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Resolution 147-06 (CM)
City Clerk
City of Watsonville
Post Office Box 50000
Watsonville, CA 95077-5000

Space above for Recorder's Use Only

PREAMBLE

The intent and purpose of this Declaration is to establish mutual covenants, conditions, and restrictions as provided in Section 1468 of the California Civil Code, equitable servitudes as provided in California law, to facilitate and maintain job creating uses and to prohibit other uses on property located north of the Union Pacific Railroad tracks and east of State Highway One in the unincorporated area of Santa Cruz County for the term of this Declaration.

The quality and economic vitality of future development depends on the people, increased employment opportunities and a healthy business community in the Pajaro Valley. The covenants in this Declaration are directed toward the goal of creating a job producing Business Park where businesses will desire to locate, own or lease, and prosper.

DECLARATION AND ESTABLISHMENT OF PROTECTIVE COVENANTS AND RESTRICTIONS

This Declaration is made this 28th day of June, 2006, by and among the following parties:

- George Ow, Jr., David L. Ow and Terry L. Ow, as Trustees of that certain Declaration of Trust Dated July 10, 1984 between George Ow as Settlor; George Ow Jr., David L. Ow and Terry L. Ow, as Trustees of that certain Declaration of Trust

Dated July 10, 1984 between Emily Lee Ow as Settlor; George Ow, Jr., David L. Ow and Terry L. Ow, as Trustees of that certain Declaration of Trust dated December 24, 1985, between George Ow as Settlor; and George Ow, Jr., David L. Ow and Terry L. Ow, as Trustees of that certain Declaration of Trust dated December 24, 1985, between Emily Lee Ow as Settlor (collectively, the "Ow Trusts").

- City of Watsonville, a municipal corporation ("Watsonville").
- M F Farming Company, a corporation ("MF").
- Watsonville Wetlands Watch, a corporation ("Wetlands Watch").
- County of Santa Cruz, a political subdivision of the State of California ("County").

RECITALS

WHEREAS, the above identified property owners, hereafter "Declarants", own certain real property described in Article 1 of this Declaration; and

WHEREAS, Declarants intend by this Declaration to establish restrictions, limitations and covenants that run with the land and will be binding on owners of the MF Property and the Ow Trusts Property and their Successor Owners having or acquiring any right, title, or interest in the real property described in Article 1; and

WHEREAS, it is the desire and intention of Declarants to impose upon the Property described in Article 1, mutual, beneficial restrictions under a general plan or scheme of improvement for the benefit of all the property described in Article 1 and the future owners of that property; and

WHEREAS, it is the intent to benefit the City Property, County Property and the Wetlands Watch Property and encumber the MF Property and the Ow Trusts Property described in Article 1 to

ensure that the purposes set forth herein are enforced and enforceable, and that this Declaration remains in effect and is not rescinded or modified; and

WHEREAS, said County Property consists of approximately 20 acres located off Buena Vista Drive south of Harkins Slough Road in southern Santa Cruz County consisting largely of bottom and wetlands, and assigned Santa Cruz County Tax Assessor's Parcel Numbers 52-531-04 and 52-531-05, the location of which two parcels is more particularly identified on Santa Cruz County Assessors Map Book 52, page 53 which are described on Exhibit E attached hereto and incorporated at this point as if set forth in full; and

WHEREAS, Wetlands Watch is a legally existing and properly constituted corporation, dedicated to the protection, restoration and appreciation of the wetlands of the Pajaro Valley; and

WHEREAS, Wetlands Watch is the owner of a parcel of land, commonly called "Tarplant Hill" and more particularly described in the deed from Alvin King and Penelope King and APASK Corporation, a corporation, to Wetlands Watch, dated December 15, 2005, and recorded January 3, 2006, as document number 2006-0000002 in the Office of the Santa Cruz County Recorder; and

WHEREAS, the land between the proposed annexation and the County Property is primarily dedicated to commercial agricultural uses and serves as a buffer between urban uses; and

