

RECORDING REQUESTED BY:

City of Merced, A California charter
municipal corporation

WHEN RECORDED MAIL TO:

City of Merced
City Clerk
678 West 18th Street
Merced, California 95340

(Above for Recorder's Use Only)

LEGISLATIVE ACTION AGREEMENT

THIS AGREEMENT is made and entered into as of this _____ day of _____ 2018, by and between the City of Merced, a California Charter Municipal Corporation ("City") and the Baxter Ranches, LLC., a California Limited Liability Company ("Owner").

W I T N E S S E T H

WHEREAS, Owner has applied to the City for General Plan Amendment #18-01 and Site Utilization Plan Revision #13 to Planned Development (P-D) #42 (the Entitlements) for approximately 5.0 acres generally located at the southeast corner of the future Catherine A. Hostetler Boulevard and Freemark Avenue (extended), and as legally described on Exhibit "A" and shown on the map at Exhibit "B," attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, City is willing to consider the Owner's request provided that certain conditions are met; and

WHEREAS, the Owner is willing to enter into this Legislative Action Agreement with respect to the Property and the project contemplated by the

Entitlements (the “Project”) should the Entitlements be approved or conditionally approved by the City.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and representations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, the parties hereto agree as follows:

1. The Owner, for themselves and all successors thereto, agree to pay all City and school district fees, taxes, and/or assessments applicable to the Property and the Project in effect on the date of subdivision and/or permit approval, any increase in those fees, taxes, and/or assessments, and any new fees, taxes, and/or assessments which are in effect at the time building permits are issued, which may include public facility impact fees, other impact fees as applicable, and any Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc., and to comply with the additional conditions set forth in Planning Commission Resolution #3098, and Exhibit “C” attached hereto and incorporated herein by this reference. Payment shall be made at the time of building permit issuance unless an Ordinance or other requirement of the City mandates or permits payment of such fees, taxes, and/or assessments at an earlier or subsequent time. The foregoing obligation shall apply to each Owner with respect to the portion of the Property owned by that Owner at the time payment or performance is due.

2. The Owner desires to comply with the conditions of approval set forth on Exhibit “C” and within this Agreement with respect to development of the Project and acknowledges that the conditions are necessary to mitigate the environmental impact caused by the Owner’s development of the Project on the Property or are necessary to offset the costs to the City generated by the Owner’s development of the Project including sewer connection costs pursuant to Chapter

15.16 of the Merced Municipal Code. The foregoing obligation shall apply to each Owner with respect to the portion of the Property owned by that Owner at the time compliance is required.

3. The Owner agrees to pay all sewer connection costs imposed by the City as delineated in Section 15.16.070 of the Merced Municipal Code and to pay all other costs required by Chapter 15.16 of the Merced Municipal Code.

4. The Owner shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and its/their officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments (hereinafter "Claims") against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul the approval of the Entitlements by the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the Entitlements. Furthermore, the Owner shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against another governmental entity in which the Owner's Project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the Owner of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the Owner shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

5. City, on its part, agrees to approve the Entitlements in accordance with Exhibits “D” and “E”.

6. No building permit or other permit shall be issued for the Project that is not in compliance with this Agreement.

7. It is expressly agreed that this Agreement is not intended to limit the power of the City to impose other requirements, limitations, or fees, etc., as a condition of development, and does not relieve the Owner from complying with all other requirements that may be imposed as a condition of development, whether now in existence or hereinafter imposed by the City whether by zone change, subdivision map approval, ordinance, resolution, use permit, or otherwise. The parties agree that this Paragraph does not apply to the approval of the final map and issuance of building permits for project(s) subject to this Agreement on the property described in Exhibit “A” and shown on Exhibit “B.”

8. To the extent allowed by law, the conditions of this Agreement constitute covenants running with the land, and shall be enforceable by the City or by any present or future owner of any of the land described in Exhibit “A” and shown on Exhibit “B.”

9. The Owner agrees to comply with and abide by all conditions set forth by the City relating to the development of the property subject to this Agreement.

