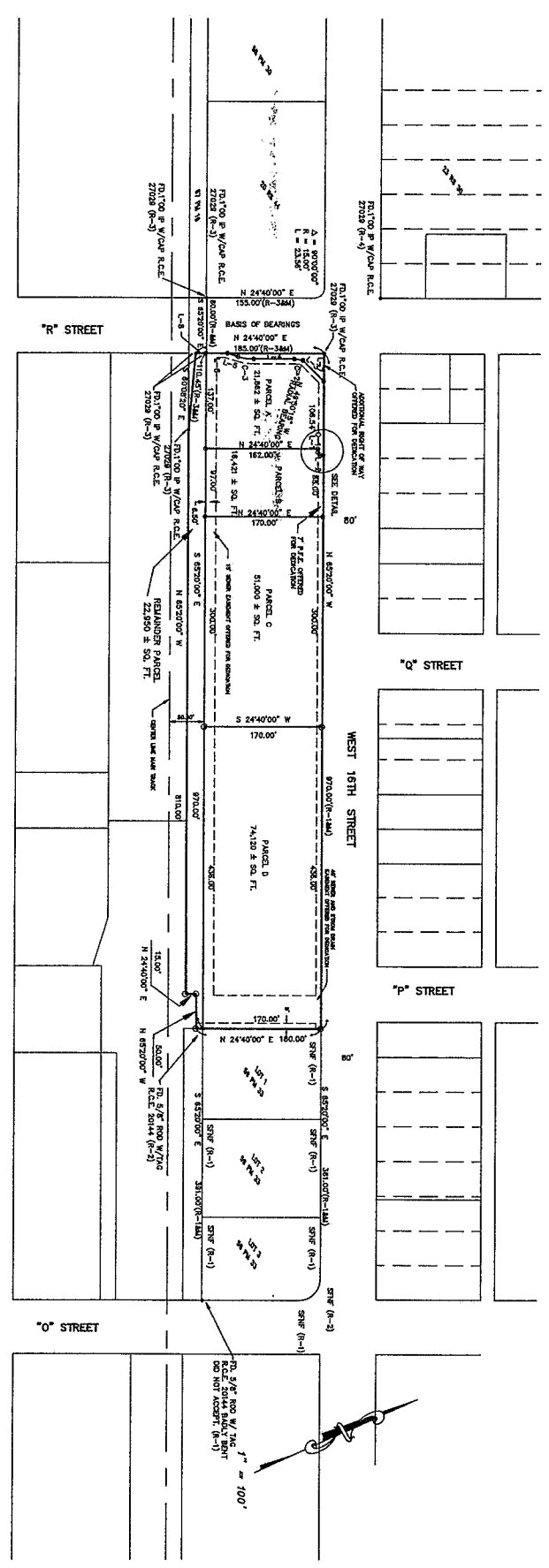
R-3 PARCEL MAP FOR SOUTHERN PACIFIC RAILROAD, BK. 67, MERCEDES COUNTY RECORDS

R-4 RECORD OF SURVEY FOR WEST COAST SHIPPERS' CO., VOL. 23, SURVEY NO. 23, MERCEDES COUNTY RECORDS

BASIS OF BEARINGS

THE BASIS OF THE BEARINGS SHOWN ON THIS MAP IS THE EAST LINE OF "R" STREET AS SHOWN ON PARCEL MAP FOR SOUTHERN PACIFIC RAILROAD, BK. 20, SURVEY NO. 4, MERCEDES COUNTY RECORDS, N. 24°40'00" E.

