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5/12/11

COOPERATION AGREEMENT BETWEEN CITY OF FRESNO, KB RESALE PROPERTIES, INC., and KB HOME SOUTH BAY, INC.

CITY OF FRESNO
City Clerk's Office (Original)

This Agreement ("Agreement") is made and entered into as of this 23 day of May, 2011 (the "Effective Date"), between the City of Fresno, a municipal corporation (the "City"), KB Resale Properties, Inc., a California Corporation, and KB Home South Bay Inc., a California Corporation (collectively, "KB Home"), and collectively, the "Parties".

RECITALS

WHEREAS, KB Home South Bay, Inc., the subdivider of Tract No. 5235, has completed construction of the tract, pursuant to the tentative map which was approved by the Fresno Planning Commission on April 21, 2004, and the final map approved by the City Council on November 1, 2005; and

WHEREAS, KB Resale Properties, Inc. and KB Home South Bay, Inc. are both parties to the "Statement of Covenants Affecting Land Development for Landscaping and Maintaining an Off-Site Open Space Facility for the Final Map of Tract No. 5235", and the "Statement of Covenants Affecting Land Development for Temporary Off-site Storm Drainage Facilities for the Final Map of Tract No. 5235" (collectively, "Covenants") attached hereto as Exhibits "A" and "A-1" incorporated herein by reference; and

WHEREAS, pursuant to the Covenants, and as a condition of approval of the Tentative Map, KB Home must provide 2.83 acres for public or quasi-public open space within one-quarter mile of the Tentative Map; and

WHEREAS, KB Home has filed a Final Map of Tract No. 5235 pursuant to the Tentative Map, which provides 1.45 acres of open space; and

WHEREAS, KB Home has elected to satisfy the balance (1.38 acres) of required open space; and

WHEREAS, KB Home wishes to donate a certain parcel of land, containing 5.755 acres, (APN 481-300-33S) to the City of Fresno ("City"), that donated portion hereinafter referred to as the "Property" and more particularly described in Exhibit "B" attached hereto and incorporated herein; and

WHEREAS, 1.38 acres of the Property shall be designated and maintained as open space as more particularly described in Exhibit "C" attached hereto and incorporated herein; and

WHEREAS, the City and KB Home now desire to enter into this Agreement providing for the disposition, development and maintenance of the Property consistent with the Statement of Covenants.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained, to be kept and performed by the respective parties, the parties agree as follows:

1. All the foregoing recitals are true and correct and incorporated herein by this reference as fully set forth herein.

2. KB Home, in consideration of City's performance obligations hereunder and for no monetary consideration payable through Escrow will convey to City and City will acquire in fee from KB Home, the Property upon the following terms and conditions.

2.1 The City has requested and received a Preliminary Title Report on the Property dated January 29, 2009 (updated on September 13, 2010) together with legible copies of all documents referenced therein as exceptions to title and a plot plan for the Property showing all the locations of all recorded easements (collectively, the "PTR"). The Property shall be conveyed subject only to "Permitted Exceptions," defined below.

KB Home shall be obligated to remove or eliminate as exceptions to title all: (i) monetary liens or encumbrances affecting the Property, except non-delinquent taxes and assessments except as may otherwise be set forth in this Agreement, and, (ii) all claims to fee title or leasehold or similar interests, all of which constitute Disapproved Exceptions.

2.2 "Permitted Exceptions" shall mean all exceptions appearing on the PTR that are: (1) standard printed exceptions in the Title Policy issued by Escrow Holder; (ii) general and special real property taxes and assessments, a lien not yet due and payable; and (iii) any other liens, easements, encumbrances, covenants, conditions and restrictions of record, except exceptions numbered _____. Any new exceptions to title to the Property shown on any supplement to the PTR that may be issued from time to time by the Escrow Holder must be removed by KB Home at or prior to the Close of Escrow unless such exceptions are expressly approved by City in writing or unless such exceptions constitute Permitted Exceptions.

2.3 City's obligation to proceed to the Close of Escrow on the Property is conditioned upon the commitment by Escrow Holder to issue a CLTA Owner's Policy of Title Insurance (the "CLTA Policy") showing title to the Property vested in City with liability equal to $600,000, subject only to the Permitted Exceptions (the "Title Policy"). KB Home shall pay for the CLTA Policy.

2.4 City shall have the period commencing with the Effective Date and ending at 5:00 p.m. pacific time, forty-five (45) calendar days thereafter (the "Feasibility Period") to review, in City's sole and absolute discretion, the suitability of the Property for City's use and development, and the presence of "Hazardous Materials" (as defined in Exhibit "E" which is attached hereto and expressly incorporated herein).

2.5 City covenants that it shall, during the Feasibility Period, transmit to KB

Home a copy of the completed Phase I Environmental Site Assessment of the Property. In addition, City shall provide KB Home with copies of all environmental reports and test results conducted with respect to the Property by or on behalf of City.

2.6 Prior to the expiration of the Feasibility Period, City shall give written notice of City's approval or disapproval of the Property (the "Feasibility Notice"). If City disapproves the Property based upon its feasibility review, then this Agreement and the Escrow shall terminate, and the parties will have no further obligation to one another except as otherwise expressly provided herein. If the City approves the Property, then this Agreement continues in effect and the Parties shall carry out their obligations under the Agreement in accordance with its terms and conditions.

2.7 If any studies conducted by City during its Feasibility Period (including the Phase I Environmental Site Assessment) provides evidence of any Hazardous Materials on the Property, then KB Home shall have the option to terminate this Agreement by delivery of its written notice of termination to be issued not less than fifteen (15) business days following the delivery of such study by City to KB Home.

2.8 KB Home hereby grants City, or City's agents, the right, upon twenty-four *(24)* hours prior notice, to enter onto the Property to conduct tests or investigations, as follows: (a) City shall conduct tests or investigations at its sole cost and expense; (b) the tests or investigations shall not unreasonably interfere with KB Home's possession; and (c) City shall indemnify and hold KB Home harmless from any costs, liability or damage arising out of tests or investigation of the Property conducted by City, excluding pre-existing conditions, provided nothing herein shall constitute a waiver by City of governmental immunities including California Government Code section 810 et seq. KB Home agrees that City's duty to indemnify and hold KB Home harmless shall in no way act to abrogate or waive any immunities available to City under the Tort Claims Act of the State of California.

2.9 City shall rely solely on its own knowledge and investigation of the Property in determining whether to purchase the Property, including but not limited to determinations as to the suitability of the Property for City's intended uses made during the Feasibility Period. KB Home shall have no duty to inquire or investigate any matter related to or arising from City's performance of its investigation of the Property or City's analysis of its investigations or City's decision as to the suitability of the Property for City's purposes. With the exception of the warranties set forth in section 2.10 below, the Property is to be purchased with ALL FAULTS, in its AS-IS condition,

2.10 KB Home represents and warrants that, to its actual knowledge: (a) KB Home owns the fee interest in the Property, subject only to the Permitted Exceptions; (b) KB Home has no present knowledge of any pending litigation involving the Property; (c) KB Home has no present knowledge of any violations of, or notices concerning defects or noncompliance with, any code, statute, regulation, ordinance, judicial order, or judicial holding concerning the Property. Except as expressly warranted herein, KB Home makes no representation or warranty and has no affirmative duty to undertake any effort of any kind to determine the existence of any of the above noted conditions. These warranties shall survive the Closing and the recording of the grant deed.

2.11 Upon satisfaction of all conditions set forth in Section 3 of this Agreement, the parties will open an escrow (the "Escrow") with Fidelity National Title Company located at 8050 N. Palm Ave., Suite 110, Fresno, CA 93711, (559) 432-1680, to the attention of Bernadette Watson, Escrow Officer (the "Escrow Holder").

2.12 This Agreement, when signed by all parties and deposited with the Escrow Holder, will be the parties' Joint Escrow instructions. City and KB Home will sign any other form instructions required by Escrow Holder. Parties and each of them may submit supplemental escrow instructions.

2.13 City and KB Home will deposit all instruments, documents, money, and other items with the Escrow Holder that are: (i) identified in this Agreement; or (ii) required by the Escrow Holder to effect the Closing on the date specified below. KB Home will deposit a recordable Grant Deed, substantially in the form attached as Exhibit "D" into the Escrow prior to the Close of Escrow.

2.14 The Escrow will be considered closed on the date that the Title Company is prepared to issue a standard CLTA owner's title insurance policy to City insuring fee title in the condition set forth herein and records the Grant Deed (the "Closing", or "Close of Escrow", or the "Closing Date"). The parties will use reasonable efforts to complete the Closing promptly following the opening of Escrow.

2.15 Property taxes for the current fiscal year, if any, shall be prorated at the close of escrow. It is understood that KB Home shall be responsible for the payment of all unpaid taxes, penalties, redemptions, and costs allocable to the subject property for all periods prior to close of escrow. Refund shall be made to KB Home out of escrow, for taxes previously paid by KB Home that are allocable to the part of the current fiscal year subsequent to the close of escrow.

2.16 City will pay the cost of the preliminary title report, any transfer taxes and the cost of preparing, executing, and acknowledging the Grant Deed and the Deed of Easement and any/all other instruments. KB Home will pay and be responsible for the payment of the CLTA Policy, all unpaid taxes, penalties, redemptions, and costs allocable to the subject property for all periods prior to Close of Escrow. KB Home and City shall each pay one-half of all escrow and similar fees, except that if one party defaults under this Agreement and escrow is terminated as a result thereof, the defaulting party shall pay all escrow fees and charges. Each party shall pay its own attorneys' fees. City and KB Home will pay any other costs according to the custom in Fresno County.

2.17 It is agreed and confirmed by the City and KB Home that notwithstanding other provisions in this Agreement, the right of possession and use of the Property by the City shall commence upon Close of Escrow.

2.18 KB Home represents and warrants that it has satisfied, or will satisfy before the Close of Escrow, all legal requirements for conveyance of the Property to the City.

2.19 Parties each represent to the other that each has had no dealings with any

broker, finder, or other party concerning City's purchase of the Property. Each party agrees to indemnify and hold the other harmless from all loss, cost, damage, or expense, including reasonable attorney fees, incurred by the other as a result of any claim arising out of the acts of the indemnifying party or others on that party's behalf, for a commission, finder's fee, or similar compensation made by any broker, finder, or any party who claims to have dealt with the indemnifying party. The representations and warranties contained in this section shall survive the Close of Escrow.

2.20 Each party will sign and deliver further documents, or take any further actions required to complete the purchase and sale described herein.

3. If the City does not timely approve the property pursuant to Section 2.6, then KB Home shall have no obligations under this Section 3, and KB Home shall remain responsible for all obligations under the Covenants. If the City timely delivers the Feasibility Notice approving the Property pursuant to Section 2.6, then KB Home shall, with respect to the Property:

3.1 Construct required utility main lines and provide one (1) complete 2 inch domestic water service, excluding meter, and required fire hydrants along property frontages, one (1) 6 inch sanitary sewer service, and one (1) underground electrical power and one (1) telephone service to the Property. Specific location of individual utility services to the Property shall be determined by the City of Fresno Parks, After-school, and Recreation & Community Services Department. All described work shall be in conformance with engineered plans approved by the City.

3.2 Construct all Portland Cement Concrete (PCC) curbs, gutters, sidewalks and permanent asphalt concrete (AC) street paving along the south half of East Church Avenue between South Minnewawa Avenue and East Orangewood Avenue. KB Home shall install PCC curbs, gutters, sidewalks and AC street paving along the east half of Orangewood Drive between East Church Avenue and East Eugenia Avenue. Sidewalk pattern on Orangewood Avenue shall be a ten (10) foot solid pattern with tree wells in the back 2 feet of the sidewalk and a ten (10) foot solid pattern with tree wells in the back 2 feet of the sidewalk along Church Avenue All described work shall be in conformance with engineered plans approved by the City.

3.3 Pay the Fresno Metropolitan Flood Control District drainage fee for the Property, reflecting open space within Drainage Areas BD &BG, currently estimated at $36,390, but not to exceed $40,000.

3.4 Install standard street lighting in accordance with City of Fresno Standards.

3.5 Dedicate property needed for street right of way along Church and Orangewood Avenues, in accordance with City Standards for street widths and adopted Plan Lines.

3.6 Pay all outstanding Urban Growth Management (UGM) and

connection fees required for utility services to the Property.

3.7 Construct all required storm drain pipelines and inlets serving the Property prior to all street paving.

3.8 It is agreed and understood that KB Home shall not be entitled to any UGM or Citywide Park fee credits for the Property being transferred.

3.9 KB Home releases all rights to the $72,200 maintenance security on deposit with the City. The City shall use that money to maintain the open space portion of the Property outlined in Exhibit "C".

3.10 The requirements of this Section 3 are conditions precedent to the opening of escrow. The construction of all improvements, payment of all fees, and dedication of all right of way set forth in paragraphs 3.1, 3.2, 3.3, 3.4, 3.5, 3.6 and 3.7 must be completed to the City's satisfaction before the Parties open escrow. Upon request by KB Home, the City shall within fifteen (15) work days provide a final inspection and punchlist for the improvements. Once all of the punchlist items are completed and the conditions of this Section 3 are satisfied to the City's reasonable satisfaction, the City shall open escrow pursuant to the terms of Section 2 of this Agreement. If KB Home fails to satisfy any condition of this Section 3 within twelve (12) months from the date of the Feasibility Notice, then the City may elect to terminate this Agreement, in which case neither party shall have any further obligations under this Agreement.

3.11 KB Home shall remain responsible for all obligations under the Covenants until such time that the City accepts title to the Property.

4. Following the Close of Escrow, the City of Fresno agrees to:

4.1 Maintain the temporary storm drainage basin located on the Property (the "Basin") until advised by the Fresno Metropolitan Flood Control District that permanent master planned storm water storage facilities are operational at which time the City shall backfill the Basin.

4.2 Relieve KB Resale Properties Inc. and KB Home South Bay, Inc. of the covenants and conditions set forth in the "Statement of Covenants Affecting Land Development for Landscaping and Maintaining an Off-Site Opens Space Facility for the Final Map of Tract No. 5235", more particularly described as the requirement to landscape, irrigate and maintain in perpetuity a 2.83 acre open space facility within one-quarter mile of the subject tract.

4.3 Relieve KB Resale Properties Inc. and KB Home South Bay, Inc. of the covenants and conditions set forth in the "Statement of Covenants Affecting Land Development for Temporary Off-site Storm Drainage Facilities for the Final Map of Tract No. 5235", more particularly described as the requirement to provide temporary storm drainage facilities until a permanent storm drainage system operated and maintained by the Fresno Metropolitan Flood Control District is constructed and operational. The City shall execute covenant releases in the form

set forth in Exhibit F attached hereto.

5. The Parties agree to the following miscellaneous provisions.

5.1. To the furthest extent allowed by law, KB Home 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 City, KB Home or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of KB Home's performance of the work in Section 3 of this Agreement. KB Home's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.

If KB Home should contract or subcontract all or any portion of the work to be performed under this Agreement, KB Home shall require each consultant, contractor and subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph. Notwithstanding the preceding sentence, any consultant, contractor or subcontractor who is a "design professional" as defined in Section 2782.8 of the California Civil Code shall, in lieu of indemnity requirements set forth in the preceding paragraph, be required to indemnify, hold harmless and defend City and each of its officers, officials, employees, agency and volunteers to the furthest extent allowed by law, 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), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

KB Home further agrees that the use for any purpose and by any person of any and all of the Project hereinbefore specified, shall be at the sole and exclusive risk of KB Home at all times prior to final acceptance by the City of the completed Project.

This section shall survive termination or expiration of this Agreement.

5.2. Throughout the life of this Agreement, KB Home shall pay for and maintain in full force and effect all policies of insurance described in this section with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by City's Risk Manager. The following policies of insurance are required:

a. COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and shall include insurance for Abodily injury@, Aproperty damage@ and Apersonal and advertising injury@ with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, contractual liability (including indemnity obligations under this Agreement),with limits of liability of not less than $1,000,000 per occurrence for bodily injury and property damage, $1,000,000 per occurrence for personal and advertising injury, $2,000,000 aggregate for products and completed operations and $2,000,000 general aggregate.

b. COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Business Auto Coverage Form CA 00 01 and shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 B Any Auto), with combined single limits of liability of not less than $1,000,000 per accident for bodily injury and property damage.

c. PROFESSIONAL LIABILITY (Errors and Omissions) insurance appropriate to the respective person's profession (applicable only to those consultants, contractors and subcontractors who are providing Professional Services), with limits of liability of not less than $1,000,000.00 per claim/occurrence and $2,000,000 policy aggregate.

d. WORKERS' COMPENSATION insurance as required by the California Labor Code.

e. EMPLOYERS' LIABILITY with minimum limits of liability of not less than $1,000,000 each accident, $1,000,000 disease policy limit and $1,000,000 disease each employee.