WHEREAS, Declarants agree that the restrictions on uses in this Declaration will substantially lessen the pressure to develop more intense urban uses in the vicinity, and will thus help preserve this agricultural buffer from development; and

WHEREAS, Declarants agree that the restrictions on uses on the MF Property and the Ow Trusts Property in this Declaration will substantially lessen the pressure to develop more intense urban uses in the vicinity of the Tarplant Hill parcel owned by Wetlands Watch; and

WHEREAS, portions of Declarants' properties contain wetlands, including a portion of Struve Slough, a habitat for wildlife; and

WHEREAS, Declarants agree that the restrictions on uses of the MF Property and Ow Trusts Property set forth in this Declaration will substantially lessen potential adverse impacts on the wetlands areas within Declarants' properties by minimizing traffic and the number of persons on these properties, which will help enhance and preserve the wetlands on Declarants' properties and the Wetlands Watch Property.

DECLARATION

NOW THEREFORE, Declarants declare that the parcels described in subdivisions (a) and (b) of Article 1 are held and will be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following limitations, restrictions, covenants, and reservations, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement, use and sale of such properties, and are established and agreed on for the purpose of enhancing and protecting the value, desirability and commercial attractiveness of such parcels and every part thereof.

All of the limitations, restrictions and covenants will run with the land and will be binding on all parties having or acquiring any right, title or interest in the properties described in Article 1 or any part thereof, and will inure to the benefit of the properties described in Article 1, and the future owners of such properties or any portion thereof. Each grantee of a conveyance or purchaser under

a contract or agreement of sale covering any right, title, or interest in the properties described in Article 1, by accepting a deed or a contract of sale or agreement of purchase, accepts the document subject to, and agrees to be bound by, any and all of the benefits, burdens, restrictions, covenants, and limitations set forth in this Declaration.

The preamble and recitals set forth at the beginning of this Declaration of any matters or facts shall be conclusive proof of the truthfulness thereof and the terms and conditions set forth in the preamble and recitals, if any, shall be deemed a part of the Declaration.

ARTICLE 1 PROPERTY

The Property burdened by this Declaration is identified below in this Article as subdivisions (a) and (b). The property benefited by this Declaration is identified below in subdivisions (c) through (e) inclusive.

- (a) M F Farming Company parcels – See Exhibit A, attached hereto and incorporated at this point as if set forth in full ("MF Property").
- (b) Ow Trusts parcels - See Exhibit B, attached hereto and incorporated at this point as if set forth in full ("Ow Trusts Property").
- (c) City of Watsonville parcel - See Exhibit C attached hereto and incorporated at this point as if set forth in full ("Watsonville Property").
- (d) Wetlands Watch parcel - The real property described in the deed from Alvin King and Penelope King and APASK Corporation, a corporation, to Wetlands Watch, dated December 15, 2005, and recorded January 3, 2006, as document number 2006-0000002 in the Office of the Santa Cruz County Recorder ("Wetlands Watch

Property"). A copy of the legal description from said deed is attached hereto and identified as Exhibit D.

- (e) County of Santa Cruz bottom land and wetlands parcels - Two parcels near Buena Vista Drive and Harkins Slough Road, Santa Cruz County Tax Assessor's parcel numbers 052-531-04 and, 052-531-05, the location of which is more particularly identified on Santa Cruz County Assessors Maps Book 52, page 53. The legal description of said parcels is set forth on Exhibit E, attached hereto and incorporated by reference. ("County Property").

ARTICLE 2 DEFINITIONS

For purposes of this Declaration, the following definitions shall apply:

- (a) "Ancillary Retail and Personal Services" means uses that provide retail or personal services primarily serving the needs of those employed in the Business Park. Examples of these uses include restaurants, delicatessens, pastry shops and coffee shops, bank service centers, ATM machines, accounting services, legal services, utility company offices, health and fitness and related facilities, health care providers, day care centers, dry cleaning and laundry services, service stations, convenience stores, copy centers, personal care services such as tanning salons, barber and/or beauty shops, small scale repair shops, and other uses of a similar nature.

