

1 WHEREAS, an Environmental Impact Report ("EIR") was prepared for the Millerton Specific Plan
2 and the EIR identified significant and potentially significant adverse impacts that were reduced to a level
3 of less than significant with Mitigation Measures that were included in the Millerton Specific Plan Mitigation
4 Measures and Monitoring Program Matrix herein after referred to Mitigation and Monitoring Program
5 shown in Attachment B and the Board of Supervisors adopted the Findings and a Statement of Overriding
6 Considerations and certified the EIR on November 29, 1994; and,

7 WHEREAS, on February 3, 2000, the Fresno County Planning Commission adopted findings that
8 none of the conditions described in Section 15162 of the California Environmental Quality Act (CEQA)
9 Guidelines calling for preparation of a subsequent EIR had occurred therefore, EIR No. SCH 84051409
10 as amended by the addendum incorporating the studies that were prepared subsequent to the adoption
11 of the EIR was determined to be adequate for Classified Conditional Use Permit Application No. 2956;
12 Vesting Tentative Subdivision Map Application No. 4968; and Site Plan Review Application No. 7082 and
13 approved the applications for the proposed development with conditions as recommended by staff with
14 modifications; and,

15 WHEREAS, Condition No. 5 of Classified Conditional Use Permit No. 2956 requires compliance
16 with all EIR Mitigation Measures contained in the Mitigation and Monitoring Program approved with the
17 project; and,

18 WHEREAS, Condition No. 5 also requires SUBDIVIDER to enter into an agreement with COUNTY
19 for the purpose of reimbursing COUNTY for all costs incurred by COUNTY in complying with the Mitigation
20 and Monitoring requirements, to include but not be limited to staff and consultation services.

21 WHEREAS, on May 1, 2018 the Board of Supervisors approved Final Map No. 4968, phase I of
22 Vesting Tentative Tract Map No. 4968, which consisted of 106 lots.

23 WHEREAS, SUBDIVIDER is now submitting the Final Map for Tract No. 6189, phase II of Vesting
24 Tentative Tract Map No. 4968, consisting of 133 lots.

25 NOW, THEREFORE, in consideration of the mutual acknowledgments, covenants, and conditions
26 herein contained, it is agreed as follows:

27 1. DUTIES OF THE SUBDIVIDER.

28 A. SUBDIVIDER shall pay to COUNTY Department of Public Works and Planning, the actual

1 costs incurred by COUNTY or its consultant ("Consultant") in performing all other work in connection with
2 the required monitoring for compliance with the Mitigation and Monitoring Program, including departmental
3 cost, COUNTY overhead costs and the cost to retain an independent consultant.

4 B. Upon execution of this AGREEMENT, SUBDIVIDER shall immediately deposit with
5 COUNTY the sum of Five Thousand Dollars (\$5,000.00) which is the estimated deposit for COUNTY's
6 efforts to retain an independent outside consultant to conduct the required monitoring for compliance with
7 the approved Mitigation and Monitoring Program including peer review of the Wetland and Open Space
8 Mitigation and Management Plan prepared by the SUBDIVIDER's appropriately certified/licensed
9 consultant.

10 C. Within ten (10) days of written notice from COUNTY, SUBDIVIDER shall deposit Twenty-
11 Five Thousand Dollars (\$25,000.00) in additional funds for reimbursement of services provided by
12 COUNTY or Consultant for the tasks necessary to accomplish the required monitoring of compliance with
13 the Mitigation and Monitoring Program and associated peer review as stated in the preceding section
14 above (Section 1.A). If funds are needed in addition to the \$25,000.00, SUBDIVIDER agrees to provide,
15 within ten (10) days written notice from COUNTY, additional funds in increments of \$5,000.00 as required
16 by COUNTY.

17 D. The advance deposits required under subsection 1.A and 1.B (hereinafter, collectively,
18 "ADVANCE") shall be used to pay for the actual fees, costs and expenses incurred by COUNTY in the
19 performance of its duties under this AGREEMENT. COUNTY shall hold the ADVANCE in trust for such
20 purposes, provided however, COUNTY shall not be obligated to invest such funds or to otherwise obtain
21 any interest thereon. If the actual fees, costs and expenses incurred by COUNTY are less than the amount
22 of the ADVANCE, COUNTY will promptly refund such surplus funds to the SUBDIVIDER following the
23 conclusion or earlier termination of this AGREEMENT.

24 2. DUTIES OF THE COUNTY.

25 A. COUNTY shall solicit and retain an independent consultant to perform the necessary
26 monitoring of the Mitigation Measures contained in said Mitigation Monitoring Program.