KB Home shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and KB Home shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of City of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a 10 calendar day written notice of such cancellation of coverage. **In the event any policies are due to expire during the term of this Agreement, KB Home shall provide a new certificate evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy(ies).** Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, KB Home shall file with City a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so KB Home's insurance shall be primary and no contribution shall be required of City. In

the event claims made forms are used for any Professional Liability coverage, either (i) the policy(ies) shall be endorsed to provide not less than a 5 year discovery period, or (ii) the coverage shall be maintained for a minimum of 5 years following the termination of this Agreement and the requirements of this section relating to such coverage shall survive termination or expiration of this Agreement. Any Workers Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees and volunteers. **KB Home shall have furnished City with the certificate(s) and applicable endorsements for ALL required insurance prior to City's execution of this Agreement.**

Upon request of City, KB Homes shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

The fact that insurance is obtained by KB Home shall not be deemed to release or diminish the liability of KB Home including without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City, its officers, officials, agents, employees and volunteers, shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by KB Home. Approval or purchase of any insurance contracts or policies shall in no way relief from liability nor limit the liability of KB Home, its principals, officers, agents, employees, persons under the supervision of KB Home, vendors, suppliers, invitees, subcontractors, consultants or anyone employed directly or indirectly by any of them.

If at any time during the life of this Agreement or any extension, KB Home fails to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve KB Home of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

If KB Home should contract or subcontract all or any portion of the services to be performed under this Agreement, KB Home shall require each consultant, contractor and subcontractor to provide insurance protection in favor of City, its officers, officials, employees, volunteers and agents in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with KB Home and City prior to the commencement of any work by the consultant, contractor or subcontractor.

5.3 KB Home shall comply, at KB Home's sole cost and expense, with all applicable legal requirements when conducting the work required by Section 3 of this

Agreement. KB Home shall obtain, at KB Home's sole cost and expense, any and all necessary permits, authorizations and approvals applicable to KB Home's activities under this Agreement.

5.4 The Parties are acting as independent contractors. Neither Party, nor any of its officers, associates, agents or employees shall be deemed an employee, partner or agent of the other for any purpose. All Parties shall retain as program income any and all income generated by its respective use hereunder.

5.5 The terms, covenants and conditions of this agreement shall be binding upon KB Resale Properties, Inc., a California Corporation, and KB Home South Bay, Inc., jointly and severally.

5.6 If any Party commences any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing Party in such proceeding or action shall be entitled to recover from the other Party its reasonable attorney's fees and legal expenses.

5.7 Any notice required or intended to be given to either Party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally or deposited into the United States mail, with postage prepaid, addressed to the Party to which notice is to be given at the Party's address set forth on the signature page of this Agreement or at such other address as the Parties may from time to time designate by written notice.

5.8 Each of the Exhibits referred to in this Agreement is incorporated into and made a part of this Agreement. This Agreement is the entire agreement between the parties regarding the disposition and improvement of APN 481-300-33S, and supersedes all prior discussions, negotiations, commitments or understanding, written or oral.

5.9 The Parties may amend or cancel this Agreement only by mutual written consent of the Parties tendered into escrow, unless otherwise expressly provided herein.

5.10 This Agreement is binding upon and shall inure to the benefit of each Party, and each Party's heirs, successors, permitted assigns, and representatives. The Parties may assign this agreement and its rights hereunder, with prior written approval of the other Parties.

5.11 Time is of the essence of each term in this Agreement.

5.12 Any Party's waiver of a breach of any provision herein will not be a continuing waiver or a waiver of any subsequent breach of that or any other provision of this Agreement.

5.13 No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

5.14 This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing any action regarding the enforcement or interpretation of this Agreement any rights and duties hereunder shall only be in the Superior Court of the County of Fresno.

5.15 The provisions of this Agreement are severable. The invalidity, or unenforceability, of any provision in this Agreement will not affect the other provisions.

5.16 This Agreement is the result of the combined efforts of the Parties. If any provision of this Agreement is found to be ambiguous, the ambiguity will not be resolved by construing this Agreement in favor or against any Party, but by construing the terms according to their generally accepted meaning.

5.17 If any conflict exists between the body of this Agreement and any Exhibit or Attachment to it, the provisions of the body of this Agreement will control and take precedence over the Exhibit or Attachment.

SIGNATURES APPEAR ON NEXT PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

By: _____

Name: Bruce A. Rudd
Title: Assistant City Manager
Address: 2600 Fresno Street
Fresno, CA 93721

KB RESALE PROPERTIES, INC., a California Corporation

By: _____
Name: Ray Panek
Title: Senior Vice President

By: _____
Name: Jeffrey P. McMullen
Title: Senior Vice President

Address: KB RESALE PROPERTIES, INC
2535 Capitol Oaks Dr. STE 340
Sacramento, CA 95833

KB HOME SOUTH BAY INC., a California Corporation

By: _____
Name: Chris Reder
Title: Senior Vice President

By: _____
Name: _____
Title: _____

Address: KB Home South Bay, Inc.
6700 Koll Center Parkway
Suite 200
Pleasanton, CA 94566

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: _____
Deputy DOERR

ATTEST:
REBECCA E. KLISCH
City Clerk

By: Sherrie L Badertscher
Deputy 5/24/11

Exhibit A &A-1 – Covenants
Exhibit B & B-1– Property Description and Map
Exhibit C & C-1– Open Space Description and Map
Exhibit D – Grant Deed
Exhibit D-1- Deed of Easement
Exhibit E – Phase I Environmental Site Assessment
Exhibit F&F-1 – Form of Covenant Releases

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California

County of Alameda

On February 15, 2011 before me, Sara L. Robbins, Notary Public, personally appeared Ray Panek and Jeffrey P. McMullen who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~/are subscribed to me 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.

SARA L. ROBBINS
Commission # 1828378
Notary Public - California
Alameda County
My Comm. Expires Jan 22, 2013

Sara L Robbins

Sara L. Robbins

ALL-PURPOSE ACKNOWLEDGEMENT

State of California

County of Alameda

On February 15, 2011, before me, T. S. Robinson, Notary Public, personally appeared Chris Reder, 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~~ signatures(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.

TS Robinson

T. S. ROBINSON
Commission # 1752257
Notary Public - California
Alameda County
My Comm. Expires Jul 18, 2011

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Recording Requested by:

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

No Fee-Govt. Code 6103

FRESNO County Recorder
Robert C. Werner
DOC- 2005-0289956
Acct 5-First American Title Insurance Company
Monday, DEC 12, 2005 08:00:00
Ttl Pd $0.00 Nbr-0002039728
RGR/R7/1-13

CITY OF FRESNO
Planning and Development Department

P.W. File No. 10779

STATEMENT OF COVENANTS AFFECTING LAND DEVELOPMENT FOR LANDSCAPING AND MAINTAINING AN OFF-SITE OPEN SPACE FACILITY FOR THE FINAL MAP OF TRACT NO. 5235

EXHIBIT A

WHEREAS, KB RESALE PROPERTIES, INC., a California Corporation, hereinafter referred to as the "Owner" and **KB HOME SOUTH BAY INC., a California Corporation**, hereinafter referred to as the "Subdivider" and together are hereinafter referred to as the "Covenantor;" and

WHEREAS, Owner owns the real property situated in the City of Fresno, County of Fresno, State of California, hereinafter referred to as the "Subject Property" and more particularly described in Exhibit "A" attached hereto and incorporated herein; and

WHEREAS, Owner hereby warrants that any and all parties having record title interest in the Subject Property which may ripen into a fee have subordinated to this instrument and that all such instruments of Subordination, if any, are attached hereto and made a part of this instrument; and

WHEREAS, Subdivider has filed with the City of Fresno, Vesting Tentative Map No. 5235 which was approved by the Fresno City Planning Commission on April 21, 2004, hereinafter referred to as the "Tentative Map" and incorporated into this Statement by this reference; and

WHEREAS, a condition of approval for the Tentative Map, in accordance with the provisions of the Roosevelt Community Plan Policies Nos. 1-17.1 and 1-17.3, requires the Subdivider to provide 2.83 acres (5% of the gross area of the Tentative Map) for public common open space purposes or provide an equivalent amount of area for an approved public or quasi-public open space within one-quarter mile of the Tentative Map, hereinafter referred to as the "Total Open Space Area;" and

WHEREAS, the Subdivider has filed with the City of Fresno, a Final Map of Tract No. 5235 pursuant to said Tentative Map, hereinafter referred to as the "Final Map," which provides 1.45 acres of open space area; and

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WHEREAS, the Subdivider has elected to satisfy the balance (1.38 acres) of the Total Open Space Area required for the Final Map on the Subject Property; and

WHEREAS, the Covenantor and the City of Fresno desire to enter into an agreement providing for the development and maintenance of the open space area on the Subject Property to satisfy the Total Open Space Area obligation for the Final Map.

COVENANTS, CONDITIONS, AND RESTRICTIONS

The Covenantor hereby covenants that the Subject Property shall be held, conveyed, encumbered, used, occupied, developed, maintained, and improved subject to the following covenants, conditions, and restrictions, which are for the purpose of enhancing attractiveness, usefulness, value, desirability, and safety of the Subject Property, the surrounding property, and the public at large, and to minimize possible adverse effects on the public health, safety, peace, and general welfare. Each of the covenants, conditions, and restrictions contained in this Statement shall run with the subject property and shall be binding upon and inure to the benefit of each successive owner of the Subject Property and his heirs, successors, and assigns.

1. The Owner grants to the City of Fresno, the owners of all final maps of the Tentative Map and the general public, the right to enter upon the Subject Property and the open space area for purposes of use and enjoyment of the open space area facility.

2. The Owner agrees that the area within the Subject Property, hereinafter referred to as the "Open Space Facility" and more particularly described in Exhibit "B" attached hereto and incorporated herein, shall be used as a public open space area facility.

3. The Covenantor agrees to provide and install landscaping and irrigation system(s) for the Open Space Facility in accordance with improvement/landscaping plans prepared in a form and manner approved by the Planning and Development Director. The design of the Open Space

Facility, including fencing when required, shall conform to conditions of approval of the Tentative Map, the City of Fresno General Plan and the Roosevelt Community Plan and their policies. The cost of preparing such plans, including plan review and permits, shall be the responsibility of the Covenantor.

4. The work shall be constructed pursuant to any necessary permit issued by the Planning and Development Department.

5. **The Open Space Facility shall be completed, inspected and accepted by the Planning and Development Department prior to occupancy of the 120th dwelling in Tract No. 5235.**

6. Notwithstanding any provision of this Statement to the contrary, the Covenantor shall have the right to establish conditions and prohibitions on public access to the Open Space Facility until such time as the Open Space Facility has been accepted by the Planning and Development Department.

7. The Covenantor agrees to maintain said Open Space Facility. The Covenantor shall deposit with the City a maintenance security in the amount of **Seventy-Two Thousand Two Hundred dollars ($72,200)**, in the form of a certificate of deposit or passbook assigned to the City or cash to insure continued maintenance of the Open Space Facility.

8. The maintenance security may be use by the City to defray all or part of the cost to maintain the Open Space Facility should the Covenantor fail to maintain said facility in accordance with the approved plans.

9. The maintenance of the Open Space Facility shall remain the responsibility of the Covenantor and the security deposit shall not remove the City's ability to enforce the provision of the agreement by any legal or equitable means.

10. The Owner agrees to provide the Open Space Facility for the Final Map on the Subject Property and agrees that such Open Space Facility shall satisfy only the open space area

requirement for the Tentative Map and shall not be used to satisfy any open space area requirement which may be imposed on the Subject Property as a condition of development of the Subject Property or to reduce the Subject Property's gross acreage for the purpose of determining the Subject Property's open space area obligation.

11. This Statement shall in no way be construed as a grant by the City of Fresno of any rights to the Covenantor to trespass upon land rightfully in the possession of, or owned by another, whether such land be privately or publicly owned.

12. The City of Fresno shall not be liable to the Covenantor or to any other person, firm or corporation whatsoever, for any injury or damage that may result to any person or property by or from any cause whatsoever in, on or about the Open Space Facility of said land covered by this Statement, or any part thereof. The Covenantor hereby releases and agrees to indemnify, defend and save the City of Fresno harmless from and against any and all injuries to and deaths of persons, and all claims, demands, costs, loss damage and liability, howsoever same may be caused, resulting directly or indirectly from the performance of any or all work to be done in and upon the street rights-of-way and said Open Space Facility and upon the premises adjacent thereto pursuant to this Statement, and also from all injuries to and deaths of persons, and all claims, demands, costs, loss, damage and liability, howsoever same may be caused, either directly or indirectly made or suffered by the Covenantor, the Covenantor's agents, employees and subcontractors, while engaged in the performance of said work. The Covenantor further agrees that the use for any purpose and by any person of any and all of the Open Space Facility hereinbefore specified, shall be at the sole and exclusive risk of the Covenantor.

13. The conditions of this Statement are intended to benefit both the Subject Property, the public and public properties. Accordingly, it is agreed the City of Fresno shall have the right to enforce this Statement by any legal or equitable means against the Covenantor and such person or persons in actual possession of the Subject Property who directly or who through any agent

violate the terms hereof.

14. The foregoing conditions and obligations of this Statement shall remain in full force and effect until such time as the Planning and Development Director issues a written release of such conditions and obligations and records such release with the Fresno County Recorder.

15. The provisions of this Statement shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforce ability of any other provision hereof. Whenever the context of the Statement so requires, in interpreting this Statement, any gender includes the other genders, the singular includes the plural, and the plural includes the singular.

* * * *

DATED: 11/01/05

CITY OF FRESNO,
a Municipal Corporation

By: _____
Nick P. Yovino, Director
Planning and Development Department

APPROVED AS TO FORM:

HILDA CANTU-MONTY
City Attorney

By _____
Deputy

COVENANTOR (Owner)

KB RESALE PROPERTIES, INC.,
a California Corporation

By: _____
P.A. [Augie] Dent III,
Senior Vice President

COVENANTOR (Subdivider)

KB HOME SOUTH BAY INC.,
a California Corporation

By: _____
P.A. Dent III, Senior Vice President

(Attach Notary Acknowledgment)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Monterey } ss.

On October 21, 2005 (Date) before me, T. S. Robinson (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),

personally appeared P. A. (Augie) Dent, III (Name(s) of Signer(s)),

☑ personally known to me
☐ 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.

T. S. ROBINSON
Commission # 1431096
Notary Public - California
Monterey County
My Comm. Expires Jul 18, 2007

WITNESS my hand and official seal.

T S Robinson
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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8

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Alameda } ss.

On October 18, 2005 (Date), before me, Sara L. Robbins (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),

personally appeared P.A. Dent III (Name(s) of Signer(s)),

☑ personally known to me

☐ 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.

SARA L. ROBBINS
Commission # 1546469
Notary Public - California
Alameda County
My Comm. Expires Jan 22, 2009

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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CLERK'S CERTIFICATE

STATE OF CALIFORNIA)
COUNTY OF FRESNO)
CITY OF FRESNO)

On November 2, 2005, before me, Cindy Brier personally appeared **Nick P. Yovino, Planning and Development Director**, personally known to me (or provided to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of the CITY OF FRESNO of which the person acted, executed the instrument.

WITNESS my hand and official seal.

REBECCA E. KLISCH, CMC
CITY CLERK

By Cindy Brier
DEPUTY

K:\jonb\Map docs\Final Maps\FM 5235\T-5235 Sub Docs\T-5235 Covenant off-site open space.wpd

EXHIBIT A

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTH HALF OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 17, SAID POINT BEING ON THE WEST LINE OF PARCEL 2 OF PARCEL MAP NO. 4359, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 30 OF PARCEL MAPS AT PAGE 41, FRESNO COUNTY RECORDS; THENCE NORTH 01°29'36" WEST ALONG THE WEST LINE OF SAID PARCEL 2, A DISTANCE OF 992.07 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 2; THENCE ALONG THE BOUNDARY OF SAID PARCEL 2, THE FOLLOWING COURSES:
NORTH 89°27'06" EAST, A DISTANCE OF 799.58 FEET; THENCE
SOUTH 01°43'00" EAST, A DISTANCE OF 579.81 FEET; THENCE
NORTH 88°17'00" EAST, A DISTANCE OF 530.00 FEET; THENCE
SOUTH 01°43'00" EAST, A DISTANCE OF 310.00 FEET; THENCE
SOUTH 88°17'00" WEST, A DISTANCE OF 342.22 FEET; THENCE
SOUTH 01°43'00" EAST, A DISTANCE OF 200.00 FEET; THENCE
NORTH 88°17'00" EAST, A DISTANCE OF 342.22 FEET; THENCE
SOUTH 01°43'00" EAST, A DISTANCE OF A DISTANCE OF 940.44 FEET TO A POINT ON THE CENTERLINE OF FANCHER CREEK; THENCE WESTERLY ALONG THE CENTERLINE OF SAID FANCHER CREEK THE FOLLOWING COURSES:
NORTH 65°41'08" WEST, A DISTANCE OF 951.50 FEET; THENCE
NORTH 85°05'45" WEST, A DISTANCE OF 66.29 FEET; THENCE
SOUTH 65°08'55" WEST, A DISTANCE OF 133.70 FEET; THENCE
SOUTH 29°08'29" WEST, A DISTANCE OF 20.38 FEET; THENCE
SOUTH 58°32'25" WEST, A DISTANCE OF 24.50 FEET; THENCE
SOUTH 53°53'54" WEST, A DISTANCE OF 51.44 FEET; THENCE
SOUTH 60°22'50" WEST, A DISTANCE OF 51.55 FEET; THENCE
SOUTH 70°30'10" WEST, A DISTANCE OF 56.99 FEET; THENCE
SOUTH 76°51'49" WEST, A DISTANCE OF 56.40 FEET; THENCE
SOUTH 77°36'00" WEST A DISTANCE OF 63.82 FEET; THENCE
SOUTH 79°16'01" WEST, A DISTANCE OF 0.66 FEET TO A POINT ON THE WEST LINE OF SAID PARCEL 2; THENCE NORTH 01°29'16" WEST, ALONG THE WEST LINE OF SAID PARCEL 2, A DISTANCE OF 805.11 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ONE-QUARTER OF ALL THE OIL, GAS, HYDROCARBON SUBSTANCES AND MINERALS IN, UNDER AND WHICH MAY BE PRODUCED FROM SAID REAL PROPERTY, AND ONE-QUARTER OF ALL THE ROYALTIES, PAYMENTS, RIGHTS, AND BENEFITS RESERVED TO THE LESSOR IN ANY OIL, GAS, OR MINERAL LEASE OF SAID LAND, AND THE RIGHT TO ENTER UPON SAID REAL PROPERTY AND TO EXPLORE AND PROSPECT FOR AND STORE AND REMOVE SAID OIL, GAS, HYDROCARBONS AND MINERALS THEREFROM AND THE RIGHT TO CONSTRUCT AND MAINTAIN ON SAID LAND SUCH ROADS, PIPE LINES, TELEPHONE LINES, TANKS, BUILDINGS, AND OTHER APPURTENANCES AS MAY BE REASONABLY NECESSARY OR INCIDENTAL TO SUCH OPERATIONS, AND TO EXERCISE SUCH OTHER RIGHTS, INCLUDING THE RIGHT OF INGRESS AND EGRESS, AS MAY BE REASONABLY NECESSARY OR INCIDENTAL THERETO, AS RESERVED IN THE DEED FROM MILTON G. COOPER & SON, INC., A CORPORATION, TO M. DUCEY AND MABLE DUCEY, HUSBAND AND WIFE, AS JOINT TENANTS, DATED MARCH 21, 1945, RECORDED MARCH 22, 1945 AS DOCUMENT NO. 11687, OFFICIAL RECORDS.