10. In the event of default by the Owner, and in addition to any other remedy available to the City, the City shall have the right to rezone the land back to its original designation.

11. In the event that either City or the Owner shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

12. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

13. This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

14. This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

BY: K Flores 8/28/18
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

OWNER
BAXTER RANCHES, LLC
A California Limited Liability Company

By:  _____
Greg Hostetler

Its: Chief Executive Officer

TAX PAYER ID: _____

ADDRESS: 923 E. Pacheco Blvd.

Los Banos, CA 93665

TELEPHONE: 209-826-6200

FAX: _____

EMAIL: almondranch@gmail.com

{SIGNATURES MUST BE NOTARIZED}

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 Merced

On August 31, 2018 before me, Stephani R. Davis, Notary Public
(insert name and title of the officer)

personally appeared Greg Hastetter
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 Stephani R. Davis (Seal)



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 _____)

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

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

LEGAL DESCRIPTION

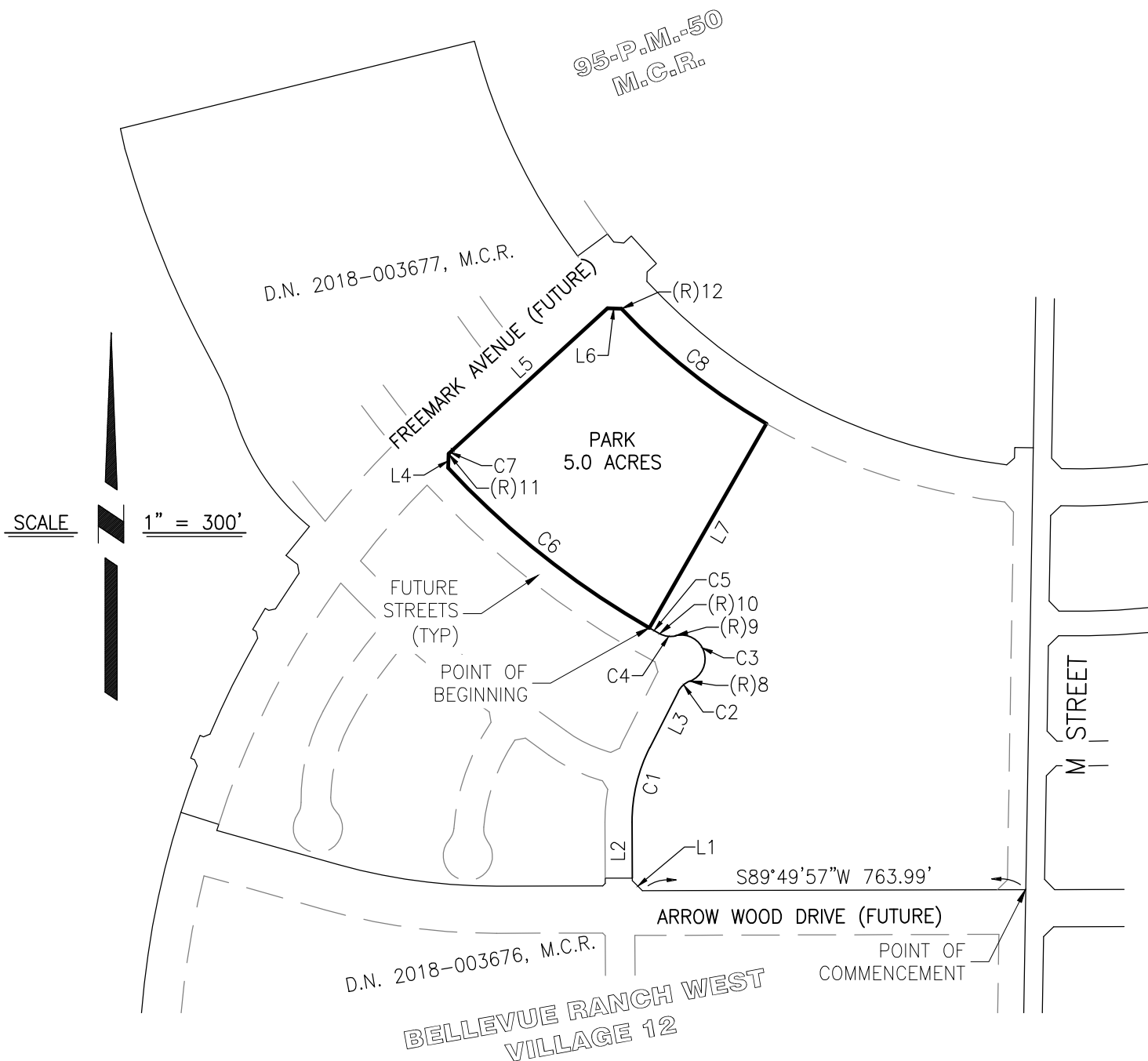
PROPOSED CITY PARK SITE

All that certain real property situate, lying, and being a portion of Adjusted Lot 1 as described in Certificate of Compliance #2017-09, filed as Document No. 2018-003677, Merced County Records, lying in the City of Merced, County of Merced, State of California, being more particularly described as follows:

COMMENCING at the southeast corner of said Adjusted Lot 1, thence along the southerly line of said Adjusted Lot 1, South 89°49'57" West 763.99 feet; thence, continuing along the southerly line of said Adjusted Lot 1, North 45°10'03" West 28.28 feet; thence North 0°10'03" West 116.56 feet, to the beginning of a curve, concave to the southeast, having a radius of 325.50 feet and a central angle of 27°09'46"; thence, along the arc of said