27 B. COUNTY shall keep accurate records of its actual costs including cost associated with
28 consultant services incurred while reviewing plans, issuing permits, conducting inspections, and any other

1 work performed in connection with monitoring said Mitigation Monitoring Program.

2 C. COUNTY shall provide SUBDIVIDER an accounting of time and expenses attributable to
3 this AGREEMENT within 10 days following receipt of a written request.

4 D. From time to time, upon a determination by the Director of Public Works and Planning, or
5 his/her designee, (collectively "Director") that the funding provided by SUBDIVIDER pursuant to Section
6 1. is insufficient to reimburse Consultant) or COUNTY, as applicable, for services to be rendered, the
7 Director may issue an invoice or invoices for the amount of funding the Director determines to be
8 reasonably necessary to compensate the consultant or COUNTY for services to be rendered.
9 SUBDIVIDER shall remit payment to COUNTY for each such invoice within fifteen (15) days of receipt of
10 such an invoice. There shall be no limit to the number of invoices COUNTY may issue to SUBDIVIDER
11 and SUBDIVIDER shall be obligated to pay, nor any limit on the total amount SUBDIVIDER shall be
12 required to pay COUNTY.

13 In the event SUBDIVIDER fails to make any payment of deposit requested by COUNTY, COUNTY
14 may refuse issuance of building permits on undeveloped lots within Tract No. 6189. The Parties
15 acknowledge that the actual cost of performance under this AGREEMENT may exceed the estimate of
16 Thirty Thousand Dollars (\$30,000). If, however, the cost incurred is less than Thirty Thousand Dollars
17 (\$30,000), COUNTY shall refund such excess funds to SUBDIVIDER after completion of the Mitigation
18 Monitoring Program.

19 3. INDEPENDENT CONTRACTOR.

20 It is understood that Consultant shall be an independent contractor of COUNTY. SUBDIVIDER
21 agrees to permit Consultant to enter upon its property in compliance with applicable safety regulations
22 to perform all work thereon, as Consultant deems necessary to complete the Mitigation Monitoring
23 required for the project. It is agreed that SUBDIVIDER at no time will interfere with Consultant in the
24 performance of such work or attempt to influence such Consultant during the course of this Monitoring
25 report.

26 4. HOLD HARMLESS.

27 SUBDIVIDER agrees to indemnify, save, hold harmless, and at COUNTY's request, defend the
28 COUNTY, its officers, agents, and employees from any and all costs and expenses (including without

1 limitation costs and fees of litigation), damages, liabilities, claims, and losses occurring or resulting to
2 COUNTY in connection with the performance, or failure to perform, by SUBDIVIDER, its officers, agents,
3 or employees under this AGREEMENT, and from any and all costs and expenses, damages, liabilities,
4 claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or
5 damaged by the performance, or failure to perform, of SUBDIVIDER, its officers, agents, or employees
6 under this AGREEMENT.

7 5. NON-ASSIGNMENT.

8 This AGREEMENT shall not be assignable by SUBDIVIDER without the prior written consent of
9 COUNTY. Any assignee shall take this AGREEMENT subject to the covenants and conditions set forth
10 herein.

11 6. TERM.

12 This AGREEMENT shall expire one (1) year after occupancy is granted for the final home in Tract
13 No. 6189.

14 7. NOTICES.

15 The persons and their addresses having authority to give and receive notices under this
16 AGREEMENT include the following:

<u>COUNTY OF FRESNO</u>	<u>SUBDIVIDER</u>
Director of Public Works and Planning	Darius Assemi, CEO, Director
County of Fresno	3B Development Inc.
2220 Tulare Street, 6 th Floor	a California Corporation
Fresno, CA 93721	1396 W. Herndon Ave.
	Fresno, CA 93711

23 All notices between COUNTY and SUBDIVIDER provided for or permitted under this AGREEMENT
24 must be in writing and delivered either by personal service, by first-class United States mail, by an overnight
25 commercial courier service, or by telephonic facsimile transmission. A notice delivered by personal service
26 is effective upon service to the recipient. A notice delivered by first-class United States mail is effective three
27 (3) COUNTY business days after deposit in the United States mail, postage prepaid, addressed to the
28 recipient. A notice delivered by an overnight commercial courier service is effective one (1) COUNTY

1 business day after deposit with the overnight commercial courier service, delivery fees prepaid, with delivery
2 instructions given for next day delivery, addressed to the recipient. A notice delivered by telephonic facsimile
3 is effective when transmission to the recipient is completed (but, if such transmission is completed outside of
4 COUNTY business hours, then such delivery shall be deemed to be effective at the next beginning of a
5 COUNTY business day), provided that the sender maintains a machine record of the completed transmission.