11

APN 481-300-33S
OPEN SPACE AREA

EXHIBIT "B"

LEGAL DESCRIPTION

BEING A PORTION OF THAT CERTAIN PARCEL DESCRIBED BY DEED AND FILED FOR RECORD AS DOCUMENT NO. 2005-0009214, OFFICIAL RECORDS OF FRESNO COUNTY, LYING WITHIN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 14 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF SECTION 17, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID PARCEL; THENCE SOUTH 1°01'53" EAST, A DISTANCE OF 75.46 FEET, ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER AND THE EAST LINE OF SAID PARCEL TO THE FUTURE SOUTH RIGHT-OF-WAY LINE OF EAST CHURCH AVENUE, AS SHOWN ON THAT CERTAIN MAP TITLED "OFFICIAL PLAN LINES FOR EAST CHURCH AVENUE" AND RECORDED IN VOLUME 7 OF PRECISE MAPS AT PAGE 67, OFFICIAL RECORDS OF FRESNO COUNTY AND ALSO BEING THE **TRUE POINT OF BEGINNING**; THENCE SOUTH 01°01'53" EAST, A DISTANCE OF 314.14 FEET, CONTINUING ALONG SAID EAST LINE TO THE NORTHERLY BOUNDARY LINE AS SHOWN ON THAT CERTAIN MAP TITLED "TRACT NO. 4682" RECORDED IN BOOK 68 OF OFFICIAL PLATS AT PAGE 3; THENCE CONTINUING ALONG SAID NORTHERLY LINE, THE FOLLOWING FIVE (5) COURSES:
NORTH 56°26'18" WEST, A DISTANCE OF 11.12 FEET; THENCE
NORTH 33°20'06" EAST, A DISTANCE OF 14.63 FEET; THENCE
NORTH 69°58'27" WEST, A DISTANCE OF 61.03 FEET; THENCE
NORTH 78°59'40" WEST, A DISTANCE OF 58.71 FEET; THENCE
SOUTH 89°47'31" WEST, A DISTANCE OF 99.27 FEET; THENCE, LEAVING SAID NORTHERLY LINE, NORTH 01°01'53" WEST, A DISTANCE OF 275.64 FEET TO SAID FUTURE SOUTH RIGHT-OF-WAY LINE; THENCE NORTH 89°48'06" EAST, A DISTANCE OF 67.57 FEET, ALONG SAID FUTURE SOUTH RIGHT-OF-WAY LINE TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 753.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AND ALONG SAID FUTURE SOUTH RIGHT-OF-WAY LINE, THROUGH A CENTRAL ANGLE OF 6°52'18", AN ARC DISTANCE OF 90.31 FEET; THENCE SOUTH 83°19'36" EAST, A DISTANCE OF 57.33 FEET, ALONG SAID SOUTH RIGHT-OF-WAY LINE, TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 1.380 ACRES OR 60,113 SQUARE FEET, MORE OR LESS.

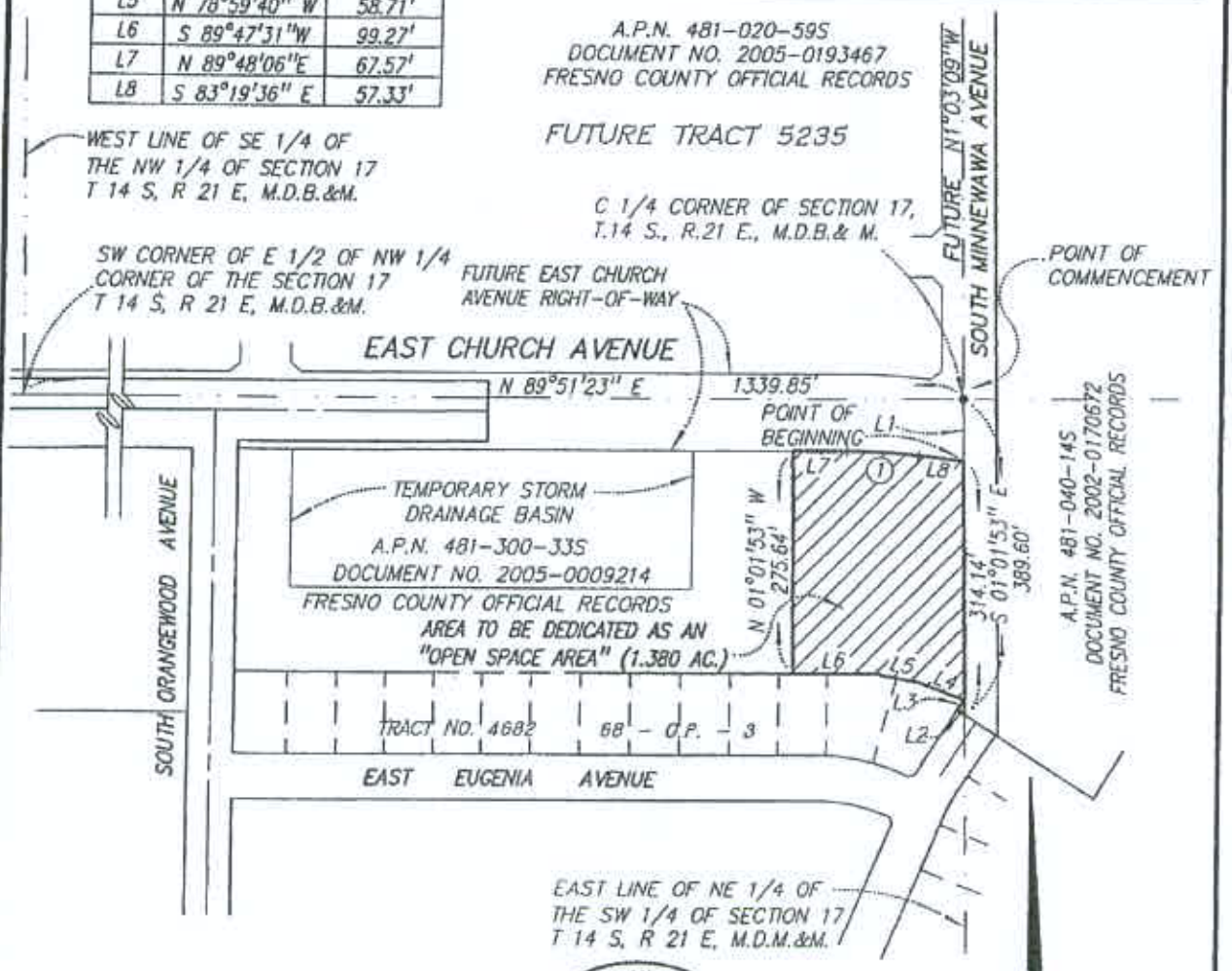
T-5235
2005-100
15-A-7944

12

EXHIBIT "B"

LINE TABLE		
LINE	BEARING	LENGTH
L1	S 01°01'53" E	75.46'
L2	N 56°26'18" W	11.12'
L3	N 33°20'06" E	14.63'
L4	N 69°58'27" W	61.03'
L5	N 78°59'40" W	58.71'
L6	S 89°47'31"W	99.27'
L7	N 89°48'06"E	67.57'
L8	S 83°19'36" E	57.33'

CURVE DATA TABLE					
NO	DELTA	RADIUS	LENGTH	CH BEARING	CHORD
1	6°52'18"	753.00'	90.31'	N86°45'45"W	90.26'



LICENSED LAND SURVEYOR
KENT A. HYSELL
No. 6953
EXP. 9-30-07
STATE OF CALIFORNIA

THOMPSON-HYSELL ENGINEERS
A DIVISION OF THE KEITH COMPANIES, INC.
1016 12TH STREET, MODESTO, CA 95354
(209) 521-6966 FAX (209) 521-9045

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REF. & REV.
200_5_-

T-5235

CITY OF FRESNO
DEPARTMENT OF PUBLIC WORKS

DEDICATION FOR
OPEN SPACE
SOUTH OF EAST CHURCH AVENUE

PROJECT I.D. _____
FUND NO. _____
ORG. NO. _____

DR. BY DAH
CH. BY MH
DATE 10-13-05
SCALE 1" = 200'

SHEET NO. 1
OF 1 SHEETS
15-A-7944

13

WHEN RECORDED MAIL TO:

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

12/12/2005,20050289952

PLEASE CONFORM

NO FEE - Government Code 6103

CITY OF FRESNO
Public Works Department

P.W. File No. 10779

STATEMENT OF COVENANTS AFFECTING LAND DEVELOPMENT FOR TEMPORARY OFF-SITE STORM DRAINAGE FACILITIES FOR THE FINAL MAP OF TRACT NO. 5235

EXHIBIT A-1

RECITALS

WHEREAS, KB RESALE PROPERTIES, INC., a California Corporation, hereinafter referred to as the "Owner," of the real property situated in the City of Fresno, County of Fresno, State of California, and **KB HOME SOUTH BAY INC., a California Corporation**, hereinafter designated and called the "Developer," shall hereinafter collectively and individually, where applicable, shall be jointly designated and referred to as the "Covenantor," hereinafter referred to as the "Subject Property" and more particularly described in the attached Exhibit "A", and

WHEREAS, the Covenantor hereby warrants that any and all parties having record title interest in the Subject Property which may ripen into a fee have subordinated to this instrument and that all such instruments of Subordination, if any, are attached hereto and made a part of this instrument; and

WHEREAS, a condition of approval for the Final Map of Tract No. 5235, hereinafter referred to as "map," requires the provision and maintenance of temporary storm water storage (ponding basin) and associated facilities, hereinafter referred to as "temporary storm drainage facilities," until such time that permanent storm drainage facilities are available to serve said map; and

WHEREAS, the Covenantor and the City of Fresno desire to enter into an agreement providing for such temporary storm drainage facilities on the Subject Property to serve said Tract No. 5235.

COVENANTS, CONDITIONS, AND RESTRICTIONS

The Covenantor hereby covenants that the Subject Property shall be held, conveyed, encumbered, used, occupied, developed, maintained, and improved subject to the following covenants, conditions, and restrictions, which are for the purpose of enhancing attractiveness, usefulness, value, desirability, and safety of the Subject Property, the surrounding property, and the public at large, and to minimize possible adverse effects on the public health, safety, peace, and general welfare. Each of the covenants, conditions, and restrictions contained in this

Statement shall run with the subject property and shall be binding upon and inure to the benefit of each successive owner of the Subject Property and his heirs, successors, and assigns during his ownership thereof.

1. The Covenantor agrees that a portion of the Subject Property, more particularly described in the attached Exhibit B, shall be used for temporary storm drainage facilities purposes until the City of Fresno releases the Subject Property from such use. The Covenantor agrees to construct and maintain said temporary storm drainage facilities; and grants to the City of Fresno the right to enter upon the Subject Property for purposes of inspection and to regulate the use of and access to the Subject Property.

2. The temporary storm drainage facilities shall be constructed to conform to the grading plans prepared at the Covenantor's expense and approved by the Development Department. The design of the temporary ponding basin, including fencing, shall conform to Public Works standard specifications. The work shall be constructed pursuant to a grading permit issued by the Development Department

3. The Public Works Director shall determine when such temporary storm drainage facilities are no longer required. Within sixty (60) calendar days after the Public Works Director notifies the Covenantor that such temporary storm drainage facilities are no longer necessary, Covenantor agrees, in accordance with grading plans prepared at the Covenantor's expense and approved by the Development Department, to obtain a grading permit from the Development Department to abandon such temporary storm drainage facilities. The abandonment of said temporary storm drainage facilities may include, but is not limited to, demolition and disposal of certain structures, fencing, backfilling, compaction and grading the Subject Property in accordance with said approved grading plan. Compaction reports, provided at the Covenantor's expense, shall be required for backfilled areas.

4. This Statement shall in no way be construed as a grant by the City of Fresno of any rights to the Covenantor to trespass upon land rightfully in the possession of, or owned by another,

whether such land be privately or publicly owned.

5. The City of Fresno shall not be liable to the Covenantor or to any other person, firm or corporation whatsoever, for any injury or damage that may result to any person or property by or from any cause whatsoever in, on or about the Subject Property of said land covered by this Statement, or any part thereof. The Covenantor hereby releases and agrees to indemnify, defend and save the City of Fresno harmless from and against any and all injuries to and deaths of persons, and all claims, demands, costs, loss damage and liability, howsoever same may be caused, resulting directly or indirectly from the performance of any or all work to be done in and upon the street rights-of-way and said Subject Property and upon the premises adjacent thereto pursuant to this Statement, and also from all injuries to and deaths of persons, and all claims, demands, costs, loss, damage and liability, howsoever same may be caused, either directly or indirectly made or suffered by the Covenantor, the Covenantor's agents, employees and subcontractors, while engaged in the performance of said work. The Covenantor further agrees that the use for any purpose and by any person of any and all of the temporary storm drainage facilities and improvements hereinbefore specified, shall be at the sole and exclusive risk of the Covenantor at all times prior to the release by the City of Fresno of the temporary storm drainage facilities and other improvements thereon and therein.

6. The conditions of this Statement are intended to benefit both the Subject Property, the public and public properties. Accordingly, it is agreed the City of Fresno shall have the right to enforce this Statement by any legal or equitable means against the Covenantor and such person or persons in actual possession of the Subject Property who directly or who through any agent violate the terms hereof.

7. The foregoing conditions and obligations of this Statement shall remain in full force and effect until such time as: (a) the work to abandon the temporary storm drainage facilities under the grading permit issued by the Development Department is completed, and (b) the Public Works Director issues a written release of such conditions and obligations and records such

release with the Fresno County Recorder.

8. The provisions of this Statement shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforce ability of any other provision hereof. Whenever the context of the Statement so requires, in interpreting this Statement, any gender includes the other genders, the singular includes the plural, and the plural includes the singular.

******

DATED: 11/01/05

CITY OF FRESNO,
a Municipal Corporation

DAVID D. HEALEY, Director
Public Works Department

By: _____
Michael T. Kirn, Assistant Director

APPROVED AS TO FORM:

HILDA CANTÚ MONTOY
City Attorney

By: _____
Deputy

COVENANTOR (Owner):

KB RESALE PROPERTIES, INC.,
a California Corporation

By: _____
P.A. [Augie] Dent III,
Senior Vice President

COVENANTOR (Developer):

KB HOME SOUTH BAY INC.,
a California Corporation

By: _____
P.A. Dent III, Senior Vice President

(Attach Notary Acknowledgment)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of Monterey } ss.

On October 21, 2005 (Date) before me, T. S. Robinson (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),
personally appeared P. A. (Angie) Dent, III (Name(s) of Signer(s)),

☑ personally known to me
☐ 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.

T. S. ROBINSON
Commission # 1431096
Notary Public - California
Monterey County
My Comm. Expires Jul 18, 2007

WITNESS my hand and official seal.

T S Robinson
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Alameda } ss.

On October 18, 2005 (Date) before me, Sara L Robbins (Name and Title of Officer (e.g., "Jane Doe, Notary Public")),

personally appeared P. A. Dent III (Name(s) of Signer(s)),

☑ personally known to me

☐ 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.

SARA L. ROBBINS
Commission # 1546469
Notary Public - California
Alameda County
My Comm. Expires Jan 22, 2009

Place Notary Seal Above

WITNESS my hand and official seal.

