

INDEMNIFICATION AGREEMENT

THIS AGREEMENT is entered into this 11th day of July, 2017, by and between the COUNTY OF FRESNO, a political subdivision of the State of California, (hereinafter "COUNTY") and Charles Maxwell, an individual (hereinafter "APPLICANT"). The COUNTY and the APPLICANT are each a "Party" to this Agreement and collectively are "Parties" to this Agreement.

W I T N E S S E T H:

WHEREAS, APPLICANT applied to COUNTY for one or more land use approvals; and

WHEREAS, litigation challenging the granting or issuance of land use approvals by governmental bodies is proliferating, and such litigation exposes COUNTY to potential liability for damages, costs, and attorney's fees; and

WHEREAS, in such litigation, the person or entity receiving land use approvals is designated as a real party in interest and is the party that primarily and directly benefits from the granting or issuance of the land use approvals; and

WHEREAS, the Board of Supervisors is an objective decision-making body and, therefore, has no special interest in the approval or denial of land use applications, or the outcome of litigation arising from such grant or denial, except as to those which promote important public policy; and

WHEREAS, COUNTY could incur great expense in the active defense of such litigation and, if unsuccessful, may also be required to pay the prevailing party's attorney's fees and costs; and

WHEREAS, fairness and sound fiscal policy require that the person or entity receiving the benefits of a land use approval should also bear the burden of the liability for potential injuries and the expense of such litigation; and

WHEREAS, APPLICANT and COUNTY mutually desire to enter into this Indemnification Agreement, by which APPLICANT shall indemnify, (at COUNTY's request) defend, save and hold COUNTY harmless, in order that COUNTY shall bear no fiscal or financial burden

1 whatsoever resulting from any litigation challenging the COUNTY's grant or issuance of land
2 use approvals to APPLICANT.

3 1. DEFINITIONS

4 For purposes of this Agreement the following terms have the following meanings,
5 provided that, as the context may require, the singular of any term may be read as the plural
6 and the plural as the singular.

7 a. "APPLICANT" means the person or entity to whom the land use approval will
8 be granted or issued, and his, her, or its heirs, assigns or successors in interest.

9 b. "Land Use Approval" shall include any benefit arising from any of the following:
10 the certification of an Environmental Impact Report ("EIR"), the grant of an amendment to the
11 general plan or a rezoning; the issuance of a variance, conditional use permit, Director Review
12 and Approval, or other discretionary land use permit; the approval of a parcel, tentative or final
13 subdivision map; and any other document prepared pursuant to the Surface Mining and
14 Reclamation Act ("SMARA"), the California Environmental Quality Act ("CEQA") or other law that
15 is approved in conjunction with the land use approval. "Land use approval" does not include a
16 ministerial permit.

17 c. "COUNTY" shall mean the County of Fresno, a political subdivision of the
18 State of California.

19 d. "Project" means the use of the land authorized by the Land Use Approval:
20 Director Review and Approval Application No. 4465.

21 2. HOLD HARMLESS

22 The APPLICANT hereby agrees to save, indemnify, hold harmless and, at
23 COUNTY's request, defend COUNTY, its officers, agents, and employees, the Fresno County
24 Board of Supervisors, each member of the Fresno County Board of Supervisors, the Fresno
25 County Planning Commission, from and against all expenses, demands, liabilities, claims, costs
26 (including but not limited to court costs and attorney's fees), or damages of any nature
27 whatsoever occurring or resulting to COUNTY, including, but not limited to, an award of
28 attorney's fees and costs to the person, organization or entity bringing the cause of action, or

1 their officers, agents, and employees, arising, from resulting from, or in connection with any
2 COUNTY action in granting, issuing or approving Land Use Approvals for the Project.

3 When defending COUNTY, APPLICANT shall pay all reasonable attorneys' fees
4 and costs related to the defense in any action brought against the COUNTY and the
5 APPLICANT, except for any fees and costs incurred by the COUNTY in defense of any action,
6 as provided in section 4 of this agreement. APPLICANT shall defend COUNTY through counsel
7 selected by APPLICANT (including but not limited to in-house counsel) and shall keep the
8 COUNTY fully informed as to the progress of such defense. COUNTY shall cooperate fully with
9 APPLICANT in the defense of the claim.