- (b) "Automobile Sales" means the retail sale and leasing of automobiles, trucks, motorcycles, off road vehicles, tractors, farm implements, boats or recreational vehicles including incidental repair and maintenance.
- (c) "Big Box Store" means a structure or single retail business establishment (including Discount Store, Discount Superstore, Discount Club store or Building Materials/Garden Supply Store) with a gross floor area exceeding (inclusive of outdoor storage, display and sales areas) 20,000 square feet.
- (d) "Business Park" means a grouping of two or more structures intended for job producing flex- industrial type uses including, but not limited to, manufacturing, wholesaling, distribution, warehousing and employment activities such as research and development, business and professional services, businesses requiring offices and/or flexible workspace, corporate offices and campuses and banking centers. Ancillary Retail And Personal Services are permitted to serve primarily the needs of the Business Park and help reduce vehicle miles traveled.
- (e) "Building Materials/Garden Supply Store" means a store that offers building materials, home maintenance supplies, nursery materials and other garden supplies. These stores typically maintain extended store hours (10-24 hours) and are typically open seven (7) days a week.
- (f) "Declarant" means any of the parties identified above as owners of the parcels of property identified in Article 1 above.

- (g) "Discount Club" means a discount store or warehouse where shoppers pay a membership fee in order to take advantage of discounted prices on a wide variety of items such as food, clothing, tires, and appliances; many items are sold in large quantities or bulk.
- (h) "Discount Store" means a store that offers a variety of services, centralized cashing, and a wide range of retail products. Discount Stores typically maintain extended store hours (10-24 hours) and are typically open seven (7) days a week.
- (i) "Discount Superstore" means a store that is similar to a "Discount Store" described above, except that it also contains a full service grocery department under the same roof that shares entrances and exits with the discount store area. Such retail stores typically exceed 100,000 square feet of gross floor area and devote at least five (5%) percent of the total sales floor area to the sale of non-taxable merchandise. These stores usually offer a variety of customer services, centralized cashing, and a wide range of products including grocery and sundry goods. Discount Superstores maintain extended store hours (10-24 hours) and are typically open seven (7) days a week.
- (j) "Property" means the parcels described in Article 1, or any portion of that Property as the context may require, whether or not subdivided.
- (k) "Successor Owner" means a person who acquires any of the Property, or any portion thereof, whether by grant, gift, testate or intestate succession, foreclosure, or any other form of transfer, including a New Owner, as defined in Section 7.01 below.

- (l) "Third Party" means the Santa Cruz County Local Agency Formation Commission and/or Wetlands Watch (should Wetlands Watch cease to own Tarplant Hill). In case the Santa Cruz County Local Agency Formation Commission or Wetlands Watch ceases to exist, upon application of any Declarant or Successor or Third Party, the Presiding Judge of the Santa Cruz County Superior Court may appoint a successor by a reference pursuant to Code of Civil Procedure Section 638 and Section 8.03 of this Declaration.
- (m) "Workforce Housing" means housing (including live/work housing) that may be purchased or rented by a household ranging from 50% to 200% of annual County median household income.

ARTICLE 3 COVENANTS

3.01 PRINCIPAL PERMITTED USE(S). The principal permitted use for the Ow Trusts Property and the MF Property is a Business Park.

3.02 ANCILLARY RETAIL AND PERSONAL SERVICES USES. Ancillary Retail and Personal Services Uses are permitted on the Ow Trusts Property and the MF Property primarily to serve the Business Park subject to the following:

- (a) Ancillary Retail And Personal Services Uses shall not cumulatively exceed five percent (5%) of the anticipated maximum gross floor area of the Business Park.
- (b) Ancillary Retail And Personal Services Uses shall not exceed 20,000 square feet in any single structure, inclusive of outdoor storage, display and sales areas.

- (c) A Special Use Permit shall be required by Watsonville for any Ancillary Retail or Personal Services Use subject to an additional finding by Watsonville that the use qualifies as an Ancillary Retail or Personal Services Use as defined in this Declaration and meets the criteria of Section 3.02 (a) and (b) above.