Sara L Robbins

Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

© 2004 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-2402 Item No. 5907 Reorder: Call Toll-Free 1-800-876-6827

CLERK'S CERTIFICATE

STATE OF CALIFORNIA)
COUNTY OF FRESNO)
CITY OF FRESNO)

On November 2, 2005 before me, Cindy Bruer
personally appeared Michael T. Kirn, Asst. P.W. Director
personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons(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(s) the person(s), or the entity upon behalf of the CITY OF FRESNO which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

REBECCA E. KLISCH, CMC
CITY CLERK

By Cindy Bruer
DEPUTY

K:\jonb\Map docs\Final Maps\FM 5235\T-5235 Sub Docs\T-5235 Covenant Temporary Drainage Facilities Off-Site.wpd

EXHIBIT A

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTH HALF OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 17, SAID POINT BEING ON THE WEST LINE OF PARCEL 2 OF PARCEL MAP NO. 4359, ACCORDING TO THE MAP THEREOF RECORDED IN BOOK 30 OF PARCEL MAPS AT PAGE 41, FRESNO COUNTY RECORDS; THENCE NORTH 01°29'36" WEST ALONG THE WEST LINE OF SAID PARCEL 2, A DISTANCE OF 992.07 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 2; THENCE ALONG THE BOUNDARY OF SAID PARCEL 2, THE FOLLOWING COURSES:
NORTH 89°27'06" EAST, A DISTANCE OF 799.58 FEET; THENCE
SOUTH 01°43'00" EAST, A DISTANCE OF 579.81 FEET; THENCE
NORTH 88°17'00" EAST, A DISTANCE OF 530.00 FEET; THENCE
SOUTH 01°43'00" EAST, A DISTANCE OF 310.00 FEET; THENCE
SOUTH 88°17'00" WEST, A DISTANCE OF 342.22 FEET; THENCE
SOUTH 01°43'00" EAST, A DISTANCE OF 200.00 FEET; THENCE
NORTH 88°17'00" EAST, A DISTANCE OF 342.22 FEET; THENCE
SOUTH 01°43'00" EAST, A DISTANCE OF A DISTANCE OF 940.44 FEET TO A POINT ON THE CENTERLINE OF FANCHER CREEK; THENCE WESTERLY ALONG THE CENTERLINE OF SAID FANCHER CREEK THE FOLLOWING COURSES:
NORTH 65°41'08" WEST, A DISTANCE OF 951.50 FEET; THENCE
NORTH 85°05'45" WEST, A DISTANCE OF 66.29 FEET; THENCE
SOUTH 65°08'55" WEST, A DISTANCE OF 133.70 FEET; THENCE
SOUTH 29°08'29" WEST, A DISTANCE OF 20.38 FEET; THENCE
SOUTH 58°32'25" WEST, A DISTANCE OF 24.50 FEET; THENCE
SOUTH 53°53'54" WEST, A DISTANCE OF 51.44 FEET; THENCE
SOUTH 60°22'50" WEST, A DISTANCE OF 51.55 FEET; THENCE
SOUTH 70°30'10" WEST, A DISTANCE OF 56.99 FEET; THENCE
SOUTH 76°51'49" WEST, A DISTANCE OF 56.40 FEET; THENCE
SOUTH 77°36'00" WEST A DISTANCE OF 63.82 FEET; THENCE
SOUTH 79°16'01" WEST, A DISTANCE OF 0.66 FEET TO A POINT ON THE WEST LINE OF SAID PARCEL 2; THENCE NORTH 01°29'16" WEST, ALONG THE WEST LINE OF SAID PARCEL 2, A DISTANCE OF 805.11 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ONE-QUARTER OF ALL THE OIL, GAS, HYDROCARBON SUBSTANCES AND MINERALS IN, UNDER AND WHICH MAY BE PRODUCED FROM SAID REAL PROPERTY, AND ONE-QUARTER OF ALL THE ROYALTIES, PAYMENTS, RIGHTS, AND BENEFITS RESERVED TO THE LESSOR IN ANY OIL, GAS, OR MINERAL LEASE OF SAID LAND, AND THE RIGHT TO ENTER UPON SAID REAL PROPERTY AND TO EXPLORE AND PROSPECT FOR AND STORE AND REMOVE SAID OIL, GAS, HYDROCARBONS AND MINERALS THEREFROM AND THE RIGHT TO CONSTRUCT AND MAINTAIN ON SAID LAND SUCH ROADS, PIPE LINES, TELEPHONE LINES, TANKS, BUILDINGS, AND OTHER APPURTENANCES AS MAY BE REASONABLY NECESSARY OR INCIDENTAL TO SUCH OPERATIONS, AND TO EXERCISE SUCH OTHER RIGHTS, INCLUDING THE RIGHT OF INGRESS AND EGRESS, AS MAY BE REASONABLY NECESSARY OR INCIDENTAL THERETO, AS RESERVED IN THE DEED FROM MILTON G. COOPER & SON, INC., A CORPORATION, TO M. DUCEY AND MABLE DUCEY, HUSBAND AND WIFE, AS JOINT TENANTS, DATED MARCH 21, 1945, RECORDED MARCH 22, 1945 AS DOCUMENT NO. 11687, OFFICIAL RECORDS.

APN 481-300-33S
DRAINAGE BASIN for T-5235

EXHIBIT "B"

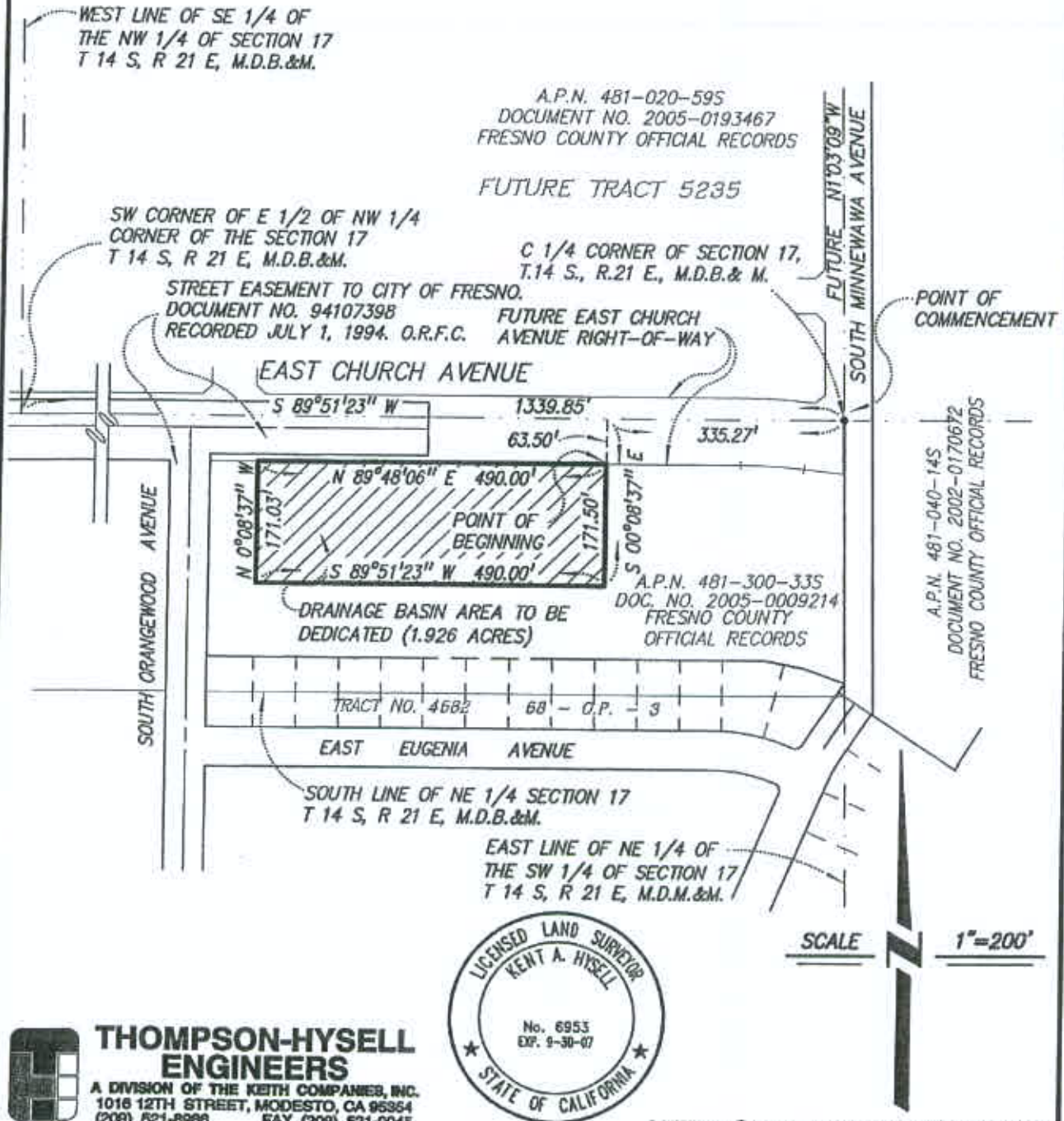
LEGAL DESCRIPTION

BEING A PORTION OF THAT CERTAIN PARCEL DESCRIBED BY DEED AND FILED FOR RECORD AS DOCUMENT NO. 2005-0009214, OFFICIAL RECORDS OF FRESNO COUNTY, LYING WITHIN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 14 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF SECTION 17, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID PARCEL; THENCE SOUTH 89°51'23" WEST, A DISTANCE OF 335.27 FEET, ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER AND THE NORTH LINE OF SAID PARCEL; THENCE SOUTH 00°08'37" EAST, A DISTANCE OF 63.50 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE SOUTH 00°08'37" EAST, A DISTANCE OF 171.50 FEET, CONTINUING ALONG THE SOUTHERLY EXTENSION OF LAST SAID LINE; THENCE SOUTH 89°51'23" WEST, A DISTANCE OF 490.00 FEET; THENCE NORTH 00°08'37" WEST, A DISTANCE OF 171.03 FEET; THENCE NORTH 89°48'06" EAST, A DISTANCE OF 490.00 FEET TO THE **TRUE POINT OF BEGINNING**.

CONTAINING 1.926 ACRES OR 83918 SQUARE FEET, MORE OR LESS.

EXHIBIT "B"



LICENSED LAND SURVEYOR
KENT A. HYSELL
No. 6953
EXP. 9-30-07
STATE OF CALIFORNIA

THOMPSON-HYSELL ENGINEERS
A DIVISION OF THE KEITH COMPANIES, INC.
1016 12TH STREET, MODESTO, CA 95354
(209) 521-8966 FAX (209) 521-9045

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REF. & REV. 200__-	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS	PROJECT I.D. ____ FUND NO. ____ ORG. NO. ____	
T-5235	DRAINAGE BASIN DEDICATION SOUTH OF EAST CHURCH AVENUE	DR. BY DAH CH. BY MH DATE 10-12-05 SCALE 1" = 200'	SHEET NO. 1 OF 1 SHEETS 15-A-7944

EXHIBIT "A"

APN 481-300-33S
Grant Deed

A portion of Parcel "B" of Lot Line Adjustment No. 03-96 as described in that Grant Deed recorded November 12, 1996 as Document No. 96150885, Official Records of Fresno County, situated in the southwest quarter of Section 17, Township 14 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plat thereof, being more particularly described as follows:

COMMENCING at the Center Quarter Corner of said Section 17, said Center Quarter Corner also being the northeast corner of said Parcel "B"; thence S 0°48'50" E, along the east line of said southwest quarter of Section 17 and along the east line of said Parcel "B", a distance of 75.46 feet to the southeast corner of that portion of East Church Avenue previously dedicated for public street purposes by that Deed of Easement recorded November 14, 2005 as Document No. 2005-0268556, Official Records of Fresno County, said southeast corner being the TRUE POINT OF BEGINNING of this description; thence continuing S 0°48'50" E, along the east line of said southwest quarter and along the east line of said Parcel "B", a distance of 314.51 feet to the southeast corner of the north 12 acres of the northeast quarter of said southwest quarter, last said southeast corner also being the southeast corner of said Parcel "B"; thence N 56°17'54" W, along the southerly boundary of said Parcel "B", a distance of 10.91 feet to the southeasterly line of Lot 107 of Tract No. 4682, according to the map thereof recorded in Volume 68 of Plats at Pages 3 through 5, Fresno County Records; thence N 33°33'24" E, continuing along said southerly boundary and along said southeasterly line, a distance of 14.77 feet to the northeasterly corner of said Lot 107; thence N 69°49'16" W, continuing along said southerly boundary and along the northeasterly line of said Lot 107, a distance of 61.14 feet; thence N 78°46'20" W, continuing along said southerly boundary and along the northeasterly line of Lots 107 and 106 of said Tract No. 4682, a distance of 58.71 feet; thence N 89°58'48" W, continuing along said southerly boundary and along the north line of Lots 106 through 94, inclusive, of said Tract No. 4682, a distance of 791.79 feet to the east right-of-way line of that portion of South Orangewood Drive previously dedicated for public street purposes by that Deed of Easement recorded July 1, 1994 as Document No. 94107398, Official Records of Fresno County; thence N 0°01'19" E, along said east right-of-way line, a distance of 275.93 feet to the south right-of-way line of said portion of East Church Avenue previously dedicated for public street purposes by said Document No. 2005-0268556; thence S 89°58'41" E, along said south right-of-way line, a distance of 756.10 feet to the beginning of a tangent curve concave southerly and having a radius of 753.00 feet; thence easterly, continuing along said south right-of-way line and along the arc of said curve, through a central angle of 6°52'18", an arc distance of 90.31 feet; thence S 83°06'23" E, continuing along said south right-of-way line and tangent to last said curve, a distance of 57.33 feet to the TRUE POINT OF BEGINNING.

Contains an area of 5.755 acres, more or less, or 250,711 square feet, more or less.

SUBJECT TO an easement and right-of-way for public street purposes granted to the City of Fresno by that Deed of Easement recorded _____, 2010 as Document No. 2010-_____, Official Records of Fresno County.

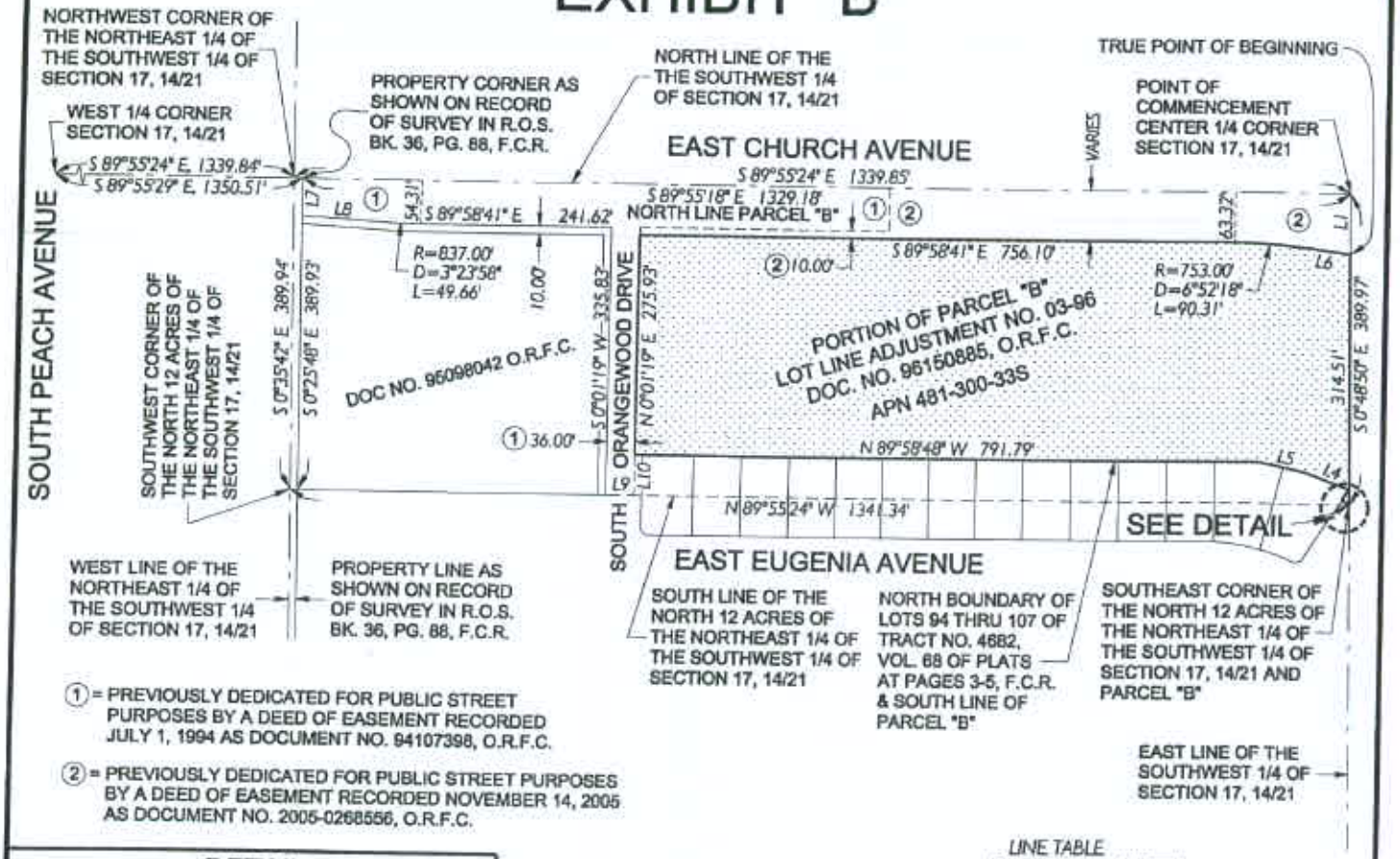
PROFESSIONAL LAND SURVEYOR
HIMAWAN BRASALI
NO. 7800
EXP. 12/31/11
STATE OF CALIFORNIA

1/14/10

2010-017
15-A-8703
D:\DATA\Parks\SE cor Church & Orangewood\Grant Deed Exhibit A.doc

EXHIBIT B

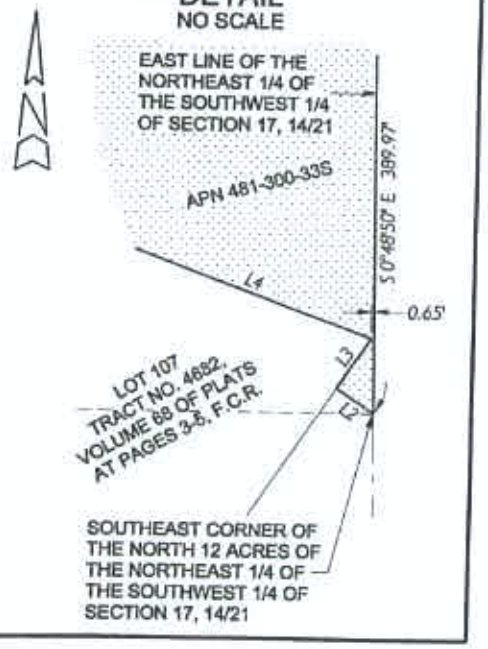
EXHIBIT "B"



① = PREVIOUSLY DEDICATED FOR PUBLIC STREET PURPOSES BY A DEED OF EASEMENT RECORDED JULY 1, 1994 AS DOCUMENT NO. 94107398, O.R.F.C.

