



CITY OF CHICO MEMORANDUM

TO: Map Advisory Committee (Mtg. 01/24/2019) DATE: January 2, 2019
FROM: Kimber Gutierrez, Associate Planner FILE: BLM 18-09
SUBJECT: Boundary Line Modification 18-09 (The Marmon Trust)
650 Rio Lindo Avenue, (APNs 006-260-005 and -025)

REQUEST

The applicant requests approval of a Boundary Line Modification (BLM) to modify the shared property line between two parcels located on the east side of Rio Lindo Avenue approximately 700 feet north of Cohasset Road (see Location Map, **Attachment A**, and Plat, **Attachment B**). The subject parcels are designated Office Mixed Used (OMU) on the City of Chico General Plan Diagram and zoned OC-AOD (Office Commercial with an Airport Overflight Zone D) overlay.

BACKGROUND/ANALYSIS

The site is currently developed with office uses. The proposed BLM would reconfigure the shared property line to reflect the existing building locations, locating one building on each lot. Parcel "A" would consist of 0.82-acre adjacent to Rio Lindo Avenue with Parcel "B" consisting of 0.70-acre east-adjacent to the new Parcel "A".

To ensure access rights for proposed Parcel "B", the applicant will record a Declaration of Covenants, Conditions and Restrictions (**Attachment C**) to establish the following:

1. A non-exclusive access easement on each parcel for vehicles and pedestrians;
2. A shared parking easement; and
3. Use and preservation of an existing area on Parcel "B" for a trash enclosure and refuse pick up.

The resultant parcels meet all applicable size requirements established for the OC zoning district.

RECOMMENDATION

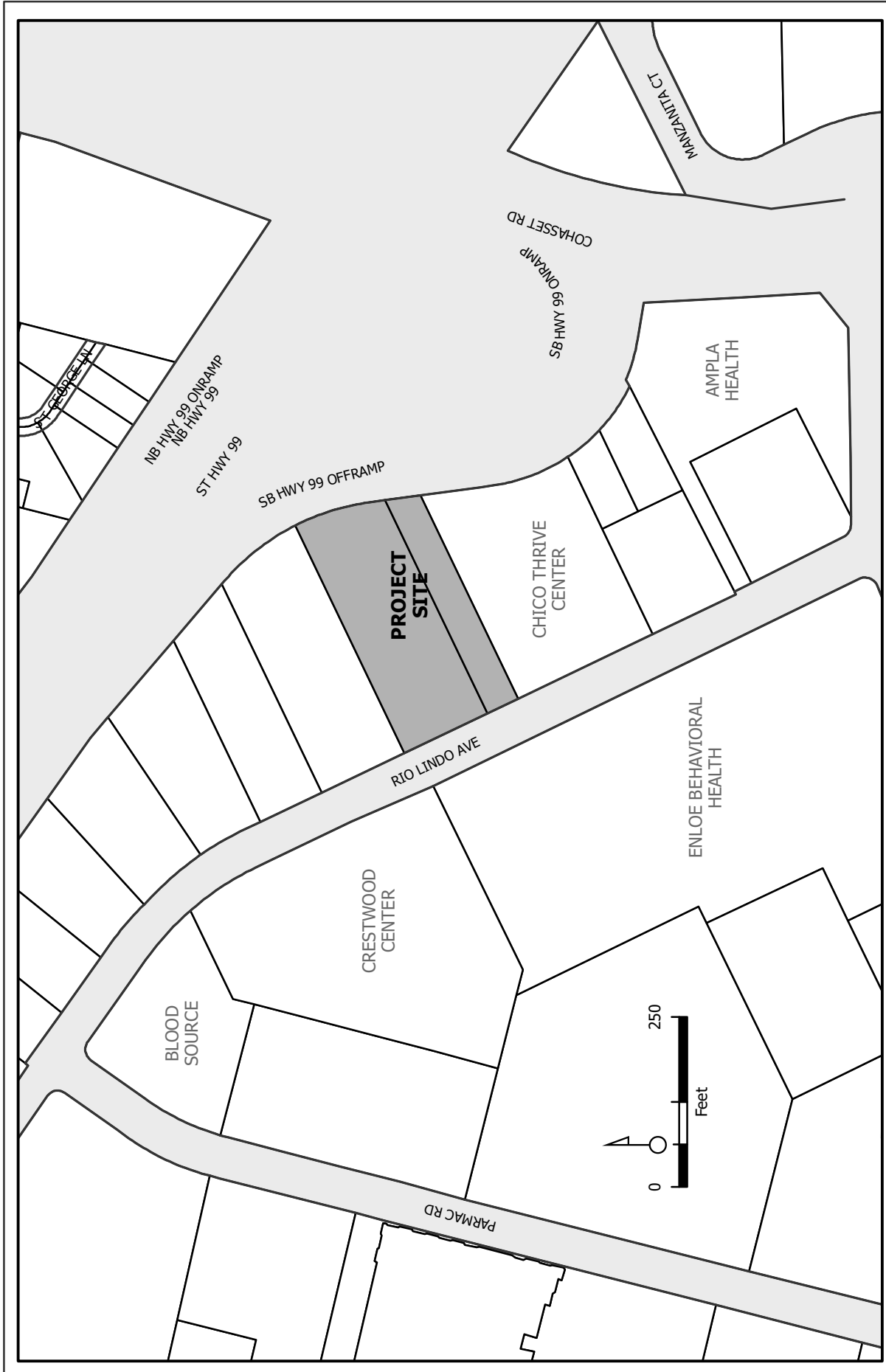
Staff recommends that the Committee determine the project is categorically exempt from environmental review pursuant to California Environmental Quality Act Section 15305 (Minor Land Use Limitations), and approve Boundary Line Modification 18-09 (The Marmon Trust).