3.03 PROHIBITED USES. Big Box Stores and Automobile Sales are prohibited on the Ow Trusts Property and the MF Property.

3.04 RESIDENTIAL USES. No residential use shall be permitted on the Ow Trusts Property and the MF Property except that Workforce Housing shall be permitted on that portion of the MF Property which is described in Exhibit F, consisting of 7.509 acres more or less.

3.05 NO OTHER USES. No uses of the Ow Trusts Property and the MF Property other than those permitted by this Article 3 shall be allowed on the Ow Trusts Property or the MF Property.

ARTICLE 4 AMENDMENT

4.01 AMENDMENT. Subject to any right of a "Mortgagee" and subject to the approval requirements of this Article, amendments to this Declaration may be approved from time to time, by an instrument in writing and only as provided in this Article 4.

4.02 OW TRUSTS AND MF APPROVAL. Any approval of any proposed amendment shall require written consent signed by the Ow Trusts and MF, or Successor Owners, as applicable, owning in the aggregate three-fourths of the total gross land area contained within the boundaries of what are now the Ow Trusts Property and the MF Property.

4.03 BENEFITED PARCELS APPROVAL OF AMENDMENT. Any approval of any proposed amendment shall require the written consent of Watsonville, Wetlands Watch and County or their

Successor Owners, as applicable, of the Watsonville Property, the Wetlands Watch Property and the County Property.

4.04 CITY OF WATSONVILLE APPROVAL OF AMENDMENT. Any approval by Watsonville of any amendment shall be invalid unless approved by a vote of at least five of the seven members of the Watsonville City Council at a duly noticed meeting of the City Council.

4.05 THIRD PARTY APPROVAL OF AMENDMENT. Any approval of any proposed amendment shall require the written consent of the Santa Cruz County Local Agency Formation Commission and, if Wetlands Watch no longer owns the Wetlands Watch Property, the written consent of Wetlands Watch.

4.06 NOTICE. Notwithstanding the foregoing, any Declarant, Successor Owner or Third Party shall have 60 days from receipt of a copy of any proposed amendment to review the same before such amendment may be voted upon or consented to as provided below.

4.07 LACK OF CONSENT. During such 60-day period, any Declarant, Successor Owner or Third Party may refuse to consent to a proposed amendment to this Declaration which would change this Declaration by giving written notice to Declarants of consent or lack thereof and describing within said 60-day period with reasonable particularity, the reason for a refusal to consent to such amendment.

4.08 PROCEDURE TO AMEND. Amendments to this Declaration shall be accomplished only by complying with the following procedure:

- (a) If a Declarant, Successor Owner or Third Party desires to propose an amendment to the Declaration, such party shall provide a copy of the text of the proposed amendment to the other Declarants, any Successor Owners and any Third Parties.
- (b) The other Declarants, Successor Owners and Third Parties shall have the 60-day period described above within which to object in writing to some or all of the proposed amendment.
- (c) Unless a written objection is received within such 60-day period as provided above, all objections are deemed waived as to any Declarant, Successor Owner or Third Party which has not so objected within such 60-day period.
- (d) All objections to any proposed amendment shall be in writing and must state all reasons for each such objection.
- (e) After the expiration of sixty days from the date of the last receipt by the owners of the Watsonville Property, the Wetlands Watch Property, the County Property, by the Santa Cruz County Local Agency Formation Commission and by Wetlands Watch should it no longer own the Wetlands Watch Property, the proposed amendments to this Declaration may be voted upon pursuant to Section 4.02 above and if approved as provided therein may be executed, acknowledged and recorded.

4.09 REASONS FOR OBJECTIONS TO AMENDMENTS. For purposes of this Article 4, any objection to an amendment to this Declaration must be based upon one or more of the following reasons in order to prevent the proposed amendment from being approved:

- (a) The proposed, amendment would change the Property benefited and burdened by this Declaration, or
- (b) The proposed amendment would modify provisions of this Declaration which affect the ability of the benefited parties under this Declaration to enforce those provisions of this Declaration which are of legitimate concern to the objecting party including, but not limited to Article 2 and Article 3.