② = PREVIOUSLY DEDICATED FOR PUBLIC STREET PURPOSES BY A DEED OF EASEMENT RECORDED NOVEMBER 14, 2005 AS DOCUMENT NO. 2005-0268556, O.R.F.C.

DETAIL
NO SCALE



NO SCALE

LINE TABLE

	BEARING	LENGTH
L1	S 0°48'50" E	75.46'
L2	N 56°17'54" W	10.91'
L3	N 33°33'24" E	14.77'
L4	N 69°49'16" W	61.14'
L5	N 78°46'20" W	58.71'
L6	S 83°06'23" E	57.33'
L7	S 0°25'48" E	47.07'
L8	S 86°34'43" E	99.72'
L9	S 89°55'24" E	36.00'
L10	N 0°01'19" E	49.94'

PROFESSIONAL LAND SURVEYOR
HIMAWAN BRASALI
NO. 7800
EXP. 12/31/11
STATE OF CALIFORNIA
1/14/10

INDICATES AREA TO BE GRANTED
5.755 ACRES± OR 250,711 S.F.±

DATA DERIVED FROM THAT RECORD OF SURVEY RECORDED IN BOOK 36 OF RECORD OF SURVEYS AT PAGE 88, FRESNO COUNTY RECORDS

REF.& REV.	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS	PROJ. ID. PC00076 FUND NO. 31502 ORG. NO. 179901	CO# SQ002 RES TYPE
2010-017 PLAT 3064	PARCEL TO BE GRANTED TO THE CITY OF FRESNO	DR. BY A.J. CH. BY H.B. DATE JAN. 6, 2010 SCALE NO SCALE	SHEET NO. 1 OF 1 SHEETS 15-A-8703

EXHIBIT B-1

APN 481-300-33S
OPEN SPACE AREA

LEGAL DESCRIPTION

BEING A PORTION OF THAT CERTAIN PARCEL DESCRIBED BY DEED AND FILED FOR RECORD AS DOCUMENT NO. 2005-0009214, OFFICIAL RECORDS OF FRESNO COUNTY, LYING WITHIN THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 14 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE CITY OF FRESNO, COUNTY OF FRESNO, STATE OF CALIFORNIA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF SECTION 17, SAID POINT ALSO BEING THE NORTHEAST CORNER OF SAID PARCEL; THENCE SOUTH 1°01'53" EAST, A DISTANCE OF 75.46 FEET, ALONG THE EAST LINE OF SAID SOUTHWEST QUARTER AND THE EAST LINE OF SAID PARCEL TO THE FUTURE SOUTH RIGHT-OF-WAY LINE OF EAST CHURCH AVENUE, AS SHOWN ON THAT CERTAIN MAP TITLED "OFFICIAL PLAN LINES FOR EAST CHURCH AVENUE" AND RECORDED IN VOLUME 7 OF PRECISE MAPS AT PAGE 67, OFFICIAL RECORDS OF FRESNO COUNTY AND ALSO BEING THE **TRUE POINT OF BEGINNING**; THENCE SOUTH 01°01'53" EAST, A DISTANCE OF 314.14 FEET, CONTINUING ALONG SAID EAST LINE TO THE NORTHERLY BOUNDARY LINE AS SHOWN ON THAT CERTAIN MAP TITLED "TRACT NO. 4682" RECORDED IN BOOK 68 OF OFFICIAL PLATS AT PAGE 3; THENCE CONTINUING ALONG SAID NORTHERLY LINE, THE FOLLOWING FIVE (5) COURSES:
NORTH 56°26'18" WEST, A DISTANCE OF 11.12 FEET; THENCE
NORTH 33°20'06" EAST, A DISTANCE OF 14.63 FEET; THENCE
NORTH 69°58'27" WEST, A DISTANCE OF 61.03 FEET; THENCE
NORTH 78°59'40" WEST, A DISTANCE OF 58.71 FEET; THENCE
SOUTH 89°47'31" WEST, A DISTANCE OF 99.27 FEET; THENCE, LEAVING SAID NORTHERLY LINE, NORTH 01°01'53" WEST, A DISTANCE OF 275.64 FEET TO SAID FUTURE SOUTH RIGHT-OF-WAY LINE; THENCE NORTH 89°48'06" EAST, A DISTANCE OF 67.57 FEET, ALONG SAID FUTURE SOUTH RIGHT-OF-WAY LINE TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHEAST AND HAVING A RADIUS OF 753.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE AND ALONG SAID FUTURE SOUTH RIGHT-OF-WAY LINE, THROUGH A CENTRAL ANGLE OF 6°52'18", AN ARC DISTANCE OF 90.31 FEET; THENCE SOUTH 83°19'36" EAST, A DISTANCE OF 57.33 FEET, ALONG SAID SOUTH RIGHT-OF-WAY LINE, TO THE **TRUE POINT OF BEGINNING.**

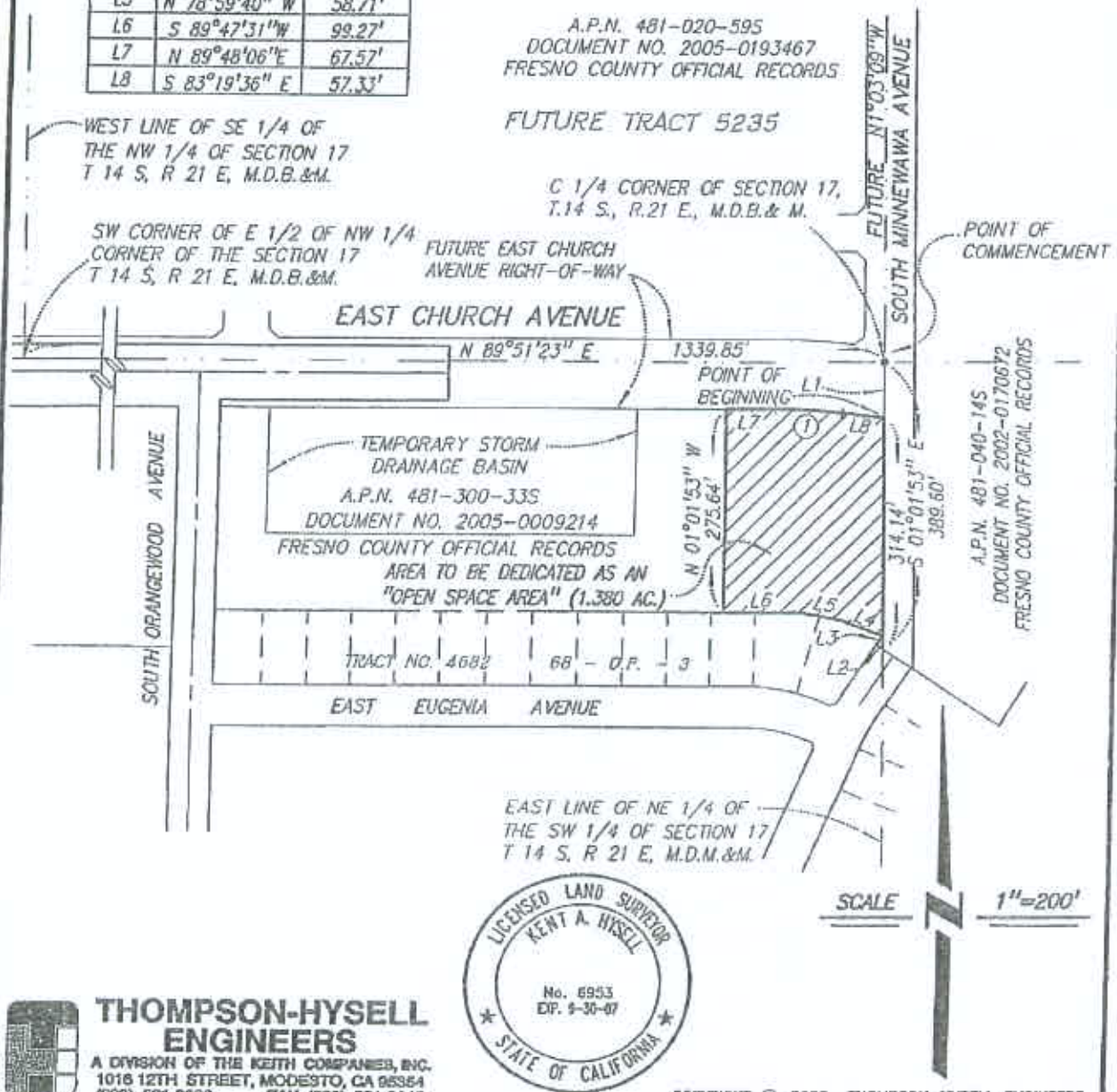
CONTAINING 1.380 ACRES OR 60,113 SQUARE FEET, MORE OR LESS.

T-5235
2005-100
15-A-7944

EXHIBIT C

LINE TABLE		
LINE	BEARING	LENGTH
L1	S 01°01'53" E	75.46'
L2	N 56°26'18" W	11.12'
L3	N 33°20'06" E	14.63'
L4	N 69°58'27" W	61.03'
L5	N 78°59'40" W	58.71'
L6	S 89°47'31"W	99.27'
L7	N 89°48'06"E	67.57'
L8	S 83°19'36" E	57.33'

CURVE DATA TABLE					
NO	DELTA	RADIUS	LENGTH	CH BEARING	CHORD
1	6°52'18"	753.00'	90.31'	N86°45'45"W	90.26'



THOMPSON-HYSELL ENGINEERS
A DIVISION OF THE KEITH COMPANIES, INC.
1016 12TH STREET, MODESTO, CA 95354
(209) 521-8988 FAX (209) 521-9046

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REF. & REV.	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS	PROJECT I.D. FUND NO. ORG. NO.	
200_5_- T-5235	DEDICATION FOR OPEN SPACE SOUTH OF EAST CHURCH AVENUE	DR. BY DAN CH. BY MH DATE 10-13-05 SCALE 1" = 200'	SHEET NO. 1 OF 1 SHEETS 15-A-7944

EXHIBIT C-1

Recording Requested By:
Public Works Department
City of Fresno
No Fee-Gov't. Code Sections
6103 and 27383

When Recorded, Mail To:
Public Works Department
City of Fresno
2600 Fresno Street
Fresno, CA. 93721-3623
Attn: Bruce Abbott

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN 481-300-33S

GRANT DEED

For a valuable consideration, receipt of which is hereby acknowledged, KB Resale Properties, Inc., a California corporation, GRANTOR, hereby GRANTS to the CITY of FRESNO, a municipal corporation, GRANTEE, all that certain real property situated in the City of Fresno, County of Fresno, State of California, more particularly described and shown as follows:

See Exhibits "A" and "B", which are attached and incorporated herein

KB Resale Properties, Inc. a California corporation

By:_____ Dated: _____

By:_____ Dated: _____

2010-017
15-A-8703
D:\DATA\Parks\SE cor Church & Orangewood\Grant to City cover.doc

EXHIBIT D

State of California)
County of Fresno)

On _____ before me, _____,
DATE NAME

Notary Public, personally appeared, _____
NAME(S) OF SIGNER(S)

_____

who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

_____
SIGNATURE OF NOTARY

OPTIONAL SECTION

TOP OF THUMB

❑ INDIVIDUAL(S
❑ CORPORATE OFFICER(S)

_____
TITLE(S)

❑ PARTNERS ❑ LIMITED
❑ GENERAL
❑ ATTORNEY-IN-FACT
❑ TRUSTEE(S)
❑ GUARDIANSHIP/CONSERVATOR
SIGNER IS REPRESENTING
NAME OF PERSON(S) OR ENTITY(IES)

_____
_____
_____
_____

TOP OF THUMB

FOR CITY OF FRESNO USE ONLY

CERTIFICATE OF ACCEPTANCE (Officer)

In accordance with Section 27281 of the Government Code, this is to certify that the interest in real property conveyed hereby is accepted by the undersigned officers on behalf of the Council of the City of Fresno pursuant to authority conferred by Resolution No. 92-219A of said Council, adopted June 9, 1992 and the grantee consents to the recordation thereof by its duly authorized officer.

Public Works Director
ACCEPTED:

By: _____ Date: _____
DEPUTY

CERTIFICATE OF ACCEPTANCE (Council)

In accordance with Section 27281 of the Government Code, this is to certify that the interest in real property conveyed by this instrument to the City of Fresno, a municipal corporation, is hereby accepted by order of the Council of the City of Fresno made on the date hereafter set forth and the grantee consents to the recordation thereof by its duly authorized officer.

Item No./Reso. No. _____

Date of Council Order: _____

City Clerk

By: _____ Date: _____
DEPUTY

FEE TITLE ACCEPTANCE (Officer)
City Manager

By: _____ Date: _____
DEPUTY

APPROVED AS TO FORM:
City Attorney

By: _____ Date: _____
DEPUTY

RECOMMENDED FOR ACCEPTANCE:

By: _____

Title: _____

Date: _____

CHECKED:

By: Allan James

Title: SUPERVISING ENGR. TECH.

Date: 1/14/10

Log No. 2010-017 Drawing No. 15-A-8703

EXHIBIT "A"

APN 481-300-33S
Grant Deed

A portion of Parcel "B" of Lot Line Adjustment No. 03-96 as described in that Grant Deed recorded November 12, 1996 as Document No. 96150885, Official Records of Fresno County, situated in the southwest quarter of Section 17, Township 14 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plat thereof, being more particularly described as follows:

COMMENCING at the Center Quarter Corner of said Section 17, said Center Quarter Corner also being the northeast corner of said Parcel "B"; thence S 0°48'50" E, along the east line of said southwest quarter of Section 17 and along the east line of said Parcel "B", a distance of 75.46 feet to the southeast corner of that portion of East Church Avenue previously dedicated for public street purposes by that Deed of Easement recorded November 14, 2005 as Document No. 2005-0268556, Official Records of Fresno County, said southeast corner being the TRUE POINT OF BEGINNING of this description; thence continuing S 0°48'50" E, along the east line of said southwest quarter and along the east line of said Parcel "B", a distance of 314.51 feet to the southeast corner of the north 12 acres of the northeast quarter of said southwest quarter, last said southeast corner also being the southeast corner of said Parcel "B"; thence N 56°17'54" W, along the southerly boundary of said Parcel "B", a distance of 10.91 feet to the southeasterly line of Lot 107 of Tract No. 4682, according to the map thereof recorded in Volume 68 of Plats at Pages 3 through 5, Fresno County Records; thence N 33°33'24" E, continuing along said southerly boundary and along said southeasterly line, a distance of 14.77 feet to the northeasterly corner of said Lot 107; thence N 69°49'16" W, continuing along said southerly boundary and along the northeasterly line of said Lot 107, a distance of 61.14 feet; thence N 78°46'20" W, continuing along said southerly boundary and along the northeasterly line of Lots 107 and 106 of said Tract No. 4682, a distance of 58.71 feet; thence N 89°58'48" W, continuing along said southerly boundary and along the north line of Lots 106 through 94, inclusive, of said Tract No. 4682, a distance of 791.79 feet to the east right-of-way line of that portion of South Orangewood Drive previously dedicated for public street purposes by that Deed of Easement recorded July 1, 1994 as Document No. 94107398, Official Records of Fresno County; thence N 0°01'19" E, along said east right-of-way line, a distance of 275.93 feet to the south right-of-way line of said portion of East Church Avenue previously dedicated for public street purposes by said Document No. 2005-0268556; thence S 89°58'41" E, along said south right-of-way line, a distance of 756.10 feet to the beginning of a tangent curve concave southerly and having a radius of 753.00 feet; thence easterly, continuing along said south right-of-way line and along the arc of said curve, through a central angle of 6°52'18", an arc distance of 90.31 feet; thence S 83°06'23" E, continuing along said south right-of-way line and tangent to last said curve, a distance of 57.33 feet to the TRUE POINT OF BEGINNING.