WEST 15TH STREET



LINE	DIRECTION	DISTANCE
1-2	N 83°20'00" E	3.00'
2-3	N 83°20'00" E	4.00'
3-4	N 83°20'00" E	4.00'
4-5	N 83°20'00" E	4.00'
5-6	N 83°20'00" E	4.00'
6-7	N 83°20'00" E	4.00'
7-8	N 83°20'00" E	4.00'
8-9	N 83°20'00" E	4.00'
9-10	N 83°20'00" E	4.00'
10-11	N 83°20'00" E	4.00'
11-12	N 83°20'00" E	4.00'
12-13	N 83°20'00" E	4.00'
13-14	N 83°20'00" E	4.00'
14-15	N 83°20'00" E	4.00'
15-16	N 83°20'00" E	4.00'
16-17	N 83°20'00" E	4.00'
17-18	N 83°20'00" E	4.00'
18-19	N 83°20'00" E	4.00'
19-20	N 83°20'00" E	4.00'
20-21	N 83°20'00" E	4.00'
21-22	N 83°20'00" E	4.00'
22-23	N 83°20'00" E	4.00'
23-24	N 83°20'00" E	4.00'
24-25	N 83°20'00" E	4.00'
25-26	N 83°20'00" E	4.00'
26-27	N 83°20'00" E	4.00'
27-28	N 83°20'00" E	4.00'
28-29	N 83°20'00" E	4.00'
29-30	N 83°20'00" E	4.00'
30-31	N 83°20'00" E	4.00'
31-32	N 83°20'00" E	4.00'
32-33	N 83°20'00" E	4.00'
33-34	N 83°20'00" E	4.00'
34-35	N 83°20'00" E	4.00'
35-36	N 83°20'00" E	4.00'
36-37	N 83°20'00" E	4.00'
37-38	N 83°20'00" E	4.00'
38-39	N 83°20'00" E	4.00'
39-40	N 83°20'00" E	4.00'
40-41	N 83°20'00" E	4.00'
41-42	N 83°20'00" E	4.00'
42-43	N 83°20'00" E	4.00'
43-44	N 83°20'00" E	4.00'
44-45	N 83°20'00" E	4.00'
45-46	N 83°20'00" E	4.00'
46-47	N 83°20'00" E	4.00'
47-48	N 83°20'00" E	4.00'
48-49	N 83°20'00" E	4.00'
49-50	N 83°20'00" E	4.00'
50-51	N 83°20'00" E	4.00'
51-52	N 83°20'00" E	4.00'
52-53	N 83°20'00" E	4.00'
53-54	N 83°20'00" E	4.00'
54-55	N 83°20'00" E	4.00'
55-56	N 83°20'00" E	4.00'
56-57	N 83°20'00" E	4.00'
57-58	N 83°20'00" E	4.00'
58-59	N 83°20'00" E	4.00'
59-60	N 83°20'00" E	4.00'
60-61	N 83°20'00" E	4.00'
61-62	N 83°20'00" E	4.00'
62-63	N 83°20'00" E	4.00'
63-64	N 83°20'00" E	4.00'
64-65	N 83°20'00" E	4.00'
65-66	N 83°20'00" E	4.00'
66-67	N 83°20'00" E	4.00'
67-68	N 83°20'00" E	4.00'
68-69	N 83°20'00" E	4.00'
69-70	N 83°20'00" E	4.00'
70-71	N 83°20'00" E	4.00'
71-72	N 83°20'00" E	4.00'
72-73	N 83°20'00" E	4.00'
73-74	N 83°20'00" E	4.00'
74-75	N 83°20'00" E	4.00'
75-76	N 83°20'00" E	4.00'
76-77	N 83°20'00" E	4.00'
77-78	N 83°20'00" E	4.00'
78-79	N 83°20'00" E	4.00'
79-80	N 83°20'00" E	4.00'
80-81	N 83°20'00" E	4.00'
81-82	N 83°20'00" E	4.00'
82-83	N 83°20'00" E	4.00'
83-84	N 83°20'00" E	4.00'
84-85	N 83°20'00" E	4.00'
85-86	N 83°20'00" E	4.00'
86-87	N 83°20'00" E	4.00'
87-88	N 83°20'00" E	4.00'
88-89	N 83°20'00" E	4.00'
89-90	N 83°20'00" E	4.00'
90-91	N 83°20'00" E	4.00'
91-92	N 83°20'00" E	4.00'
92-93	N 83°20'00" E	4.00'
93-94	N 83°20'00" E	4.00'
94-95	N 83°20'00" E	4.00'
95-96	N 83°20'00" E	4.00'
96-97	N 83°20'00" E	4.00'
97-98	N 83°20'00" E	4.00'
98-99	N 83°20'00" E	4.00'
99-100	N 83°20'00" E	4.00'