ATTACHMENTS

- A. Location Map
- B. Plat
- C. Draft Declaration of Covenants, Conditions and Restrictions

DISTRIBUTION

cc: The Marmon Trust, Attn: Mark Habib, P.O. Box 3534, Chico, CA 95926, Email: mhabib@peterslawchico.com
Robertson Erickson Engineers, Attn: Russ Erickson 888 Manzanita Court, Suite 101, Chico, CA, 95926, Email: russ@robertsonerickson.com



BLM 18-09 (The Marmon Trust)
650 Rio Lindo Avenue
APN 006-260-(005 and -025)-000

STREET LIGHTING
EASEMENTS PER
34-MAPS-30
ABANDONED PER
1534-O.R.-258

ABUTTER'S
RIGHTS OF
ACCESS
RELINQUISHED
PER 1383-O.R.-31

PGE ESM'T PER
2029-O.R.-276

BPD PROPERTIES LLC
APN 006-260-006
LOT 6
NOT A PART

THE MARMON
TRUST
PARCEL "B"
0.39 Ac. Old
0.70 Ac. New

THE MARMON
TRUST
PARCEL "A"
1.13 Ac. Old
0.82 Ac. New

APN 006-260-005
LOT 5

NEW
PROPERTY
LINE

APN 006-260-025
PORTION LOT A

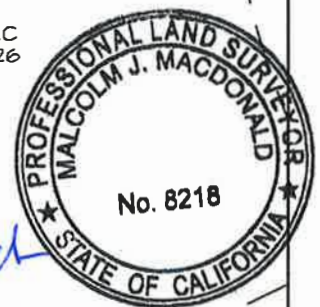
LOT LINE TO
BE DELETED

CONDUCTOR
OVERHEAD
ESM'T PER
34-MAPS-30

20' CAL WATER
ESM'T PER
RSN 92-058035

25' INGRESS
EGRESS ESM'T
RESERVED IN
DEEDS

CHICO THRIVE LLC
APN 006-260-026
LOT 4 LOT 3
NOT A PART



CITY OF CHICO

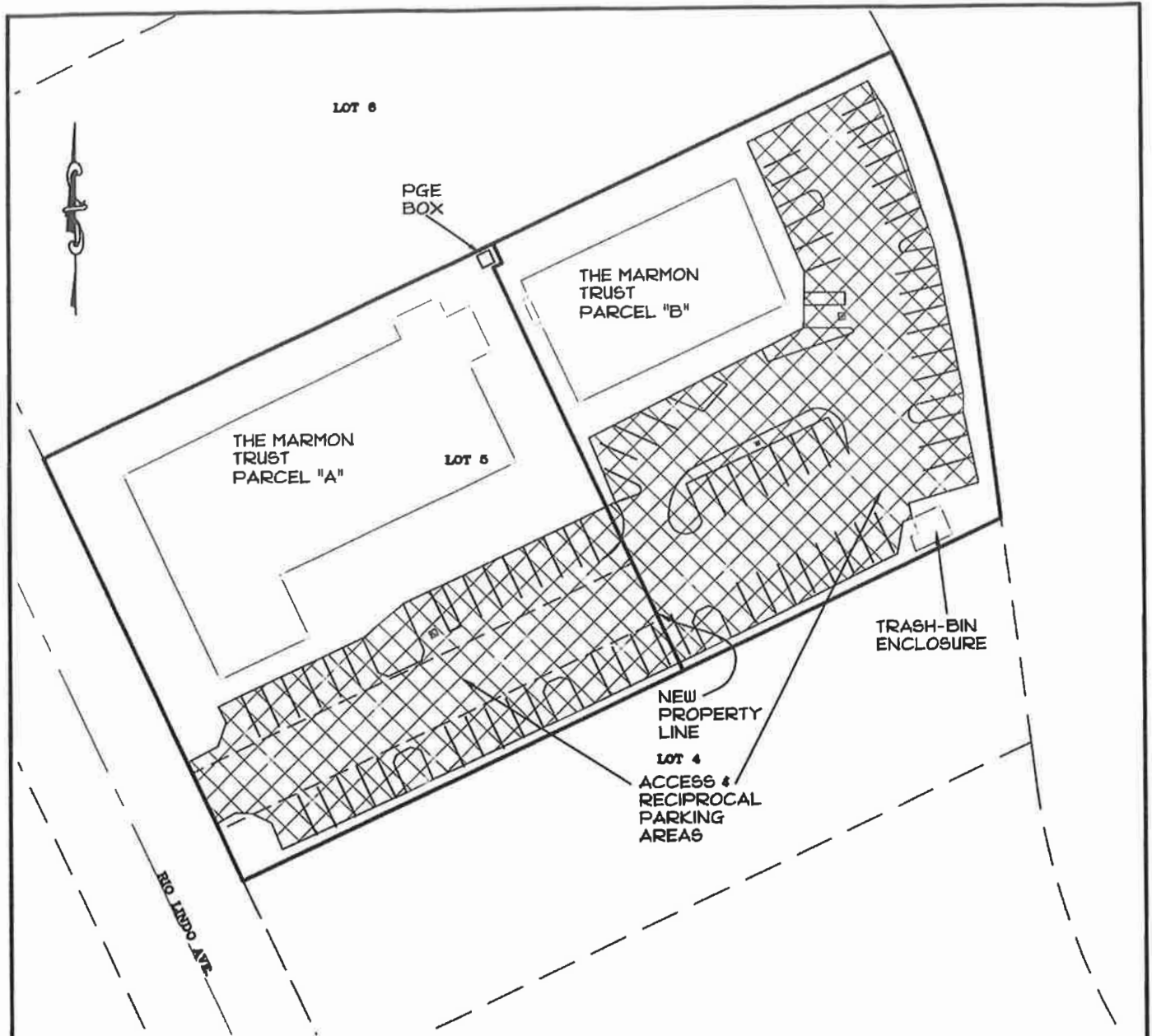
PUBLIC WORKS DEPARTMENT

DRAWN BY icm DATE 12/11/2018
CHECKED MJ SCALE 1" = 60'
APPROVED [Signature]
for PUBLIC WORKS DIRECTOR

BOUNDARY LINE
MODIFICATION 18-09
FOR
THE MARMON TRUST

EXHIBIT
B

SHEET 2 OF 4



LEGEND



ACCESS & RECIPROCAL
PARKING AREAS

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DRAWN BY: JCM

DATE: 12-13-16