ARTICLE 5 SCOPE AND DURATION

5.01 PLAN. All the covenants and restrictions of this Declaration are imposed on the Ow Trusts Property and the MF Property for the direct benefit of the Watsonville Property, the Wetlands Watch Property and the County Property as covenants running with the land and as a part of a general plan of improvement, development, building, occupation, and maintenance of the Property.

5.02 EFFECTIVE DATE. This Declaration shall become effective upon execution but will expire automatically if the Santa Cruz County Local Agency Formation Commission Annexation No. 895 is not completed by August 1, 2006.

5.03 SUCCESSORS; TERM. These covenants and restrictions will run with the land and will be binding on and benefit all of the Declarants, any Successor Owners, and all persons claiming under them, and continue to be in full force and effect. This Declaration, and all of the covenants and restrictions contained in this Declaration, shall automatically terminate on December 31, 2030, unless this Declaration expires earlier pursuant to Section 5.02 above.

5.04 ASSUMPTION AGREEMENT. Each Successor Owner shall execute and acknowledge an agreement in writing assuming all of the terms, covenants and conditions of this Declaration

(including the status of the Third Parties as a beneficiary of this Declaration as specified in Section 6.01 below), which assumption agreement shall be recorded in the Official Records of County concurrently with the transfer of the affected interest in the affected property to such Successor Owner. Failure by a Successor Owner to execute such acknowledgement of assumption shall constitute a default of this Declaration and give rise to a right in favor of all Declarants, Successors and Third Parties to enforce all remedies available under this Declaration.

5.05 SALE BY ANY PARTY. Except as otherwise provided by this Declaration, upon the assignment, conveyance, sale or other transfer by a Declarant of its entire interest in the Property, that Declarant shall be released from the obligations of this Declaration accruing after the effective date of such transfer, if such Declarant has given to the other Parties notice of such transfer and delivered the assumption agreement required by Section 5.04 concurrently with the filing for record of the instrument effecting the transfer.

ARTICLE 6 ENFORCEMENT

6.01 COVENANTS BENEFIT AND BIND. The provisions in this Declaration will inure to the benefit of and bind and be enforceable by a Declarant, a Successor Owner or a Third Party. It is the intent of the Declarants to make this Declaration enforceable by any Third Party identified above, and the Declarants hereby declare each Third Party as a third party beneficiary of the covenants and restrictions contained in this Declaration with the status of a creditor beneficiary in accordance with California law. Notwithstanding anything to the contrary contained in this Declaration, no Third Party shall have the right to reassign this Declaration, or any of its rights under this Declaration, unless a substitute Third Party is designated pursuant to the definition of Third Party contained in subsection (l) of Article 2 above.

6.02 EQUITABLE ENFORCEMENT. This Declaration vests in any one or more Third Parties and each Declarant and Successor Owner the right to bring a proceeding in equity to enforce the general and specific intent of this Declaration.

6.03 ENFORCEMENT. Third Parties identified in this Declaration, each Declarant or any Successor Owner, including any bona fide purchaser for value under contract, in the event of a breach of any restriction or covenant in this Declaration or a continuance of any such breach may, by appropriate legal or equitable proceedings, take steps to enjoin, abate, or remedy the breach. It is agreed that damages are not an adequate remedy for breach.

6.04 NUISANCE. Every act or omission that violates in whole or in part any of the covenants contained in this Declaration is declared to be and constitutes a nuisance, and every remedy allowed by law or in equity against a nuisance, either public or private (except damages), will be applicable and may be exercised by any Third Party, Declarant or Successor Owner of any portion of the Property.

6.05 REMEDIES. The remedies provided in this Declaration for breach of the covenants contained in this Declaration are cumulative; none of the remedies will be deemed exclusive.