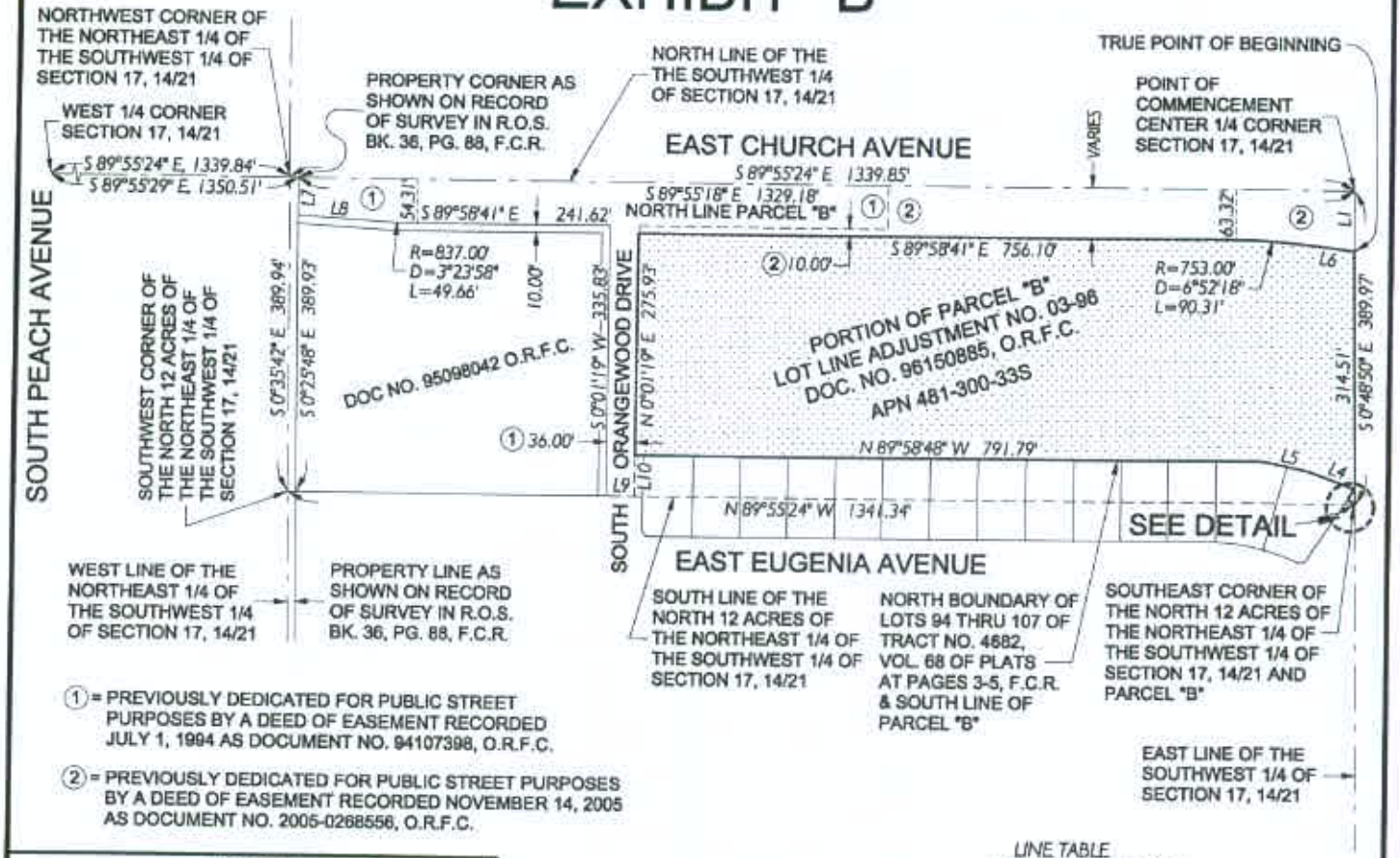
Contains an area of 5.755 acres, more or less, or 250,711 square feet, more or less.

SUBJECT TO an easement and right-of-way for public street purposes granted to the City of Fresno by that Deed of Easement recorded _____, 2010 as Document No. 2010-_____, Official Records of Fresno County.

PROFESSIONAL LAND SURVEYOR
HIMAWAN BRASALI
NO. 7800
EXP. 12/31/11
STATE OF CALIFORNIA
1/14/10

2010-017
15-A-8703
D:\DATA\Parks\SE cor Church & Orangewood\Grant Deed Exhibit A.doc

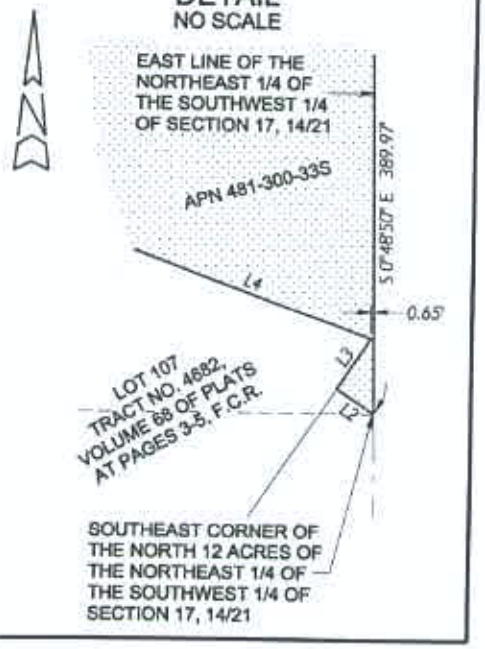
EXHIBIT "B"



① = PREVIOUSLY DEDICATED FOR PUBLIC STREET PURPOSES BY A DEED OF EASEMENT RECORDED JULY 1, 1994 AS DOCUMENT NO. 94107398, O.R.F.C.

② = PREVIOUSLY DEDICATED FOR PUBLIC STREET PURPOSES BY A DEED OF EASEMENT RECORDED NOVEMBER 14, 2005 AS DOCUMENT NO. 2005-0268556, O.R.F.C.

DETAIL
NO SCALE



NO SCALE

LINE TABLE

	BEARING	LENGTH
L1	S 0°48'50" E	75.46'
L2	N 56°17'54" W	10.91'
L3	N 33°33'24" E	14.77'
L4	N 69°49'16" W	61.14'
L5	N 78°46'20" W	58.71'
L6	S 83°06'23" E	57.33'
L7	S 0°25'48" E	47.07'
L8	S 86°34'43" E	99.72'
L9	S 89°55'24" E	36.00'
L10	N 0°01'19" E	49.94'

PROFESSIONAL LAND SURVEYOR
HIMAWAN BRASALI
NO. 7800
EXP. 12/31/11
STATE OF CALIFORNIA
1/14/10

INDICATES AREA TO BE GRANTED
5.755 ACRES± OR 250,711 S.F.±

DATA DERIVED FROM THAT RECORD OF SURVEY RECORDED IN BOOK 36 OF RECORD OF SURVEYS AT PAGE 88, FRESNO COUNTY RECORDS

REF. & REV.	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS	PROJ. ID. PC00076 FUND NO. 31502 ORG. NO. 179901	CO# SQ002 RES TYPE
2010-017 PLAT 3064	PARCEL TO BE GRANTED TO THE CITY OF FRESNO	DR. BY A.J. CH. BY H.B. DATE JAN. 6, 2010 SCALE NO SCALE	SHEET NO. 1 OF 1 SHEETS 15-A-8703

Recording Requested By:
Public Works Department
City of Fresno
No Fee-Gov't. Code Sections
6103 and 27383

When Recorded, Mail To:
Public Works Department
City of Fresno
2600 Fresno Street
Fresno, CA. 93721-3623
ATTN: Bruce Abbott

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN 481-300-33S (portion)

DEED OF EASEMENT

KB Resale Properties, Inc., a California corporation, GRANTOR, hereby GRANTS to the City of Fresno, a municipal corporation, GRANTEE, an easement and right-of-way for public street purposes over, under, through and across all that real property situated in the City of Fresno, County of Fresno, State of California, more particularly described and shown as follows:

See Exhibits "A" and "B", which are attached and incorporated herein

KB Resale Properties, Inc. a California corporation

By:_____ Dated: _____

By:_____ Dated: _____

2010-016
15-A-8702
D:\DATA\Parks\SE cor Church & Orangewood\Street Exhibit A.doc

EXHIBIT D-1

State of California)
County of Fresno)

On _____ before me, _____,
DATE NAME

Notary Public, personally appeared, _____
NAME(S) OF SIGNER(S)

_____

who proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

_____
SIGNATURE OF NOTARY

OPTIONAL SECTION

TOP OF THUMB

❑ INDIVIDUAL(S
❑ CORPORATE OFFICER(S)

_____
TITLE(S)

❑ PARTNERS ❑ LIMITED
❑ GENERAL

❑ ATTORNEY-IN-FACT
❑ TRUSTEE(S)
❑ GUARDIANSHIP/CONSERVATOR
SIGNER IS REPRESENTING
NAME OF PERSON(S) OR ENTITY(IES)

_____
_____
_____
_____

TOP OF THUMB

FOR CITY OF FRESNO USE ONLY

CERTIFICATE OF ACCEPTANCE (Officer)

In accordance with Section 27281 of the Government Code, this is to certify that the interest in real property conveyed hereby is accepted by the undersigned officers on behalf of the Council of the City of Fresno pursuant to authority conferred by Resolution No. 92-219A of said Council, adopted June 9, 1992 and the grantee consents to the recordation thereof by its duly authorized officer.

Public Works Director
ACCEPTED:

By: _____ Date: _____
DEPUTY

CERTIFICATE OF ACCEPTANCE (Council)

In accordance with Section 27281 of the Government Code, this is to certify that the interest in real property conveyed by this instrument to the City of Fresno, a municipal corporation, is hereby accepted by order of the Council of the City of Fresno made on the date hereafter set forth and the grantee consents to the recordation thereof by its duly authorized officer.

Item No./Reso. No. _____

Date of Council Order: _____

City Clerk

By: _____ Date: _____
DEPUTY

APPROVED AS TO FORM:
City Attorney

By: _____ Date: _____
DEPUTY

RECOMMENDED FOR ACCEPTANCE:

By: _____

Title: _____

Date: _____

CHECKED:

By: Allen James

Title: SUPERVISING ENGR. TECH.

Date: 1/14/10

Log No. 2010-016 Drawing No. 15-A-8702

EXHIBIT "A"

APN 481-300-33S (portion)
Street easement

A portion of Parcel "B" of Lot Line Adjustment No. 03-96 as described in that Grant Deed recorded November 12, 1996 as Document No. 96150885, Official Records of Fresno County, situated in the southwest quarter of Section 17, Township 14 South, Range 21 East, Mount Diablo Base and Meridian, according to the Official United States Government Township Plat thereof, in the City of Fresno, County of Fresno, State of California, said portion being more particularly described as follows:

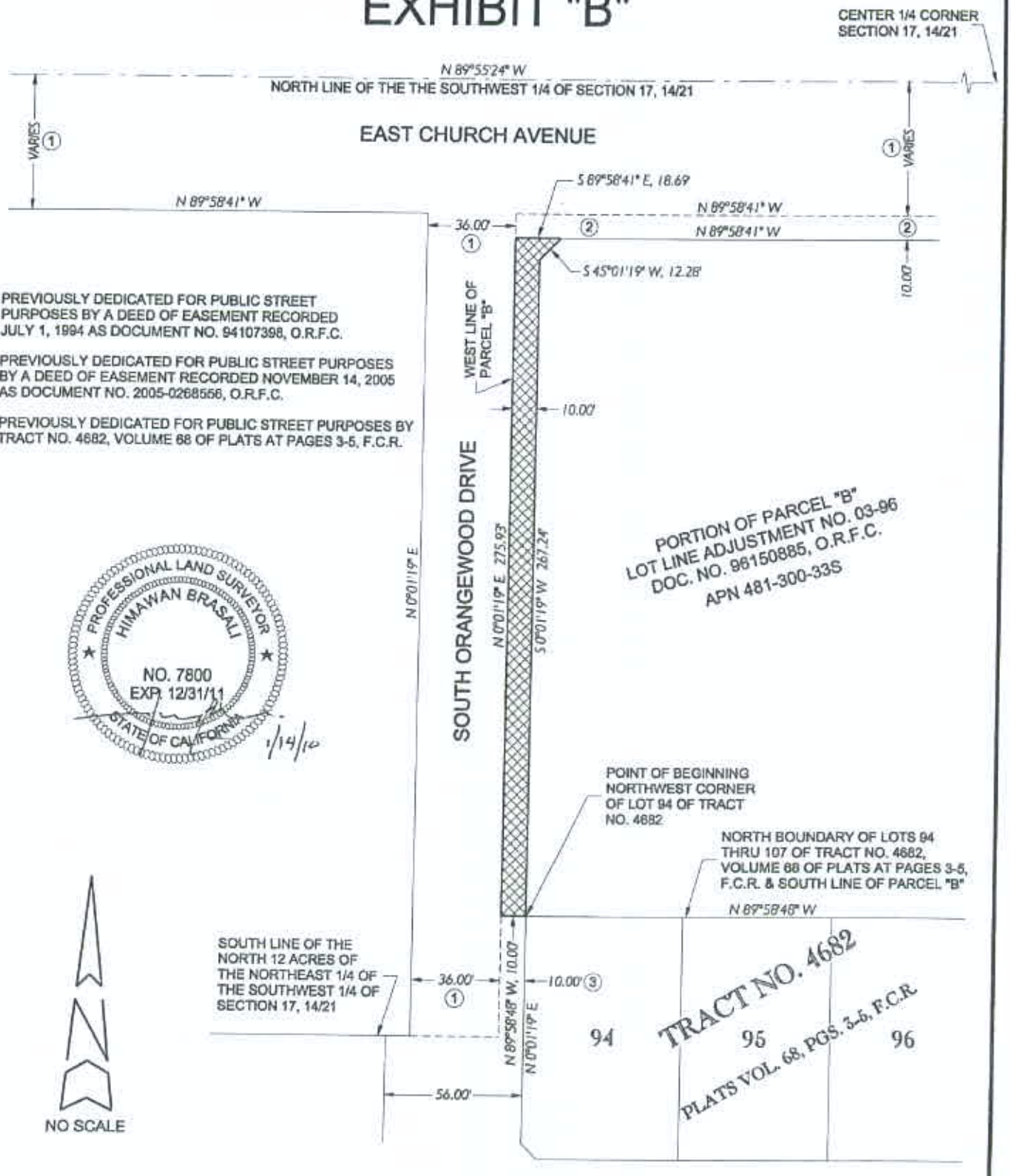
BEGINNING at the northwest corner of Lot 94 of Tract No. 4682, according to the map thereof recorded in Volume 68 of Plats at Pages 3 through 5, Fresno County Records; thence N 89°58'48" W, along the westerly prolongation of the north line of said Lot 94, said westerly prolongation also being the north line of that portion of South Orange Avenue previously dedicated for public street purposes by the map of said Tract No. 4682, a distance of 10.00 feet to the east right-of-way line of that portion of South Orange Avenue previously dedicated for public street purposes by that Deed of Easement recorded July 1, 1994 as Document No. 94107398, Official Records of Fresno County, said east right-of-way line also being the west line of said Parcel "B"; thence N 0°01'19" E, along said east right-of-way line, a distance of 275.93 feet to the southwest corner of that portion of East Church Avenue previously dedicated for public street purposes by that Deed of Easement recorded November 14, 2005 as Document No. 2005-0268556, Official Records of Fresno County; thence S 89°58'41" E, along the south right-of-way line of said portion of East Church Avenue, a distance of 18.69 feet; thence, leaving said south right-of-way line, S 45°01'19" W, a distance of 12.28 feet; thence S 0°01'19" W, parallel with and 10.00 feet east of said east right-of-way line of South Orange Avenue, a distance of 267.24 feet to the POINT OF BEGINNING.

Contains an area of 2,799 square feet, more or less.

PROFESSIONAL LAND SURVEYOR
HIMAWAN BRASALI
NO. 7800
EXP. 12/31/11
STATE OF CALIFORNIA
1/14/10

2010-016
15-A-8702
D:\DATA\Parks\SE cor Church & Orangewood\Street Exhibit A.doc

EXHIBIT "B"



① = PREVIOUSLY DEDICATED FOR PUBLIC STREET PURPOSES BY A DEED OF EASEMENT RECORDED JULY 1, 1994 AS DOCUMENT NO. 94107398, O.R.F.C.

② = PREVIOUSLY DEDICATED FOR PUBLIC STREET PURPOSES BY A DEED OF EASEMENT RECORDED NOVEMBER 14, 2005 AS DOCUMENT NO. 2005-0268556, O.R.F.C.