SCALE: 1" = 60'

APPROVED BY: MH

PROJECT: EXHIBIT TWO TO
DECLARATION OF
CC&R's

Robertson Erickson
Civil Engineers and Surveyors
888 Manzanita Court, Suite 101
Chico, CA 95926
530-894-3500 894-8955 fax

AND WHEN RECORDED RETURN TO:

Mark A. Habib
Attorney at Law
Peters, Habib, McKenna, Juhl-Rhodes &
Cardoza
414 Salem Street
Chico, CA 95928

Space Reserved for Recorder's Use Only

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND
ESTABLISHMENT OF EASEMENTS AFFECTING PROPERTY**

This "Declaration of Covenants, Conditions and Restrictions and Establishment of Easements Affecting Property" ("Declaration") is made on _____, 2018, by **Mark A. Habib and Monica C. O'Neil, Co-Trustees of the MARMON Trust, dated November 18, 2009** (hereinafter "Declarants"), with respect to the Recitals set forth below. Declarants hereby declare as follows:

RECITALS

A. Declarants are the fee simple owners of certain real property in the City of Chico, County of Butte, State of California, consisting of two legal parcels of land described as the "Marmon Trust Parcel A" ("Parcel A" and "Marmon Trust Parcel B" ("Parcel B") as legally described and depicted on that certain Boundary Line Modification Map recorded as _____ (_____ and Resultant Parcel _____) recorded on _____, 20____ as Document _____, Official Records of the County of Butte, all as more specifically described and depicted in Exhibit AA@ attached hereto and incorporated herein in full by this reference.