curve, 154.31 feet; thence North 26°59'43" East 124.53 feet, to the beginning of a curve, concave to the southeast, having a radius of 44.50 feet and a central angle of 41°24'35"; thence, along the arc of said curve, 32.16 feet, to the beginning of a reverse curve, concave to the southwest, from which a radial line bears South 21°35'42" East, having a radius of 47.50 feet, and a central angle of 171°48'06"; thence, along the arc of said curve, 142.43 feet, to the beginning of a reverse curve, concave to the north, from which a radial line bears North 13°23'47" West, having a radius of 44.50 feet, and a central angle of 42°26'54"; thence, along the arc of said curve, 32.97 feet, to the beginning of a compound curve, concave to the northeast, from which a radial line bears North 29°03'06" East, having a radius of 1706.00 feet, and a central angle of 0°47'24"; thence, along the arc of said curve, 23.52 feet, to the beginning of a compound curve, concave to the northeast, from which a radial line bears North 29°50'30" East, having a radius of 1706.00 feet, and a central angle of 17°15'46"; said point also being the POINT OF BEGINNING of this description; thence, along the arc of said curve, 514.01 feet; thence North 2°08'33" East 28.30 feet, to the beginning of a non-tangent curve, concave to the southeast, from which a radial line bears South 42°49'11" East, having a radius of 1713.00 feet, and a central angle of 0°22'03"; thence, along the arc of said curve, 10.99 feet; thence North 47°32'52" East 418.16 feet; thence South 87°44'55" East 28.14 feet, to the beginning of a non-tangent curve, concave to the northeast, from which a radial line bears North 46°57'18" East, having a radius of 1237.00 feet, and a central angle of 17°06'48"; thence, along the arc of said curve, 369.47 feet; thence South 29°50'30" West 469.00 feet, to the point of beginning.

Containing a total of 5.0 acres, more or less.

EXHIBIT A



NOTES

1. ALL DISTANCES AND DIMENSIONS SHOWN ARE IN FEET AND DECIMAL PARTS THEREOF.
2. ALL RECORD INFORMATION SHOWN IS FROM MERCED COUNTY RECORDS.
3. SEE SHEET 2 FOR LINE AND CURVE DATA TABLES.