LEGEND

- FOUND AND ACCEPTED MONUMENT AS NOTED
- SET 1" COLL. WITH PLASTIC PLUG MARKED R.C.E. 27029
- BOUNDARY OF ORIGINAL PARCEL
- (R-1) RECORD DATA NUMBER REFERS TO REPRODUCE THAT P.F.C. PUBLIC FACILITIES EXISTENT C.R. CALCULATED FROM RECORD
- ALL DISTANCES ARE IN FEET

CITY OF MERCED MINOR SUBDIVISION 94-02

PARCEL MAP
FOR
SOUTHERN PACIFIC TRANSPORTATION CO.

A DIVISION OF A PORTION OF THE CENTRAL PACIFIC RAILROAD RESERVE, AS SHOWN ON THE "MAP OF THE CITY OF MERCED AND SUBDIVISION OF ADJOINING ACREAGE PROPERTIES" RECORDED ON VOLUME 2 OF OFFICIAL PLATS AT PAGE 59, MERCED COUNTY RECORDS.

SECTION 24, T. 7 S., R. 13 E., M.D.B.M.

CITY OF MERCED COUNTY OF MERCED CALIFORNIA

SHEET 2 OF 2 SHEETS

SCALE 1" = 100'

MARCH 1984

LARSEN OHLINGER & HOLMES INC

ARCHITECTURE ENGINEERING PLANNING SURVEYING

MERCED CALIFORNIA

EXHIBIT "B" (continued)
LICENSE AGREEMENT AREA
LEGAL DESCRIPITON
APN 031-017-004

All that real property situate in Section 24, Township 7 South, Range 13 East, Mount Diablo Meridian, City of Merced, County of Merced, State of California, described as follows:

15' SEWER EASEMENT

BEING the southerly 15.00 feet of Parcel D as shown on that certain map recorded March 31, 1994 in Book 77 of Parcel Maps at Pages 7 and 8, Merced County Records, except therefrom the easterly 48.00 feet thereof.

Containing 5,819 square feet, more or less.

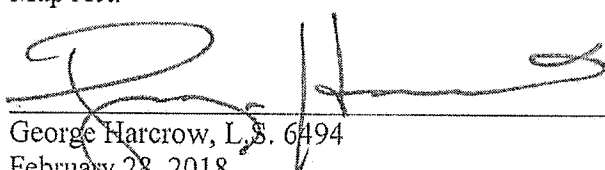
40' SEWER AND STORM DRAIN EASEMENT

BEING the westerly 40.00 feet of the easterly 48.00 feet of Parcel D as shown on that certain map recorded March 31, 1994 in Book 77 of Parcel Maps, at Pages 7 and 8, Merced County Records.