B. Parcel A and Parcel B are situated adjacent to each other, as depicted on Exhibit AA@, and will at times be referred to herein collectively as the "Property", or as "Parcel A" or "Parcel B" as described in **Exhibit "A"** hereto.

D. Declarants are recording this Declaration to establish and clarify allowable and intended uses on the existing and future access, parking, and trash-bin connection areas on Parcel and Parcel B. The physical relationship of Parcel A and Parcel B to each other is shown on Exhibit "A". It is one of the intents and material considerations of Declarants to establish certain rights and responsibilities and to create reciprocal easements, covenants, conditions and restrictions affecting the existing and future access, parking, and trash-bin connection areas on Parcel A and Parcel B so as to bind all parties now having or acquiring any future right, title or interest in either Parcel A or Parcel B. The areas on Parcel A and Parcel B designated and created by this Declaration as being subject to the reciprocal easements, covenants, conditions and restrictions created by this Declaration are depicted on **Exhibit "B"**, attached hereto and incorporated herein as though set forth in full by this reference.

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E. Declarants make this Declaration with knowledge of the relationship of the buildings, parking areas and trash enclosure/collection are now existing on Parcel A and Parcel B, which are depicted on Exhibit B attached hereto.

F. Declarants hereby establish certain easements, covenants, and restrictions, (collectively, the ARestrictions@) as are hereinafter set forth, subject to which both of the two (2) Parcels will and are to be held, exchanged, leased, sold and conveyed.

NOW, THEREFORE, Declarants makes this Declaration as to the Property and each Parcel constituting the Property and the foregoing Recitals are incorporated into and made a part of this Declaration.

1. Creation of Easements. Declarants hereby grant, convey, and create by this Declaration reciprocal, non-exclusive easements appurtenant to Parcel A and Parcel B for the purpose of: (a) ingress and egress by vehicular and pedestrian traffic, upon, over, across and through the driveway access areas and parking lot areas located on each Parcel; and (b) parking in the designated parking areas and spots located on each Parcel; use and preservation of an existing area on Parcel B for a trash-bin enclosure and refuse pick up. The easements created hereunder affecting Parcel A and Parcel B (sometimes collectively referred to as the "Easements") shall be used in a manner that shall not unreasonably disturb or interfere with the use of either Parcel. The driveway access and parking areas depicted in the easement areas of each Parcel shall remain open and available at all times, without any blockage or impediment.

2. Duration. This Declaration shall be binding upon and inure to the benefit of the current owners of the Property, and any successor owners and their successors and assigns. As used herein, the term "owner" refers to the owner of either one of the Parcels, or any third party with a right to possession of any portion of Parcel A or Parcel B as an occupant, licensee, invitee or tenant of an owner of said Parcel A or Parcel B.

3. Usage. The portions of Parcel A and Parcel B subject to the Easements created and described herein, namely the parking lot areas, driveway access areas, and trash-bin collection area ("Easement Areas") shall be only used for: (a) parking of motor vehicles and pedestrian and vehicular ingress and egress by occupants of the Parcels, their agents, employees, customers and other invitees; (b) designated parking stalls; (c) public utility installations serving buildings on the Parcels which will, if reasonably possible, be underground; (d) ingress and egress of delivery and service vehicles to and from the Property, or any portion thereof, and adjacent public streets; (e) delivery of goods, wares, merchandise and the retention of services to owners and occupants of the Property; (f) trash-bin storage and refuse collection within the area described and depicted for that purpose herein; and (g) lighting standards as may be consented to by the owners of the Parcels.

4. Restrictions. All uses of the easement areas created by this Declaration must comply with all requirements imposed by the local jurisdiction. No walls, fences or barriers of any sort or kind shall be constructed or maintained on either of the Parcels or easement areas describe herein that shall prevent or impair the use or exercise of the Easements. No owner shall expand and/or remodel any existing building or structure on the Property beyond its existing square footage and footprint without first obtaining the necessary building permit. If the expansion or

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remodel of any existing building or structure impacts the Easement Areas, the owner of the Parcel seeking and proposing the remodel shall obtain written consent from the owner of the Parcel not seeking or proposing said remodel before proceeding with the work.