DATE: 8/10/2018 9:31 FILE: M:\125971\Survey Drawings\PARK SITE\BRW-PARK.dwg



BENCHMARK ENGINEERING, INC.
CIVIL ENGINEERING & LAND SURVEYING
 915 17TH STREET • MODESTO, CALIFORNIA • 95354
 (209) 548-9300 FAX:(209) 548-9305

PARK SITE
BELLEVUE RANCH WEST
 MERCED, CALIFORNIA

DRAWN BY: SYD
 DATE: 2018-08-10
 SHEET: 1 OF 2
 JOB: 125971

EXHIBIT B

LINE DATA TABLE		
LINE	BEARING	DISTANCE
L1	N45°10'03"W	28.28'
L2	N0°10'03"W	116.56'
L3	N26°59'43"E	124.53'
L4	N2°08'33"E	28.30'
L5	N47°32'52"E	418.16'
L6	S87°44'55"E	28.14'
L7	S29°50'30"W	469.00'

CURVE DATA TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	27°09'46"	325.50'	154.31'
C2	41°24'35"	44.50'	32.16'
C3	171°48'06"	47.50'	142.43'
C4	42°26'54"	44.50'	32.97'
C5	0°47'24"	1706.00'	23.52'
C6	17°15'46"	1706.00'	514.01'
C7	0°22'03"	1713.00'	10.99'
C8	17°06'48"	1237.00'	369.47'

RADIAL BEARING DATA	
RADIAL	BEARING
(R)8	S21°35'42"E
(R)9	N13°23'47"W
(R)10	N29°03'06"E
(R)11	S42°49'11"E
(R)12	N46°57'18"E

DATE: 8/10/2018 9:31 FILE: M:\125971\Survey Drawings\PARK SITE\BRW-PARK.dwg



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 MERCED, CALIFORNIA

DRAWN BY: SYD
 DATE: 2018-08-10
 SHEET: 2 OF 2
 JOB: 125971

CITY OF MERCED
Planning Commission

Resolution #3098

WHEREAS, the Merced City Planning Commission at its regular meeting of August 8, 2018, held a public hearing and considered **General Plan Amendment #18-01 and Site Utilization Plan Revision #13 to Planned Development (P-D) #42**, initiated by Benchmark Engineering, on behalf of Baxter Ranches, LLC, property owner. The application is a request to change the General Plan designation for approximately 5.88 acres of land at the southwest corner of M Street and Arrow Wood Drive from Open Space/Park (OS) to Low-Medium Density Residential (LMD) to allow the construction of 43 single-family lots and to change the General Plan designation for approximately 5 acres of land located west of M Street and north of Arrow Wood Drive from Low-Medium Density Residential (LMD) to Open Space/Park (OS). The Site Utilization Plan Revision would change the land use designation for the 5.88 acres at M Street and Arrow Wood Drive from “Park” to “Single-Family Residential” and change the designation for the approximately 5.0 acres west of M Street and north of Arrow Wood Drive from “Single-Family Residential” to “Park.” Vesting Tentative Subdivision Map #1307 would allow the subdivision of the 5.88 acres located at the southwest corner of M Street and Arrow Wood Drive into 43 single-family lots; also known as Assessor’s Parcel No. 224-030-018; and,

WHEREAS, the Merced City Planning Commission concurs with Findings A through L of Staff Report #18-16; and,

NOW THEREFORE, after reviewing the City’s Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby find that the previous environmental review [Environmental Impact Report (EIR) for the Bellevue Ranch Master Development Plan (SCH#9212055)] remains sufficient and no further documentation is required (subsequent EIR/ND 15162 Findings), and recommend to City Council approval of General Plan Amendment #18-01 and Site Utilization Plan Revision #13 to Planned Development #42, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

PLANNING COMMISSION RESOLUTION # 3098

Page 2

August 8, 2018

Upon motion by Commissioner PADILLA, seconded by
Commissioner DYLINA, and carried by the following vote:

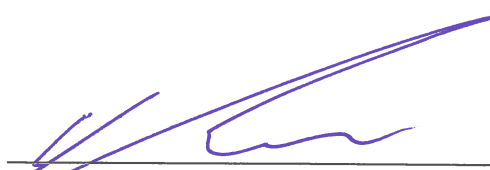
AYES: Commissioner(s) Drexel, Harris, Martinez, Padilla, Rashe, and
Chairperson Dylina