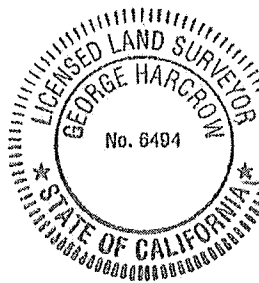
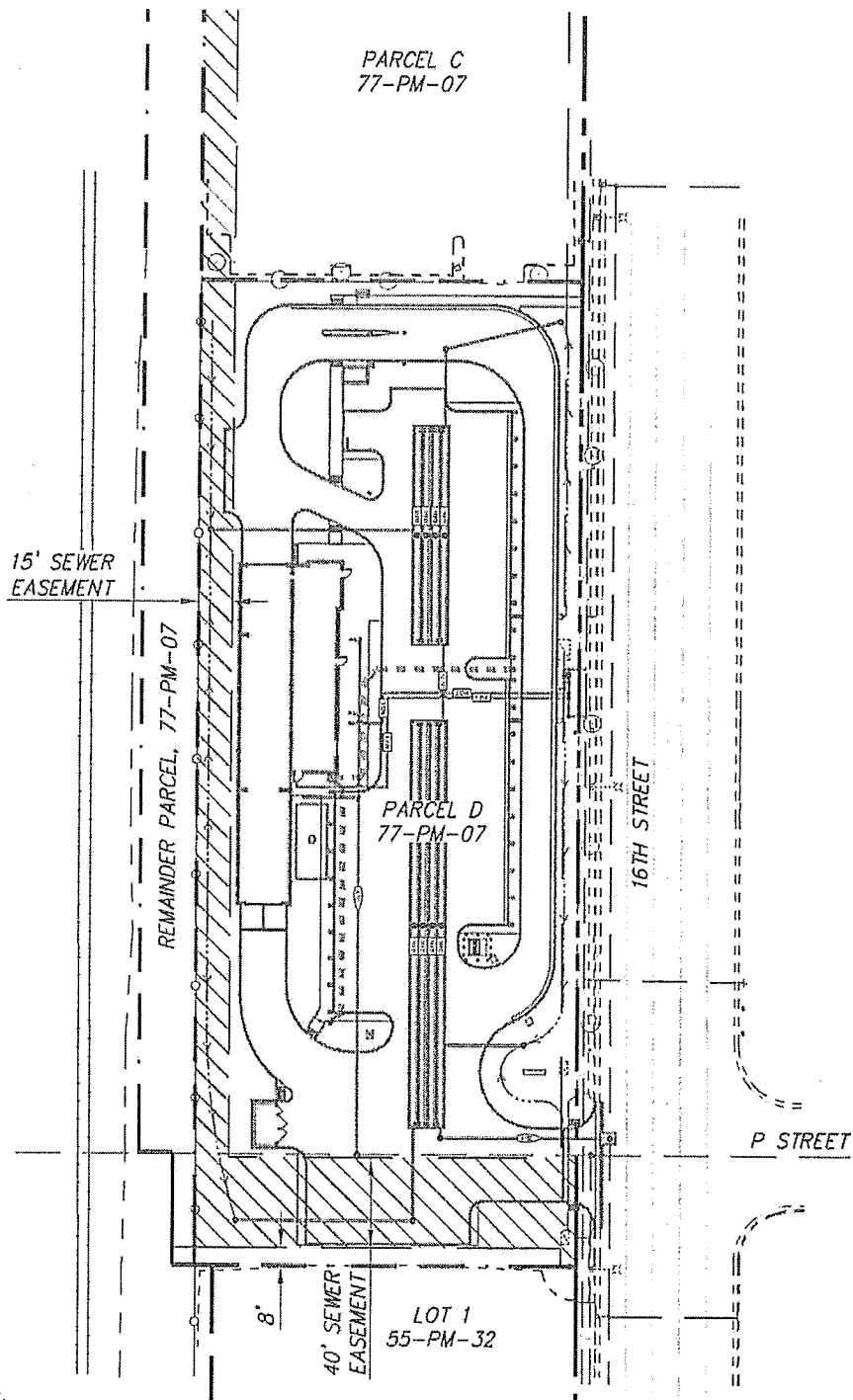
Containing 6,800 square feet, more or less.

Subject to all easements and rights of way of record.

This description was prepared by me or under my direction in accordance with the Subdivision Map Act.


George Hargrow, L.S. 6494
February 28, 2018





[Handwritten signature]



1
OF
1



**HAWKINS & ASSOCIATES
ENGINEERING, INC.**
436 MITCHELL ROAD
MODESTO, CA. 95354
PH: (209) 575 - 4295
FX: (209) 578 - 4295

EXHIBIT "C"
LICENSE AGREEMENT AREA
PRIMESHINE MERCED
930 W. 16TH STREET, MERCED, CA

BY: MTS
CHK: RHH
DATE: 10/26/17
SCALE: 1" = 80'
JOB #: 3402
FILE: PLATS