6.06 DAMAGES. The parties acknowledge that it will be impossible to measure in money the damage to them caused by any failure to comply with the covenants set forth herein, that each such covenant is material, and that in the event of any such failure, the injured party will not have an adequate remedy at law or in damages. Therefore, the parties consent to the issuance of an injunction or the enforcement of other equitable remedies against them at the suit of the other, without bond or other security, to compel performance of all of the terms herein, and waive the defense of the availability of relief in damages.

ARTICLE 7 PROTECTION FOR MORTGAGES AND TITLE INSURANCE COMPANIES

7.01 NEW OWNER. For purposes of this Declaration, "Mortgage" means a bona fide deed of trust, mortgage, leasehold mortgage, sale and leaseback, or other financing or security instrument or encumbrance securing a financing (and all documents executed in connection therewith), made for fair value, encumbering any of the Property. "Mortgagee" means any one or more institutional holders of the beneficial interest and secured position under any Mortgage. For purposes of the foregoing, "institutional" means a life insurance company, bank, CMBS lender, mortgage banker, or similar commercial lender, and also includes seller carry-back financing. In the event of foreclosure of a Mortgage, whether by power of sale or by court action, or upon a transfer of any of the Property by conveyance in lieu of foreclosure (the purchaser at foreclosure or the transferee in lieu of foreclosure, being herein called "New Owner"), this Declaration shall continue in full force and effect and New Owner shall be subject to all of the terms, covenants, conditions and agreements set forth herein.

7.02 PRIORITY; SUCCESSORS. This Declaration, and the rights, obligations, covenants, conditions, restrictions and easements hereunder with respect to each Declarant and the Property, shall be superior and senior to any lien placed upon any portion of or interest in the Property, including the lien of any Mortgage, but no breach of this Declaration shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value. This Declaration, and all of the covenants, conditions, and restrictions hereunder, shall benefit and be binding upon and effective against any New Owner (including any Mortgagee) who acquires title to any portion of or interest in the Property, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Notwithstanding the foregoing, no Mortgagee or New Owner shall be bound by any amendment or

modification of the Declaration made after the date of recordation with the County of the Mortgage, without the prior written consent of Mortgagee.

7.03 BREACH. A breach of the covenants contained in this Declaration will not affect or impair the lien or charge of any Mortgage made in good faith and for value on any portion of the Property.

7.04 REPRESENTATIONS AND WARRANTIES CONCERNING TITLE. MF Farming and Ow Trusts each represents and warrants that it has good fee simple title to the MF Property and the Ow Trusts Property, respectively, free from any and all Mortgages as defined in Section 7.01, above, but otherwise subject to all other matters of record; and MF Farming and Ow Trusts each promises to defend against all claims that conflict with these representations and warranties.

7.05 NO TERMINATION. No breach of this Declaration shall entitle any party, person, or entity to cancel, rescind or otherwise terminate this Declaration, or any conditions, covenants, or restrictions hereunder.

ARTICLE 8 COSTS, LIABILITIES AND TAXES

8.01 COSTS, LEGAL REQUIREMENTS, AND LIABILITIES. Other than as specified herein, this Declaration is not intended to impose any legal or other responsibility on Wetlands Watch, and it is agreed that Wetlands Watch exercises no control over the ownership, management, operation, upkeep or maintenance of the MF Property and the Ow Trusts Property. MF Farming and Ow Trusts retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, management, operation, upkeep and maintenance of the MF Property and the Ow Trusts Property, respectively, including, but not limited to, the payment of taxes and compliance with federal, state and local law. MF Farming and Ow Trusts remain, respectively, solely responsible for

obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted on the MF Property and the Ow Trusts Property, respectively.

8.02 CONTROL UNDER ENVIRONMENTAL LAWS. Nothing in this Declaration shall be construed as giving rise to any right or ability in Wetlands Watch to exercise physical or managerial control over the day-to-day operations of the MF Property and/or the Ow Trusts Property, or any of the activities on the MF Property and/or the Ow Trusts Property, or otherwise to become an owner, operator or responsible person with respect to the MF Property and/or the Ow Trusts Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), California Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), 42 U.S.C. Section 9607 or any other environmental law (which includes, without limitation, any federal, state or local law ordinance, rules or regulation now in effect or enacted after the effective date of this Declaration).