NOES: Commissioner(s) None

ABSENT: Commissioner(s) None

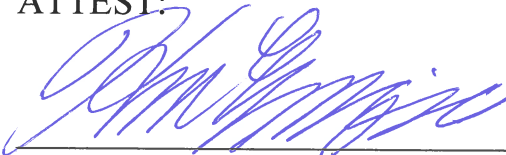
ABSTAIN: Commissioner(s) Camper

Adopted this 8th day of August 2018



Chairperson, Planning Commission of
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

Conditions of Approval
Planning Commission Resolution #3098
General Plan Amendment #18-01 and Site Utilization Plan #13 to
Planned Development (PD) #42

1. The General Plan designation shall be changed from Open Space/Park (OS) to Low-Medium Density Residential (LMD) for Lot A and changed from Low-Medium Density Residential (LMD) to Open Space/Park for 5 acres located at the southeast corner of the future Catherine A Hostetler Boulevard and Freemark Avenue (extended) as shown on Exhibit A. The Site Utilization Plan for Planned Development (P-D) #42 shall be modified to change the designation from Park to Single-Family Residential for Lot A and from Single-Family Residential to Park for the 5 acres located at the southeast corner of the future Catherine A Hostetler Boulevard and Freemark Avenue (extended), also shown on Exhibits 1 and 2 - Attachments B and C of Staff Report #18-16.
2. All previously adopted conditions, mitigation measures, and guiding principles contained in Appendices D, E, and F of the Bellevue Ranch Master Development Plan (BRMDP) adopted by the Merced City Council on May 15, 1995, which are applicable to this project, shall apply to this tentative map and all subsequent final maps, improvement plans, building permits, and discretionary approvals.
3. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
4. Approval of the General Plan Amendment and Site Utilization Plan Revision is subject to the applicant's entering into a written (developer) agreement that they agree to all the conditions and shall pay all City and school district fees, taxes, and/or assessments, in effect on the date of any subsequent subdivision and/or permit approval, any increase in those fees, taxes, or assessments, and any new fees, taxes, or assessments, which are in effect at the time the building permits are issued, which may include public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such

fees, taxes, and or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.

5. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
6. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
7. The new park site shall be dedicated by separate deed for "Park Purposes."

8. The dedication of Lot A as a park shall be vacated by the City. The applicant shall submit an application to the Planning Department to initiate this process.
9. The new park site at the southeast corner of Freemark Avenue and Catherine A Hostetler Blvd. shall be dedicated for park use by a separate document. This shall occur either prior to or simultaneously with the recordation of the City's vacation of Lot A.
10. Street frontage improvements, including curb, gutter, sidewalks, and park strips for the new park site at the southeast corner of Catherine A Hostetler Boulevard and Freemark Avenue shall be installed with the construction of Lot 17-C (consistent with the approval of Tentative Map #1308 for Bellevue Ranch West).

n:\shared\planning\PC Resolutions\GPA#18-01\SUP Rev#13 to PD #42 Exhibit A

GENERAL PLAN LAND USE CHANGES GENERAL PLAN AMENDMENT #18-01

High Density
Residential

High Density
Residential

GENERAL PLAN:
Site # 2 - Change from Low-Medium Density
Residential (LMD) to
Open Space/Park (OS) (Approximately 5.0 Acres)

Low-Medium
Density
Residential

Future
School

Low-Medium
Density
Residential

Low Density
Residential

GENERAL PLAN:
Site #1 - Change from OpenSpace/Park (OS) to
Low-Medium Density Residential (LMD)
(Approximately 5.88 Acres)

ARROW WOOD

EXHIBIT D



Site Utilization Plan Revision #13 to Planned Development (P-D) #42

High Density
Residential

High Density
Residential

SITE UTILIZATION PLAN:

Site #2 - Change from Single-Family Residential
to Park (Approximately 5.0 Acres)

Low-Medium
Density
Residential

Future
School

Low-Medium
Density
Residential

Low Density
Residential

SITE UTILIZATION PLAN:

Site #1 - Change from Park to Single Family
Residential (Approximately 5.88 Acres)

ARROW WOOD

EXHIBIT E