10 3. NOTIFICATIONS AND COOPERATION BY COUNTY

11 COUNTY shall notify applicant within five (5) COUNTY business days of its receipt of
12 any demand, claim, action, proceeding, or litigation in which COUNTY is to be indemnified and
13 held harmless by APPLICANT. If COUNTY requests that APPLICANT defend COUNTY, it shall
14 notify APPLICANT in writing within ten (10) COUNTY business days of its receipt of any such
15 demand, claim, action, proceeding, or litigation. COUNTY shall cooperate fully in such defense.

16 4. COUNTY PARTICIPATION IN DEFENSE

17 Nothing contained herein shall prohibit COUNTY, in its sole discretion, from participating
18 in the defense of any demand, claim, action, proceeding, or litigation over and above
19 representation by outside counsel, or from participating in the defense of any demand, claim,
20 action, proceeding, or litigation. If COUNTY elects to also defend, it shall do so in good faith
21 and COUNTY shall bear its attorney's fees and cost. Except as otherwise provided in this
22 paragraph, in no event shall COUNTY's participation in the defense of any demand, claim,
23 action, proceeding, or litigation affect the obligations imposed upon APPLICANT in section 2 of
24 this Agreement.

25 5. REIMBURSEMENT OF COUNTY'S COSTS RE: ADMINISTRATIVE RECORD

26 COUNTY acknowledges that it will make all reasonable efforts to look to Petitioner
27 bringing action for payment of costs associated with preparation of administrative record as
28 provided by law. However, only if the Petitioner refuses to pay on or before the date judgment

1 is entered by the superior court, APPLICANT agrees to reimburse COUNTY for its actual cost
2 incurred, including, but not limited to, COUNTY staff and attorney time expended, for certifying
3 and/or preparing the administrative record in connection with any litigation/ proceedings related
4 to the subject matter of this Indemnification Agreement. To the extent administrative record
5 reimbursement and related costs are recovered by the COUNTY in any litigation, APPLICANT
6 shall be reimbursed to the extent of any such recovery.

7 6. BINDING OBLIGATION

8 This Agreement shall be binding upon, and inure to the benefit of, the successors and
9 assigns of the Parties.

10 7. COVENANT NOT TO SUE

11 (a) Upon issuance of a building permit for the Project, APPLICANT on behalf
12 of itself, and its successors, and assigns, hereby fully releases COUNTY, its successors, and
13 all other persons and associations, known or unknown, from all claims and causes of action, as
14 a result of the above-described land use approval and covenants not to sue relating to such
15 claims.

16 (b) APPLICANT acknowledges and agrees that this release applies to all
17 claims that APPLICANT may have against COUNTY arising out of the above-described land
18 use approval for injuries, damages, or losses to APPLICANT's person and property, real or
19 personal, whether those injuries, damages, or losses are known or unknown, foreseen or
20 unforeseen, or patent or latent.

21 (c) APPLICANT acknowledges and warrants that APPLICANT's execution of
22 this release is free and voluntary.

23 (d) This release pertains to a disputed claim and does not constitute an
24 admission of liability by COUNTY for the above-described land use approval.

25 8. SEVERABILITY

26 In the event any provisions of this Agreement are held by a court of competent jurisdiction
27 to be invalid, void, or unenforceable, the Parties will use their best efforts to meet and confer to
28 determine how to mutually amend such provisions with valid and enforceable provisions, and

the remaining provisions of this Agreement will nevertheless continue in full force and effect without being impaired or invalidated in any way.

9. NON-ASSIGNMENT

Neither Party shall assign, transfer or sub-contract this Agreement nor their rights or duties under this Agreement without the prior written consent of the other party.

10. NOTICES

Except as otherwise specified herein, all notices, demands, requests or approvals to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by: (a) personal delivery, in which case notice is effective upon delivery; (b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered upon receipt if delivery is confirmed by a return receipt; or (c) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service. For all claims arising out of or related to this Agreement, nothing in this section establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

COUNTY: County of Fresno
Director of Public Works and Planning
2220 Tulare Street, Sixth Floor
Fresno, CA 93721

Copies of notices to COUNTY shall also be given to:

Fresno County Counsel
Attention: Arthur G. Wille, Senior Deputy County Counsel
2220 Tulare Street, Suite 500
Fresno, CA 93721

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APPLICANT: Charles Maxwell
10925 Rusty Spur Lane
Clovis, CA 93611

Copies of notices to APPLICANT shall also be given to:

John P. Kinsey, Esq.
Wanger Jones Helsley PC
265 E River Park Cir Ste 310
PO Box 28340
Fresno, CA 93720

11. RELATIONSHIP OF PARTIES

Neither APPLICANT nor any of its members, officers, agents, employees, contractors or their subcontractors, or consultants or their subconsultants shall be deemed to be agents of COUNTY in connection with the performance of APPLICANT's obligations under this Agreement.