5. Maintenance and Repair of Parcel A, Parcel B, and the Easement Areas. The Easement Areas shall be maintained and repaired at all times in a safe, good and clean condition and repair, including, without limitation, the following: (a) maintaining the paved surface in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as will in all respects be equal or superior in quality, use and durability including seal coating the parking lot within each Parcel not less frequently than once each five (5) years; (b) removing all papers, debris, filth and refuse, and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition and removing trash and litter; (c) placing, keeping in repair, and replacing appropriate directional signs, markers, lines and parking stall lines existing on the easement areas, when and where necessary; (d) operating, keeping in repair, and replacing such artificial lighting facilities as exist on the easement areas, when and where necessary; (e) maintaining all landscape areas on Parcel A and Parcel B including repairing automatic sprinkler systems or water lines, and replacing shrubs and other landscaping as necessary to keep the grounds at Parcel A and Parcel B attractive and in good condition; (f) maintaining and repairing any and all walls and utilities existing on Parcel A. and Parcel B; (g) maintaining free and unobstructive access to and from each Parcel A and Parcel B and the adjoining portions of the Property, and to and from the Parcels and the streets adjacent thereto; and (h) jointly maintain the trash-bin and collection area depicted and described on **Exhibit B**. Each Parcel owner shall perform the maintenance and repair of its Parcel and access areas described herein and in sub paragraphs (a) through (g) inclusive of this Paragraph 5 at its sole cost and expense. Expenses pertaining to trash collection, trash pick-up and maintenance of the trash-bin collection area shall be borne and allocated ____% to Parcel A and ____% to Parcel B and shall be paid, coordinated and reimbursed on a monthly, quarterly or semi-annual basis as the owners of said Parcels A and B may agree on from time to time between themselves.

6. Easement Area Utilities. Public utilities serving each Parcel A and Parcel B are separately metered to the Parcel on which they are located. The time and duration of any lighting facilities existing within the easements of Parcel A and Parcel B shall be determined by the owner of said Parcel where said lighting facilities are installed.

7. Taxes. Each Parcel owner will pay or cause to be paid directly to the tax collector when due the real property taxes assessed against the Parcel owned by such owner, including the portion of the Easement Areas owned by such owner. The owner will have the right, at its own cost and expense, and in its own name, to contest or protest or seek to have reviewed, reduced, equalized or abated any real property tax or other special tax or assessed levied upon its Parcel by first paying such tax or assessment and thereafter filing a claim for refund, or pursuing such other remedy as may be available under and in accordance with state law.

8. Enforcement.

(a) If any owner shall default in the full, faithful and punctual performance of any obligation hereunder, and if at the end of fifteen (15) days after written notice from the other owner, stating with particularity the nature and extent of such default, the defaulting owner has failed to cure

such default, or if a diligent effort is not then being made to cure such default, then the non-defaulting owner shall, in addition to all other remedies it may have at law or in equity, have the right to perform such obligation of this Declaration on behalf of such defaulting owner. In the event of an emergency, the non-defaulting owner may take immediate action and give the defaulting owner such reasonable notice as is appropriate under the circumstances, which may be notice after the taking of any required emergency action. Any sums advanced by the non-defaulting owner shall be repaid upon demand and if not so paid, shall bear interest at the rate of ten percent (10%) per annum until paid. Each owner hereby grants to the other owner a right of entry over such owner's Parcel for the purpose of curing such default.

(b) Either owner shall have the right to prosecute any proceedings at law or in equity against an owner violating or attempting to violate or defaulting in the performance of any of the provisions contained in this Declaration in order to prevent such owner from violating or attempting to violate or defaulting in the performance of any of the provisions of this Declaration or to recover damages for any such violation or default (including, but not limited to, failure to pay the assessments provided for in Section 6 hereof).

(c) Failure to enforce any covenant, restriction or other provision of this Declaration or to seek redress for the breach of or default in performance under any such covenant, restriction or other provision shall in no way constitute a waiver of the right to enforce such covenant, restriction or provision or seek redress for the breach thereof or constitute a waiver of the right to enforce any other covenant, restriction or provision of this Declaration or seek redress for the breach thereof.