③ = PREVIOUSLY DEDICATED FOR PUBLIC STREET PURPOSES BY TRACT NO. 4682, VOLUME 68 OF PLATS AT PAGES 3-5, F.C.R.

PROFESSIONAL LAND SURVEYOR
HIMAWAN BRASALI
NO. 7800
EXP. 12/31/11
STATE OF CALIFORNIA
1/14/10

INDICATES AREA TO BE DEDICATED
2,799 S.F.±

REF. & REV.	CITY OF FRESNO DEPARTMENT OF PUBLIC WORKS	PROJ. ID. PC00076	CO# SQ002
2010-016 PLAT 3064		FUND NO. 31502 ORG. NO. 179901	RES TYPE
	PARCEL TO BE DEDICATED TO THE CITY OF FRESNO AS AN EASEMENT AND RIGHT-OF-WAY FOR PUBLIC STREET PURPOSES	DR. BY A.J. CH. BY H.B. DATE JAN. 6, 2010 SCALE NO SCALE	SHEET NO. 1 OF 1 SHEETS 15-A-8702

PHASE I ENVIRONMENTAL SITE ASSESSMENT

SOUTHWEST CORNER OF EAST CHURCH AVENUE AND SOUTH ORANGEWOOD DRIVE

FRESNO, CALIFORNIA

Prepared For:

Carl Kassabian
City of Fresno Public Works
2600 Fresno Street
Fresno, CA 93721

Prepared By:

RL Fraser Consulting
Rebecca Fraser, Consultant
PO Box 2040
Clovis, CA 93613

JULY 27, 2009

EXHIBIT E

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ACRONYMS

Ug/g	micrograms per gram
AST	Aboveground Storage Tank(s)
AWP	Annual Workplan
CAL-EPA	State of California Environmental Protection Agency
CERCLIS	Comprehensive Environmental Responsibility, Compensation, and Liability Information System
DTSC	Department of Toxic Substances Control
ERNS	Emergency Response and Notification System
FCAO	Fresno County Assessor's Office
FCBD	Fresno County Building Department
FCEHD	Fresno County Environmental Health Department
FCRO	Fresno County Recorder's Office
FDD	City of Fresno Development Department
FFD	City of Fresno Fire Department
IWMB	Integrated Waste Management Board
LUST	Leaking Underground Storage Tank
NPL	National Priority List
RCRA	Resource Conservation and Recovery Act
RWQCB	Regional Water Quality Control Board
SWIS	Solid Waste Information System
SWRCB	State Water Resource Control Board
TSD	Hazardous Waste Transport, Storage, or Disposal Facilities
US EPA	United States Environmental Protection Agency
UST(s)	Underground Storage Tank(s)

PHASE I ENVIRONMENTAL SITE ASSESSMENT

SOUTHWEST CORNER OF EAST CHURCH AVENUE AND SOUTH ORANGEWOOD DRIVE

FRESNO, CALIFORNIA

1.0 EXECUTIVE SUMMARY

RL Fraser Consulting conducted a Phase I Environmental Site Assessment (ESA) on one parcels located at the southeast corner of East Church Avenue and South Orangewood Drive in the City of Fresno, Fresno County, California (SITE). RL Fraser conducted the Phase I ESA of the subject site in conformance with the American Society for Testing and Materials (ASTM) E1527-05 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process. This Phase I ESA constitutes all appropriate inquiry (AAI) designed to identify recognized environmental conditions (RECs) in connection with the previous ownership and uses of the subject site as defined by ASTM E1527-05.

ASTM E1527-05 Section 1.1.1 Recognized Environmental Conditions – The term recognized environmental conditions means the presence of likely presence of any hazardous substances or petroleum products on a property under conditions that indicate an existing release, a past release, or material threat of a release of any hazardous substances or petroleum products into structures on the property or into the ground, groundwater, or surface water on the property. The term includes hazardous substances or petroleum products even under conditions in compliance with laws. The term is not intended to include de minimis conditions that generally do not present a threat to human health or the environment and that generally would not be the subject of an enforcement action if brought to the attention of appropriate governmental agencies. Conditions determined to be de minimis are not recognized environmental conditions.

RL Fraser Consulting findings of this Phase I ESA revealed no evidence of RECs in connection with the subject site.

2.0 INTRODUCTION

This report summarizes the findings of a Phase I Environmental Site Assessment (Phase I) conducted on one parcel located in the southeast corner of East Church Avenue and South Orangewood Drive, City of Fresno, Fresno, California (SITE). The parcel is occupied with a ponding basin electrical transformers, which is located on the north western portion of the parcel. A SITE Location Map is presented in Appendix 1.

2.1 Purpose

According to ASTM E1527-05, the purpose of this practice is to define good commercial and customary practice in the United States of America for conducting an environmental site assessment of a parcel of commercial real estate with respect to the range of contaminants within the scope of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C.*9601) and petroleum products. As such, this practice is intended to permit a user to satisfy one of the requirements to qualify for the innocent landowner, contiguous property owner, or bona fide prospective purchaser limitation on CERCLA liability (hereinafter, the landowner liability protections, or LLPs): that is, the practice that constitutes "all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice" as defined at 42 U.S.C. *9601(35)(B).

2.2 Detailed Scope of Services

The scope of work is summarized as follows:

- Conducted a reconnaissance of the SITE and accessible areas within one-quarter mile;
- Reviewed available historical resources to assess the history and past use of the SITE;
- Reviewed available regulatory agency files regarding the possible release of hazardous materials to the environment, up to one mile from the SITE. Facilities known to operate and / or maintain underground storage tanks (USTs) and / or aboveground storage tanks (ASTs) on-SITE or at adjoining properties were identified;
- Reviewed data to assess potential environmental concerns or impairments as a result of the past and present activities at the SITE, existing SITE conditions, and conditions at nearby off-SITE properties; and
- Prepared this report summarizing the assessment procedures, findings, evaluations, and conclusions.

2.3 Limitations and Exceptions

The purpose of an environmental assessment is to reasonably assess the potential for, or actual impact of, past practices on a given site which may pose an environmental impairment to it. No assessment is thorough enough to identify all potential environmental impairment at a given site. If environmental impairments have not been identified during the assessment, such a finding should not, therefore, be consistent as a guarantee of the absence of such conditions on the Site, but rather the result of the services performed within the scope, limitations, and cost of the work performed.

Information obtained from the aerial photographs is an interpretation of features observed in the photographs. Actual conditions at the Site may be different from those interpreted.

The conclusion presented in this report are solely professional opinions based on information provided regarding the Site and the findings of the reconnaissance and records search. Conclusions presented are based on conditions as they existed at the time the work was performed. Changes in existing conditions of the Site due to time lapse, natural causes, or operations adjacent to the Site may deem conclusions presented invalid, unless the changes are reviewed and the conclusions reevaluated. Such conditions may require additional field and laboratory investigations to assess if the conclusions are applicable considering the changed conditions.

3.0 SITE DESCRIPTION

The northwestern portion of the parcel is occupied with a ponding basin and electrical transformers and the other portion of the parcel is vacant.

3.1 Location and Legal Description

Current Address:	NA
Location:	The site exists within Section 17, Township 14 South, Range 21 East, Mount Diablo Baseline and Meridian.
Assessor's Parcel Number:	481-300-033s
Site Acreage:	6.7 acres

3.2 Site and Vicinity General Characteristics

The property is level in topography and slightly above street grades. Load bearing capabilities of the soil are assumed to be adequate. The subject property has concrete curb, gutters and sidewalks.

3.3 Current Use of the Property

Existing Site Use:	vacant, ponding basin
Proposed Site Use:	construction of park

3.4 Description of Structures, Roads, Other improvements on the Site

According to the City of Fresno records agricultural has been located on the site since the early 1900's.

East Church Avenue is located on the northern property line and South Orangewood Drive is located on the western property line. City of Fresno has sewer and water lines in East Church Avenue.

3.5 Current Uses of Adjoining Property

	Zoning	Property Use
North	R-1-UGM	Single-family houses and vacant
South	R-1-UGM	Single-family houses
East	AE-5	vacant
West	AE-5 UGM	vacant

4.0 USER PROVIDED INFORMATION

A review of user-provided title reports and a completed Phase I ESA user Questionnaire was conducted in order to help identify pertinent information regarding potential environmental impacts associated with the subject site.

4.1 Title Records, Environmental Liens or Activity

On January 29, 2009, a Preliminary Title Report for the subject site by Fidelity National Title Company was provided to the City of Fresno and the Phase I ESA user. The subject site Title Report was reviewed to identify potential deed restrictions, environmental liens or activity and use limitations (AULs) which may have occurred on or exist in connection with the subject site indicated by the subject site Title Report. RL Fraser Consulting review of the Title Report indicated no deed restrictions, environmental liens or AULs for the subject site.

4.2 Specialized Knowledge

On July 21, 2009, a completed Phase I ESA user questionnaire was received from the current owner of the Site. Please refer to Appendix 4 for a copy of the completed user questionnaire.

4.3 Commonly Known or Reasonably Ascertainable Information

In order to qualify for one of the Landowner Liability Protection (LLPs) offered by the Small Business Liability Relief and Brownfields Revitalization Act of 2001 (the Brownfields Amendments), the user must provide the following information (if available) to the environmental professional. Failure to provide this information could result in a determination that all appropriate inquiry is not complete. The user is asked to provide information or knowledge of the following:

1. Environmental cleanup liens that are filed or recorded against the site.
2. Activity and land use limitation that are in place on the site or that have been filed or recorded in a registry.
3. Specialized knowledge or experience of the person seeking to qualify for the LLPs.
4. Relationship of the purchase price to the fair market value of the property if it were not contaminated.
5. Commonly know or reasonably ascertainable information about the property
6. The degree of obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination by appropriate investigation

4.4 Phase I Environmental Site Assessment User Questionnaire, Owner Information

According to the questionnaire responses, Mr. Zach Gomes, General Superintendent for KB Homes, to the best of his knowledge as the user of this Phase I ESA, was not aware of any environmental cleanup liens and activity or land use limitations which have been filed or recorded against the subject site; and Mr. Gomes has no specialized knowledge or experience of the prior nature of the business or chemical utilization on the subject site. He reported that there were no current or former ASTs, USTs, or disposal area on the Project site. He also reported that there was no site waste generation, storage or disposal of hazardous materials at the site.

4.5 Reasons for Performing Phase I

According to ASTM E1527-05, the purpose of this practice is to define good commercial and customary practice in the United States of America for conducting an environmental site assessment of a parcel of commercial real estate with respect to the range of contaminants within the scope of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C.*9601) and petroleum products. As such, this practice is intended to permit a user to satisfy one of the requirements to qualify for the innocent landowner, contiguous property owner, or bona fide prospective purchaser limitation on CERCLA liability (hereinafter, the landowner liability protections, or LLPs): that is, the practice that constitutes "all appropriate inquiry into the previous ownership and uses of the property consistent with good commercial or customary practice" as defined at 42 U.S.C. *9601(35)(B).

5.0 RECORDS REVIEW

Federal, state, and local government regulatory agency lists, records, and permits were researched for information regarding potential impacts to the site by off-site sources from a report obtained from Environmental Data Resources which is located in Appendix 5. Records were obtained from the City of Fresno Planning and Development, R.L. Polk Directory, historical aerial photographs, Sanborn Fire Insurance Maps and Phase I ESA interviews were conducted with the current owner and surrounding property owners to assess the history of the subject site.

5.1 Standard Environmental Record Sources

Federal, state, and local government regulatory agency lists, records, and permits were researched for information regarding potential impacts to the site by off-site sources. A copy of the regulatory list check data report (Environmental Data Resources Report) is presented in Appendix 5.

5.2 Physical Setting Source

City directories published by R.L. Polk Directory were reviewed at the Fresno County Library and Environmental Data Resources, Inc. The city directories were reviewed for information concerning past and current occupancy of the SITE.

5.3 Historical Use Information on the Property and Adjoining Properties

Aerial photographs of the site and surrounding property were reviewed at the Fresno State University Library in Fresno, California and City of Fresno, Development Department, Map Division to provide historical information on the site.

On March 2, 1994, the City of Fresno Development Department approved Conditional Use Permit (CUP) No. 94-04 (Minnewawa Ranch) for property located on both sides of East Church Avenue between South Peach and South Jensen Avenues. The CUP proposed the development of a planned development project on 162 acres which will contain approximately 609 single-family residential lots of which 251 lots are reduced size lots within clustered planned development projects. Rezone Application No. 94-02 rezoned the site from AE-5/UGM to R-1/UGM.

Only single-family houses were constructed. KB Homes was going to make this parcel into park.

6.0 SITE AND VICINITY RECONNAISSANCE

A reconnaissance of the Site was performed by Rebecca Fraser, planning consultant, on July 23, 2009. An assessor parcel map depicting the Site, adjoining property use, and observed on-site features is presented in Appendix 1. Photographs of the Site were taken during the reconnaissance and copies of selected photographs are presented in Appendix 3.

6.1 General Site Setting

The eastern portion of the parcel is currently occupied with a single-family house. The western portion of the parcel is vacant. The proposed site that is vacant is flat and has several large trees

6.2 Exterior Observations

Listed below are the exterior observations at the Site on July 23, 2009.

SUMMARY OF SITE RECONNAISSANCE OBSERVATIONS		
FEATURE	OBSERVED	NOT OBSERVED
AST (other than propane and / or water ASTs)		X
Chemical / pesticide / hazardous material storage area		X
Debris		X
Discolored or stained soil or water		X
Electrical equipment (not owned by a utility)		X
Pipes of unknown use or origin		X
Ponding basins	X	
Storage drums		X
Storm drains		X
Structures		X
USTs or evidence of USTs		X
Waste or wastewater discharge to surface or surface waters of Site (not storm water)		X
Waste oil storage		X
Water wells (not observed)		X

INTERVIEW

Interview with the Owner and local governments were conducted on July 21, 2009, to provide pertinent information regarding potential environmental impacts associated with the subject site.

7.1 Interview with Owner

According to the questionnaire responses, Mr. Zach Gomes, to the best of his knowledge as the user of this Phase I ESA, was not aware of any environmental cleanup liens and activity or land use limitations which have been filed or recorded against the subject site; and Mr. Gomes has no specialized knowledge or experience of the prior nature of the business or chemical utilization on the subject site. He reported that there were no current or former ASTs, USTs, or disposal area on the Project site. He also reported that there was no site waste generation, storage or disposal of hazardous materials at the site.

7.2 Interview with Local Governments Officials

A verbal interview was received from the Department of Public Works of the City of Fresno. They were not aware of any prior nature of the business or chemical utilization on the subject site. As far as they new, the site has been used for agricultural or a ponding basin.

8.0 FINDINGS

The findings of the PHASE I are presented in the following subsections. Aerial Photographs, Sanborn Insurance Map Review, Historical City Directory Review

Available historical aerial photographs of the Site and vicinity for the years 1937, 1950, 1967, 1977, 1987, and 1998 were reviewed for indications of past Site use and / or Site activities which may have involved the manufacture, generation, use, storage and / or disposal of hazardous materials.

- The site was occupied with agricultural until the late 1990's. The site was surrounded by agricultural until the late 1990's. The elementary school located near the site was constructed in the mid 1990's.

Sanborn Fire Insurance Map drawn for the City of Fresno did not include the Site and surrounding property.

8.1 Evaluation of Data Gaps/Data Failure

In accordance with ASTM E 1527-05 guidance, data gaps represent a lack of or an inability to obtain information required by this practice despite good faith efforts by the environmental professional to gather such information. Data gaps may result from incompleteness in any of the activities required by this practice. Data failure represents the failure to achieve the historical research objectives of this practice even after reviewing the standard historical sources that are reasonably ascertainable and likely to be useful. Data failure is one type of data gap. The following is a summary of data gaps encountered in the process of preparing this report including an observation as to the presumed significance of that data gap to the conclusion of this assessment.

Absence of Final Title Report

On January 29, 2009, a Preliminary Report (PR) for the subject site by Fidelity National Title Company was provided to RL Fraser Consulting by the City of Fresno, RL Fraser Client and the Phase I ESA user. The subject site PR was reviewed to identify potential deed restrictions, environmental liens or activity and use limitations (AULs) which may have occurred on or exist in connection with the subject site as indicated by the subject site PR. RL Fraser Consulting review of the PR indicated no deed restrictions, environmental liens or AULs for the subject site. However, as quoted from the subject site PR, "It is important to note that this Preliminary Report is not a written representation as to the condition of title and may not list all liens, defects and encumbrances affecting title to the land." The absence of a condition of title represents a data gap. Therefore, RL Fraser recommends that a the close of the real estate transaction and upon the issuance of the final Title Report (TR) that the final TR be reviewed and any information deviating from that presented in the PR reviewed herein revealing evidence of RECs be evaluated and documented in conjunction with the report. Taken in consideration with the available information obtained in the course of preparing this report in conjunction with professional experience, there is no evidence to suggest that this data gap might alter the conclusion of this assessment. However, contents of a Final Title Report are unknown.

Absence of Interview with the previous Owner

A Phase I ESA interview with the previous owner of the subject site was not reasonably ascertainable. Consequently, information regarding the history and historical uses of the subject site obtained from interview of the current owner constitutes a data gap. Taken in consideration with the available information obtained in the course of preparing this report in conjunction with professional experience, there is no evidence to suggest that this data gap might alter the conclusions of this assessment. However, contents of an interview with a previous property owner are unknown.