ARTICLE 9 GENERAL PROVISIONS

9.01 AUTHORITY. Each party represents and warrants to the others that the execution and delivery of this Declaration and the performance of such party's obligations hereunder have been duly authorized and that this Declaration is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

9.02 EXHIBITS. Each and every Exhibit identified herein is incorporated into this Declaration as if set forth in full at the place of reference.

9.03 REFERENCE. All questions of interpretation or construction of any of the terms or restrictions in this Declaration will be resolved by the reference procedures herein specified, and that decision

will be final, binding, and conclusive on all parties affected. Any action brought to interpret or enforce this Declaration shall be tried by the reference procedures set forth in California Code of Civil Procedure Section 638, et seq., upon motion by a party to this Declaration before the Superior Court for the County. A single referee shall be appointed to consider the matter and such referee shall be a retired judge of the California Superior Court, California Court of Appeals, or California Supreme Court, or an attorney licensed to practice law in the State of California with at least ten years experience emphasizing real estate and land use law, particularly the interpretation and enforcement of covenants running with the land and equitable servitudes. Any affected party may reject two referees appointed by the Superior Court. The referee shall be compensated at the rate per hour charged by senior attorneys in major Santa Cruz County law firms. During the pendency of the reference proceeding, each affected party shall pay a proportionate share of the cost thereof.

9.04 PARTIAL INVALIDITY. If any term or provision of this Declaration is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Declaration, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Declaration. If any provision or part thereof of this Declaration is stricken in accordance with the provisions of this Section, then the stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

9.05 WORDS AND PHRASES. Wherever the context of this Declaration requires, all words used in the singular shall be construed to have been used in the plural, and vice versa, and the use of any gender specific pronoun shall include any other appropriate gender. The term "person" shall refer to any individual, corporation or legal entity having standing to bring an action in its own name under

California law. The use of the conjunctive "or" shall mean "and/or" unless otherwise required by the context in which the conjunctive "or" is used. The term "including" shall mean "including without limitation" and "including but not limited to" unless otherwise required by the context in which the term "including" is used.

9.06 INTERPRETATION. This Declaration has been negotiated at arm's length and each party has been represented or has had the opportunity to be represented by independent legal counsel in this transaction. Accordingly, each party hereby waives any benefit under any rule of law (including Section 1654 of the California Civil Code) or legal decision that would require interpretation of any ambiguities in this Declaration against the party drafting it.

9.07 HEADINGS. In this Declaration, Articles are distinguished by article numbers having no decimal point or no numbers to the left of the decimal point (i.e., "Article 12" or "12.") Sections are distinguished by Section numbers on both sides of a single decimal point (i.e., "12.02"). Reference to an "Article" shall include the terms and provisions of each Section under such Article. Article, Section, and Subsection titles and captions contained in this Declaration are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Declaration or the intent of any of its provisions.

9.08 WAIVER. The failure to enforce any covenant or restriction in this Declaration will not be deemed a waiver of the right to enforce thereafter.

9.09 NOTICES. All notices and other communications under this Declaration shall be in writing, addressed to the parties who are to receive such notices pursuant to the terms of this Declaration, at the addresses set forth below, and delivered by personal service, overnight delivery service or by registered or certified mail, postage prepaid, return receipt requested.