(d) In any legal or equitable proceeding for the enforcement of or to restrain the violation of this Declaration, the prevailing party shall be entitled to reasonable attorneys' fees, which shall consist of the fees for services rendered by counsel, the fees for services of experts, and all other expenses incurred in connection with the action, including those expenses recoverable as allowable costs of suit under the applicable state or federal statute, and those attorneys' fees and costs incurred executing upon or appealing any judgment, as well as all other expenses incurred during the course of the action.

(e) All remedies provided herein or at law or in equity shall be cumulative and not exclusive. This Declaration shall not be construed to limit the legal rights and remedies available to an owner to the extent that such rights and remedies are not inconsistent with the provisions of this Declaration.

9. Cooperation. The owners shall cooperate and execute any and all documents necessary to effectuate the terms of this Declaration.

10. Indemnification. Each owner agrees to indemnify, protect, defend and hold the other owner harmless from and against any and all losses, claims, demands, liabilities, damages and costs and expenses (including, but not limited to, attorneys' fees and expenses) whatsoever arising out of the use of the Easement Areas by such owner and by such owner's invitees, guests, agents or employees.

11. Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires the right, title or interest in or to any portion of either of the Parcels is and shall be

conclusively deemed to have consented and agreed to every covenant, condition, restriction and easement contained herein, by reference or otherwise, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired an interest in either of the Parcels.

12. Mortgage Protection. This Declaration, and the rights, privileges, covenants and agreements hereunder with respect to each owner and to the Parcels, shall be superior and senior to any lien placed upon either of the Parcels, or any portion thereof, including the lien of any mortgage or deed of trust. Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust made in good faith and for value, but all of the covenants and restrictions, easements and conditions herein contained shall be binding upon and effective against every person (including any mortgagee or beneficiary under a deed of trust) who acquires title to either of the Parcels, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

13. Relief from Obligations. In the event any owner shall convey its fee interest in a Parcel, upon such conveyance said owner shall be automatically freed and relieved of all liability under this Declaration with respect to any obligation thereafter to be performed with respect to the Parcel so conveyed. It is intended that the rights, privileges, covenants, agreements and obligations contained in this Declaration on the part of each owner shall be personally binding on such owner only with respect to obligations that are to be performed during its ownership; therefore, the conveying owner shall remain liable for any obligations incurred under this Declaration prior to the date on which its ownership interest is terminated.

14. No Waivers. Failure to enforce any covenant, restriction or other provision of this Declaration or to seek redress for the breach of or default in performance under any such covenant, restriction or other provision shall in no way constitute a waiver of the right to enforce such covenant, restriction or provision or seek redress for the breach thereof or constitute a waiver of the right to enforce any other covenant, restriction or provision of this Declaration or seek redress for the breach thereof.

15. Incorporation of Exhibits. All exhibits to which reference is made in this Declaration are incorporated in this Declaration by the respective references to them.

16. Notices. Any notice or demand given or served by the owner of Parcel A or Parcel B to the other owner will not be deemed to have been duly given or served unless in writing and personally delivered or forwarded by postage prepaid certified or registered mail, return receipt requested, or by another commercially recognized means of delivery, addressed to the owner of record of said Parcel at the address indicated for mailing of real property tax bills for said Parcel by the Butte County Assessor's Office. Notices and demands will be deemed effective upon receipt. The person and place to which notices are to be given may be changed by written notice by one Parcel owner to the other Parcel owner.

17. Modification. Except as otherwise provided herein, this Declaration may not be modified in any respect whatsoever or rescinded, in whole or in part, except by a writing executed by the owner of each Parcel that constitutes the Property, and duly recorded.

18. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Property to the general public or for any public purpose whatsoever, it being the intention of the Parties that this Declaration will be strictly limited to and for the purposes herein expressed.

19. Authority. Each Party executing this Declaration on behalf of the corporation, partnership or limited liability company (in his or her representative capacity only) represents and warrants that he or she is duly authorized to execute and deliver this Declaration on behalf of the corporation, partnership or limited liability company and that this Declaration is binding upon the corporation, partnership or limited liability company.

IN WITNESS WHEREOF, this Declaration has been executed as of the date first above written.

DECLARANTS:

Mark A. Habib and Monica C. O'Neil, Co-Trustees of the MARMON Trust, dated November 18, 2009

By: _____

Mark A. Habib, Co-Trustee

By: _____

Monica C. O'Neil, Co-Trustee

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