Absence of Response to Tribal Records Request

As of the date of this report, no responses have been received by RL Fraser Consulting from the tribal contacts. However, according to the EDR Radius Map Report, no tribal records are listed for the subject site or the adjacent properties. There is no evidence to suggest that this data gap might alter the conclusion of this assessment. However, contents of absent responses to request for tribal records are unknown.

8.2 List, Record, and Permit Review

Information regarding the list, record and permit review findings is summarized in the table below.

SUMMARY OF REGULATORY LISTS AND RECORDS REVIEWED

SOURCE	DATE	SEARCH RADIUS (mile)	PROXIMITY TO SITE (miles)			
			ON-SITE	WITHIN-1/4	¼ - ½	½ - 1
US EPA, CERCLIS LIST	3-2007	½	NONE	NONE	NONE	NA
US EPA, NPL	3-2007	1	NONE	NONE	NONE	NONE
US EPA, ERNS LIST	1-2007	SITE	NONE	NA	NA	NA
US EPA, RCRA Hazardous Waste Generators	3-2007	SITE & adjoining	NONE	NONE	NA	NA
US EPA, RCRA TSD Facilities	3-2007	½	NONE	NONE	NA	NONE
US EPA, RCRA, TSD, CORRACTS Facilities	3-2007	1	NONE	NONE	NONE	NONE
State Equivalent CERCLIS	1-2007	1	NONE	NONE	NONE	NONE
CAL-EPA, DTSC, Annual Workplan sites	1-2007	1	NONE	NONE	NONE	NONE
CAL-EPA, RWQCB List of Facilities with Leaking USTs	3-2007	½	NONE	NONE	NONE	NA
CAL-EPA, IWMB SWIS List of Active and Inactive Landfills	3-2007	½	NONE	NONE	NONE	NA
CAL-EPA, SWRCB List of Registered USTs	3-2007	SITE & adjoining	NONE	NONE	NONE	NA
FCEHD, List of Leaking USTs		SITE & adjoining	NONE	NONE	NONE	NA
FFD, Hazardous Materials Incidents		SITE & Adjoining	NONE	NONE	NA	NA
FFD, Registered USTs		SITE	NONE	NONE	NONE	NA

8.3 On-Site Concerns

The southwester portion of the parcel appears to have a ponding basin. There were no environmental concerns identified at the Site during this assessment.

8.4 Off-Site Concerns

Those facilities identified on the regulatory list and record reviews which are considered to present a possible environmental concern to the SITE were reviewed. The results of that review are presented as follows:

The agency provides oversight of business that require Hazardous Materials Business Plans, Accidental Release Plans, operate UST's, and generate hazardous waste. Following is a summary of the listed properties.

No other potential recognized environmental conditions or conditions at Vicinity properties which appear to have the potential to environmentally impair the property were identified.

No engineering control site, sites with institutional controls, or sites with deed restrictions were listed for the subject site, adjacent sites or vicinity properties in the EDR-provided government database report.

No Indian reservations or leaking UST (LUSTs) on Indian Land were reported on the subject site, adjacent sites or vicinity properties in the EDR-provided government database report.

9.0 CONCLUSIONS/OPINIONS

A Phase I Environmental Site Assessment in conformance with the scope and limitations of ASTM Practice E 1527-05 *Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process,* of the project site was performed. Any deviation from this practice was previously described in this report. The assessment has revealed no evidence of recognized environmental conditions in connection with the project site.

10.0 QUALIFICATIONS and SIGNATURE OF ENVIRONMENTAL PROFESSIONAL

This Phase I ESA was conducted by Rebecca Fraser, Master Degree in Urban Planning, see attached resume. The work was conducted in accordance with ASTM E1527-05, generally accepted industry standards for environmental due diligence in place at the time of the preparation of this report, and Rebecca Fraser's quality-control policies.

I declare that, to the best of my professional knowledge and belief , I meet the definition of environmental professional as defined in 312.10 of 40 CFR 312 and I have the specific qualifications based on education, training and experience to assess a property of the nature, history, and setting of the subject property. I have developed and performed all the appropriate inquiries in conformance with the standards and practice set forth in 40 CFR Part 312.

Respectfully submitted,

Rebecca Fraser, Planning Consultant

10.0 REFERENCES

American Society for Testing and Materials, 2006, ASTM Standards on Environmental Site Assessment for Commercial Real Estate, 2nd ed., E 1527-05, Philadelphia, Pennsylvania.

Fresno County Library

Fresno State, California University, Map Library

Fresno County Planning Department

City of Fresno Development Department and Redevelopment Agency

Federal and State regulatory agency lists compiled by Environmental Data Resources, Inc (EDR)

U.S. Geological Survey 7.5 minute Fresno

When Recorded Mail To:

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

CITY OF FRESNO
Public Works Department

RELEASE OF STATEMENT OF COVENANTS AFFECTING LAND DEVELOPMENT FOR TEMPORARY OFF-SITE STORM DRAINAGE FACILITIES FOR TRACT NO. 5235.

EXHIBIT F

WHEREAS, KB RESALE PROPERTIES, INC., "owner" and KB HOME SOUTH BAY, INC., "Developer", together hereinafter referred to as "Covenantor" entered into a covenant providing for Temporary Off-Site Storm Drainage Facilities, dated November 1, 2005 and recorded on December 12, 2005 as Instrument No. 20050289952 of Official Records of Fresno County, hereinafter referred to as the "Covenant;" and

WHEREAS, said Covenant is attached as Exhibit A; and

WHEREAS, the property affected is more specifically described in said Exhibit; and

WHEREAS, the Director of the Public Works Department has determined that the terms of the said Covenant have been satisfied and that the continued existence and enforcement of said Covenant are no longer necessary.

NOW, THEREFORE, in accordance with the provisions of said Covenant, the City of Fresno does hereby release the Subject Property from said Covenant and that it shall be of no further force or effect.

* * * *

DATED: _____

CITY OF FRESNO
a Municipal Corporation

PATRICK N. WIEMILLER, Director
Public Works Department

By: _____
SCOTT L. MOZIER, P.E.
Assistant Director/City Engineer

APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

By: _____
Deputy

CLERK'S CERTIFICATE

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

On _____ before me, _____ personally appeared, _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of the City of Fresno which the person acted, executed the instrument.

WITNESS my hand and official city seal.

REBECCA E. KLISCH, CMC
City Clerk

By: _____
DEPUTY

When Recorded Mail To:

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

CITY OF FRESNO
Public Works Department

RELEASE OF STATEMENT OF COVENANTS AFFECTING LAND DEVELOPMENT FOR LANDSCAPING AND MAINTAINING AN OFF-SITE OPEN SPACE FACILITY FOR FINAL MAP OF TRACT NO. 5235.

EXHIBIT F-1

WHEREAS, KB RESALE PROPERTIES, INC., "Owner" and KB HOME SOUTH BAY, INC., "Subdivider", together hereinafter referred to as "Covenantor" entered into a covenant providing for the development, landscaping and maintenance of an off-site open space facility, dated November 1, 2005, and recorded on December 12, 2005 as Instrument No. 20050289956 of Official Records of Fresno County, hereinafter referred to as the "Covenant;" and

WHEREAS, said Covenant is attached as Exhibit A; and

WHEREAS, the property affected is more specifically described in said Exhibit; and

WHEREAS, the Director of the Public Works Department has determined that the terms of the said Covenant have been satisfied and that the continued existence and enforcement of said Covenant are no longer necessary.

NOW, THEREFORE, in accordance with the provisions of said Covenant, the City of Fresno does hereby release the Subject Property from said Covenant and that it shall be of no further force or effect.

****

DATED: _____

CITY OF FRESNO
a Municipal Corporation

PATRICK N. WIEMILLER, Director
Public Works Department

By: _____
SCOTT L. MOZIER,
Assistant Director/City Engineer

APPROVED AS TO FORM:

JAMES C. SANCHEZ
City Attorney

By: _____
Deputy

CLERK'S CERTIFICATE

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

On _____ before me, _____ personally appeared, _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of the City of Fresno which the person acted, executed the instrument.

WITNESS my hand and official city seal.

REBECCA E. KLISCH, CMC
City Clerk

By: _____
DEPUTY

City of FRESNO **REPORT TO THE CITYCOUNCIL**

AGENDA ITEM NO.	1B
COUNCIL MEETING	5/12/11
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

May 12, 2011

Presented to City Council
Date 5/12/11
Disposition Rec. approved

FROM: BRUCE A. RUDD, Assistant City Manager
City Manager's Office

BY: ANDY VANDERFORD, Supervising Engineering Technician
Facilities Management Division

PAUL A. MELIKIAN, Administrative Manager
Parks, After School, Recreation and Community Services Department

SUBJECT: ADOPT A FINDING OF CATEGORICAL EXEMPTION PURSUANT TO ARTICLE 19, SECTION 15301 CLASS 1 (EXISTING FACILITIES), AND 15325 CLASS 25 (TRANSFERS OF INTEREST IN LAND TO PRESERVE OPEN SPACE) OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES FOR A COOPERATIVE AGREEMENT BETWEEN THE CITY OF FRESNO AND KB RESALE PROPERTIES AND KB HOME SOUTH BAY

APPROVE (1) A COOPERATIVE AGREEMENT BETWEEN THE CITY OF FRESNO AND KB RESALE PROPERTIES AND KB HOME SOUTH BAY; (2) THE CONDITIONAL RELEASE OF A STATEMENT OF COVENANTS AFFECTING LAND DEVELOPMENT FOR TEMPORARY STORM DRAINAGE FACILITIES FOR TRACT NO. 5235; (3) THE CONDITIONAL RELEASE OF A STATEMENT OF COVENANTS AFFECTING LAND DEVELOPMENT FOR LANDSCAPING AND MAINTAINING AN OFF-SITE OPEN SPACE FACILITY FOR TRACT NO. 5235; AND (4) AUTHORIZE THE ASSISTANT CITY MANAGER OR HIS DESIGNEES TO SIGN, ALL REQUIRED DOCUMENTS, INCLUDING THE COOPERATIVE AGREEMENT AND COVENANT RELEASES ON BEHALF OF THE CITY OF FRESNO

RECOMMENDATION

Staff recommends that the Council adopt a finding of categorical exemption pursuant to Article 19, Section 15301 Class 1(existing facilities), and 15325 Class 25 (transfers of interest in land to preserve open space) of the Environmental Quality Act Guidelines for a Cooperative Agreement between the City of Fresno and KB Resale Properties and KB Home South and also approve a Cooperative Agreement with KB Resale Properties, Inc., the owner, and KB Home South Bay, Inc., the subdivider, collectively called the "developer" of Tract No. 5235 and authorizes the conditional release of the two (2) Statements of Covenants related to the Tract. Staff also recommends that the Council authorize the Assistant City Manager or his designees to sign, all required documents, including the Cooperative Agreement and Covenant Releases on behalf of the City of Fresno.

EXECUTIVE SUMMARY

KB Home South Bay, Inc., subdivider of Tract No. 5235 has asked the City of Fresno to consider releasing two Statements of Covenants tied to the approval and development of Tract No. 5235, generally located on the

north side of Church Avenue, between Peach and Minnewawa Avenues. The covenants relate to requirements within the original subdivision agreement, signed and dated by KB Home officials on November 1, 2005.

The first covenant requires the subdivider to provide 2.83 acres (5% of the gross area of the Tentative Map) for public common open space purposes (within the tract) or provide an equivalent amount of area within one-quarter mile of the Tentative Map. In addition the subdivider is required to install landscaping and irrigation systems and maintain the open space area in perpetuity.

The second covenant requires the subdivider to excavate, fence and maintain an off-site temporary storm water ponding basin, until such time as permanent storm water drainage facilities are constructed and operational. In response to both covenants, the subdivider purchased a 5.755 acre parcel of land on the south side of Church Avenue between Orangewood Avenue and the Minnewawa Avenue alignment. The temporary storm water ponding basin, comprising 1.926 acres has been excavated and fenced.

However, the open space facility has not been constructed as of this date and KB Home has requested the City of Fresno consider relieving them of this obligation in exchange for their granting the City of Fresno ownership to the entire 5.755 acre parcel. PARCS has expressed interest in such a deal, for development as a future neighborhood park site and to that end; PARCS, Public Works and representatives from KB Home have met several times and have negotiated the attached agreement. In summary, the agreement states the following:

KB Resale Properties, Inc. and KB Home South Bay, Inc. at Opening of Escrow agree to:

1. Deposit a grant deed, with the Escrow Holder, conveying to the City of Fresno, a 5.755 acre parcel of property, located on the south side of Church Avenue between Orangewood Avenue and the Minnewawa Avenue alignment, APN 481-300-33S.

2. Have completed construction of all utility main lines for water, sewer, storm drain pipeline and inlets, underground electrical power, and telephone to the parcel of property to be deeded to the City.

3. Have completed construction of all missing off-site street improvements such as curbs, gutters, sidewalks, fire hydrants, street lights and street paving along street frontages of the property.

4. Paid the Fresno Metropolitan Flood Control District drainage fee, currently in affect, reflecting open space for FMFCD Drainage areas BD and BG. Currently estimated at $36,390, but not to exceed $40,000.

5. Paid all outstanding Urban Growth Management and connection fees required for utility services to the subject property.

6. Deposit into escrow, a Deed of Easement for street right of way, along Orangewood Avenue, in accordance with City Standards for street widths and adopted Official Plan Lines.

7. Deposit into escrow, funds in the amount of $72,200 currently held by the City as a Certificate of Deposit to guarantee maintenance of the required open space area described in the "Statement of Covenants Affecting Land Development for Landscaping and Maintaining an Off-site Open Space Facility for the Final Map of Tract No. 5235".

8. Pay for a California Land Title Association (CLTA) title policy to be issued by the Escrow Holder, showing title to the property vested in the City of Fresno with liability equal to $600,000.

At Close of Escrow the City of Fresno agrees to:

1. Relieve KB Resale Properties, Inc. and KB Home South Bay, Inc. of the requirement to maintain the temporary storm water storage basin and associated facilities as set forth in the "Statement of Covenants Affecting Land Development for Temporary Off-site Storm Drainage Facilities for the Final Map of Tract No. 5235" by recording a Release Statement.

2. Relieve KB Resale Properties, Inc. and KB Home South Bay, Inc. of the requirement to provide, landscape, irrigate, and maintain, in perpetuity, a 2.83 acre area for public common open space as set forth in the "Statement of Covenants Affecting Land Development for Landscaping and Maintaining an Off-site Open Space Facility for the Final Map of Tract No. 5235" by recording a Release Statement.

Following Close of Escrow the City of Fresno agrees to:

1. Maintain the existing temporary storm water drainage basin, located on the subject property, until advised by the Fresno Metropolitan Flood Control District that permanent master planned storm water storage facilities have been constructed and are operational. City shall be responsible for backfilling the basin.

As a matter of course, staff had a Phase I Environmental Site Assessment conducted, dated July 27, 2009, for the subject property which concluded that "The results of the assessment revealed no evidence of recognized environmental conditions in connection with the project site".

Staff has performed a preliminary environmental assessment of this project and has determined that it falls within the Class 1 Categorical Exemption set forth in CEQA Guidelines, Section 15301(c) and 15325 (f) as this property is being transferred to maintain open space and there is no expansion of existing uses. Furthermore, none of the exceptions to Categorical Exemptions set forth in the CEQA Guidelines, Section 15300.2 apply to this project.

BACKGROUND

On November 1, 2005, the City Council approved the final map of Tract No. 5235, a 240-lot single family residential subdivision, located on approximately 55 acres on the north side of Church Avenue between Peach and Minnewawa Avenues. One of the conditions imposed on the subdivision was the requirement that the developer provide at least five percent of the total tract area for public or private common open space per the Roosevelt Community Plan. In response to this development condition KB Home agreed to landscape and maintain, in perpetuity, a 2.83 acre common use open space area for the neighborhood.

A second development condition required the developer to provide a temporary storm water drainage ponding basin since permanent Fresno Metropolitan Flood Control District master planned facilities would not be available to serve the new tract. The ponding basin was excavated and fenced on the same 5.755 acre parcel that KB Home wants to deed to the City.

These two particular conditions have been memorialized in the form of officially recorded Statements of Covenants. The subdivision has been completed and performance security has been released.

However, at this time KB Home has asked the City of Fresno to consider relieving them of the obligations to (1) landscape, irrigate and maintain, in perpetuity, the open space area in exchange for a grant deed to 5.755 acres of land which the PARCS Department will, at some future date, develop into a Neighborhood Park and (2) operate and maintain the temporary storm water ponding basin until the Fresno Metropolitan Flood Control District notifies the City that permanent storm drainage facilities are constructed and operational.

FISCAL IMPACT

Entering into this agreement will not have an initial fiscal impact on the General Fund. However, once the City takes title to the property, it will be responsible for the maintenance of the storm water ponding basin for an unknown time period and keeping the remainder of the property weed and trash free. It is estimated that this cost would be about $2,500 annually and will be paid from the forfeited security deposit of $72,200.

Attachment: Cooperative Agreement between City of Fresno and KB Resale Properties, Inc. and KB Home South Bay, Inc., including exhibits