12. INTEGRATED AGREEMENT; AMENDMENTS IN WRITING

This Agreement represents the full and complete understanding of the Parties with respect to the subject matter hereof, and all preliminary negotiations and oral or written agreements with respect thereto are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by a written instrument signed by both COUNTY and APPLICANT. No waiver of any provision of this Agreement will be valid unless and until it is in writing and signed by the Party making the waiver. Waiver by either Party at any time of a breach or default of this Agreement shall not be deemed a waiver of or consent to a breach or default of the same or any other provision of this Agreement.

13. HEADINGS; CONSTRUCTION; STATUTORY REFERENCES

The headings of the sections and paragraphs of this Agreement are for convenience only and shall not be used to interpret this Agreement. This Agreement is the product of negotiation between the Parties. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. All references in this Agreement to particular statutes, regulations, ordinances or

1 resolutions of the United States, the State of California, or the County of Fresno shall be deemed
2 to include the same statute, regulation, ordinance or resolution as hereafter amended or
3 renumbered, or if repealed, to such other provisions as may thereafter govern the same subject.

4 14. AUTHORITY

5 Each Party represents and warrants to the other Party that such Party is duly
6 authorized and empowered to execute, enter into, and perform its obligations set forth in this
7 Agreement, and that the individual signing this Agreement on behalf of such Party has been
8 duly authorized to execute this Agreement on behalf of such Party, and will, by signing this
9 Agreement on such Party's behalf, legally bind such Party to the terms and conditions of this
10 Agreement.

11 Each Party further represents and warrants to the other Party that no other person or
12 entity is required to give its approval or consent to this Agreement in order for such Party to
13 authorize, enter into, and perform its obligations under this Agreement, or that if such approval
14 or consent to this Agreement is required, that such approval or consent has been obtained.

15 15. APPLICABLE LAW

16 This Agreement is made and entered into in the State of California and shall be deemed
17 to have been executed and delivered within the State of California, and the rights and obligations
18 of the Parties hereunder shall be governed by, and construed, and enforced in accordance with
19 the laws of the State of California. The Agreement and obligations of the Parties are subject to
20 all laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement
21 (or the successors of those authorities). Venue for any action arising out of or related to this
22 Agreement shall only be in Fresno County, California.

23 16. CONSTRUCTION OF AGREEMENT

24 The Parties hereby acknowledge that they and their respective counsel have cooperated
25 in the drafting and preparation of this agreement, for which reason this agreement shall not be
26 construed against any party as the drafter thereof.

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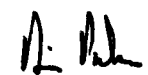
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1 IN WITNESS WHEREOF, APPLICANT and COUNTY hereby execute this Agreement.

2 **APPLICANT:**

COUNTY OF FRESNO

3 By 
4 Charles Maxwell


By 
Brian Pacheco, Chairman
Board of Supervisors

5 Date: 6-1-17


6 **ATTEST:**
Bernice E. Seidel, Clerk
Board of Supervisors

8 **APPROVED AS TO LEGAL FORM**

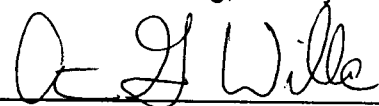
By 
Deputy

9
10 By 
11 Attorney for APPLICANT

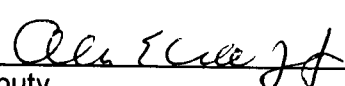
12 **REVIEWED AND RECOMMENDED**
13 **FOR APPROVAL**

14 By: 
15 Steven E. White, Director
Department of Public Works and Planning

17 **APPROVED AS TO LEGAL FORM**
18 Daniel C. Cederborg, County Counsel

19 By: 
20 Deputy

22 **APPROVED AS TO ACCOUNTING FORM**
23 Oscar J. Garcia, CPA
Auditor-Controller/Treasurer-Tax Collector

24
25 By: 
Deputy