6 For all claims arising out of or related to this AGREEMENT, nothing in this section establishes, waives,
7 or modifies any claims presentation requirements or procedures provided by law, including but not limited to
8 the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

9 8. GOVERNING LAW.

10 Venue for any action arising out of or related to this AGREEMENT shall only be in Fresno County,
11 California. The rights and obligations of the Parties and all interpretation and performance of this
12 AGREEMENT shall be governed in all respects by the laws of the State of California.

13 9. SEVERABILITY.

14 In the event any provisions of this AGREEMENT are held by a court of competent jurisdiction to
15 be invalid, void, or unenforceable, the Parties will use their best efforts to meet and confer to determine
16 how to mutually amend such provisions with valid and enforceable provisions, and the remaining
17 provisions of this AGREEMENT will nevertheless continue in full force and effect without being impaired
18 or invalidated in any way.

19 10. HEADINGS; CONSTRUCTION; STATUTORY REFERENCES.

20 The headings of the sections and paragraphs of this AGREEMENT are for convenience only and
21 shall not be used to interpret this AGREEMENT. This AGREEMENT is the product of negotiation between
22 the Parties. The language of this AGREEMENT shall be construed as a whole according to its fair
23 meaning and not strictly for or against any Party. Any rule of construction to the effect that ambiguities
24 are to be resolved against the drafting party shall not apply in interpreting this AGREEMENT. All
25 references in this AGREEMENT to statutes, regulations, ordinances or resolutions of the United States,
26 the State of California, or the County of Fresno shall be deemed to include the same statute, regulation,
27 ordinance or resolution as hereafter amended or renumbered, or if repealed, to such other provisions as
28 may thereafter govern the same subject.

1 11. LEGAL AUTHORITY

2 Each individual executing or attesting this AGREEMENT hereby covenants, warrants, and
3 represents to the other Party: (1) that he or she is duly authorized to execute and deliver this AGREEMENT
4 on behalf of his or her respective Party in accordance with the following: for SUBDIVIDER, its articles of
5 incorporation and bylaws; and for COUNTY, its governing legal authority; (2) that this AGREEMENT is
6 binding upon his or her respective Party; and (3) that his or her respective Party is duly organized and
7 legally existing in good standing in the State of California.

8 12. BINDING EFFECT

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

11 13. NO THIRD-PARTY BENEFICIARIES

12 Notwithstanding anything else to the contrary herein, the Parties acknowledge and agree that no
13 other person, firm, corporation, or entity shall be deemed an intended third-party beneficiary of this
14 AGREEMENT.

15 14. COUNTERPARTS

16 This AGREEMENT may be executed in two or more counterparts, each of which shall be deemed
17 to be an original, and all of which taken together shall constitute one and the same instrument.

18 15. ENTIRE AGREEMENT

19 This AGREEMENT constitutes the entire AGREEMENT between SUBDIVIDER and COUNTY with
20 respect to the subject matter hereof and supersedes all previous AGREEMENT negotiations, proposals,
21 commitments, writings, advertisements, publications, and understanding of any nature whatsoever unless
22 expressly included in this AGREEMENT.

23 16. INDEPENDENT CAPACITY.

24 This AGREEMENT is not intended to and will not be construed to create the relationship of
25 principal-agent, master-servant, employer-employee, partnership, joint venture or association between
26 the COUNTY and the SUBDIVIDER; neither Party is an officer of the other. Each of the Parties to this
27 AGREEMENT, their respective officers, agents and employees, in the performance of this AGREEMENT
28 shall act in an independent capacity, as independent contractors, between each other.

1 IN WITNESS WHEREOF, the Parties have executed this AGREEMENT on the date
2 set forth above.

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SUBDIVIDER AND/OR CONSULTANT



Authorized Signature

Darius Ascermi, CEO

Print Name and Title

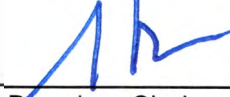
1394 W. Herndon Ave, Ste 101

Mailing Address

Fresno, CA 93711

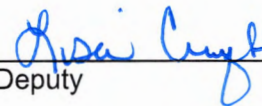
City, State, and Zip Code

COUNTY OF FRESNO



Steve Brandau, Chairman of the Board of
Supervisors of the County of Fresno

ATTEST:
Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By 

Deputy

FOR ACCOUNTING USE ONLY:
ORG: 43600200
FUND: 0001
SUBCLASS: 10000
ACCOUNT: 4910

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Fresno

On November 8, 2021 before me, Daryl C. Gagliardi, a notary public,
(insert name and title of the officer)

personally appeared Darius Assemi,
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 *Daryl C. Gagliardi* (Seal)