DECLARANTS:

Ow Trusts
Atten: George Ow, Jr.
203 Highland Avenue
Santa Cruz, CA 95060

City of Watsonville
Atten: City Clerk
Post Office Box 50000
Watsonville, CA 95077-5000

M F Farming Company
Atten: Louis Jemison
Post Office Box 2512
Watsonville, CA 95077-2512

County of Santa Cruz
Atten: Clerk of the Board of Supervisors
Clerk of the Board
701 Ocean Street, Room 500
Santa Cruz, CA 95060

Watsonville Wetlands Watch
Atten: President or Secretary
PO Box 1239
Freedom, CA 95019-1239

THIRD PARTIES:

Santa Cruz County Local
Agency Formation Commission
Atten: Executive Officer
701 Ocean Street,
Room 318-D
Santa Cruz, CA 95060

Watsonville Wetlands Watch

(See above address)

Any such notice shall be deemed delivered as follows: (a) if personally delivered, the date of delivery to the address of the person to receive such notice; (b) if sent by courier service, the date of delivery to the address of the person to receive such notice; (c) if mailed, the date of delivery or attempted delivery to the address of the person to receive such notice shown by the return receipt.

Any party may change its address for notice by written notice given to the other at least five (5) calendar days before the effective date of such change in the manner provided in this Section.

9.10 ESTOPPEL CERTIFICATE. A party may, from time to time in connection with a sale or transfer of the party's interest in the Property, or the financing or refinancing of such interest by Mortgage sale-leaseback made in good faith and for value, request the other parties to certify that

based upon actual knowledge and without duty of inquiry (i) this Declaration is in full force and effect, (ii) this Declaration has not been amended or modified, either orally or in writing, or, if so amended, identifying the amendments, and (iii) to the knowledge of the certifying party, no party is in default of its obligations under this Declaration, or, if in default, describing the nature of such default. Each party receiving such request shall provide such certificate within thirty (30) days following such request. No party shall be liable to the requesting party, or third person or entity requesting or receiving a certificate hereunder, on account of any information therein contained, notwithstanding the omission for any reason to disclose correct and/or relevant information, but such party shall be estopped with respect to the requesting party, or such third person or entity, from asserting any right or obligation, or utilizing any defense, which contravenes or is contrary to any such information.

9.11 GOVERNING LAW. This Declaration shall be governed by and construed in accordance with the laws of California without giving effect to the choice of law provisions thereof.

9.12 COSTS, LEGAL REQUIREMENTS, AND LIABILITIES. Other than as specified herein, this Declaration is not intended to impose any legal or other responsibility on Wetlands Watch, and it is agreed that Wetlands Watch exercises no control over the ownership, management, operation, upkeep and maintenance of the MF Property and the Ow Trusts Property. MF and the Ow Trusts retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, management, operation, upkeep and maintenance of the MF Property and the Ow Trusts Property, including, but not limited to, the payment of taxes and compliance with federal, state and local law. MF and the Ow Trusts remain solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Declaration.

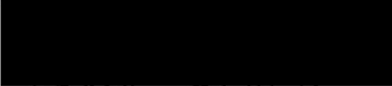

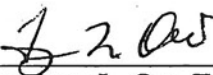


IN WITNESS WHEREOF, Declarants have executed this Declaration on the date first above written.

George Ow, Jr., David L. Ow and Terry L. Ow, as Trustees of that certain Declaration of Trust
Dated July 10, 1984 between George Ow as Settlor;

George Ow Jr., David L. Ow and Terry L. Ow as Trustees of that certain Declaration of Trust Dated
July 10, 1984 between Emily Lee Ow as Settlor;

George Ow, Jr., David L. Ow and Terry L. Ow, as Trustees of that certain Declaration of Trust
dated December 24, 1985, between George Ow as Settlor;

George Ow, Jr., David L. Ow and Terry L. Ow, as Trustees of that certain Declaration of Trust
dated December 24, 1985, between Emily Lee Ow as Settlor.

 By George Ow, Jr., Trustee Dated: <u>May 30</u> , 2006	 By David L. Ow, Trustee Dated: <u>May 30</u> , 2006
 By Terry L. Ow, Trustee Dated: <u>May 30</u> , 2006	
M H Farming Company, a corporation  By Louis Jemison, President Dated: <u>6-1-06</u> , 2006	City of Watsonville, a municipal corporation  By Carlos Palacios City Manager Dated: <u>6/29</u> , 2006