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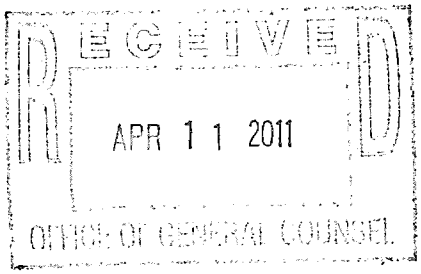
April 8, 2011



Via E-Mail and FedEx

Alfred M. Pollard
General Counsel
Federal Housing Finance Agency
Attention: Comments/RIN 2590-AA41
1700 G Street, NW
Washington, DC 20552
E-Mail: RegComments@fhfa.gov

Re: Notice of Proposed Rulemaking for Private Transfer Fees (RIN 2590-AA41)

Dear Mr. Pollard:

On behalf of the Natural Resources Defense Council, the Sierra Club, Audubon California, and the Endangered Habitats League (collectively, "environmental groups"), Shute, Mihaly and Weinberger LLP provides these comments on the Federal Housing Finance Agency's ("FHFA's") Notice of Proposed Rulemaking for Private Transfer Fees ("proposed rule"), published in the Federal Register on February 8, 2011 (76 Fed.Reg. 6702). This letter supplements the letter dated October 14, 2010 from Susannah T. French of our firm ("October 14, 2010 letter"), submitted on behalf of the environmental groups, regarding the FHFA's proposed "Guidance on Private Transfer Fee Covenants" ("Guidance"), which was issued by the FHFA on August 16, 2010 (75 Fed.Reg. 49932).

The FHFA issued the proposed rule in response to thousands of public comments received on the Guidance, many of which expressed concerns about the significant environmental and community impacts that would result from the proposed elimination of private transfer fees ("PTFs"). *See, e.g.*, 76 Fed.Reg. 6702, 6704 (describing comments setting forth the valuable role PTFs play in "the creation and maintenance of community enhancements such as open space, environmental

conservation and preservation, affordable housing and transit improvements"). As set forth in our October 14, 2010 letter, pursuant to the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. ("NEPA"), such potential significant environmental impacts mandate that the FHFA prepare an Environmental Assessment ("EA") or Environmental Impact Statement ("EIS") before proceeding with its proposed action.

The proposed rule does not mention NEPA or otherwise address the environmental group's October 14, 2010 letter regarding the FHFA's failure to comply with the statute. The proposed rule narrows certain aspects of the Guidance, but none of the proposed changes obviates the need for NEPA compliance. With respect to environmental impacts, the proposed rule is materially the same as the Guidance. Accordingly, our October 14, 2010 letter, explaining that the FHFA must prepare an EA or EIS before proceeding with its proposed action, remains applicable to the proposed rule, and is incorporated by reference herein. For convenience, the letter is attached hereto as Exhibit A.

1. As with the Guidance, the FHFA's Proposed Rule is a Major Federal Action Subject to NEPA.

The Federal Register notice indicates that the FHFA "has decided to address the subject [of PTFs] by regulation rather than through guidance." 76 Fed.Reg. 6702, 6703. This change in the nature of the federal action does not change NEPA's applicability. As with the Guidance, the proposed rule is a "major federal action" subject to NEPA. 42 U.S.C. § 4332(c). NEPA's broad definition of "major federal action" expressly includes an agency's proposed rulemaking. *See* 40 C.F.R. §§ 1508.18(a)-(b) ("major Federal action" includes "new or revised agency rules, regulations, plans, policies, or procedures," and "[a]doption of official policy, such as rules, regulations, and interpretations.").

2. The Proposed Rule's "Direct Benefit" Test Effectively Precludes the Use of PTFs for Environmental and Community Benefits.

The proposed rule alters the Guidance by exempting PTFs paid to certain non-profit entities from the rule if the fees are used "exclusively for the direct benefit" of the property encumbered by the covenant. *See* Proposed Rule § 1228.1. However, as explained in detail in a letter from the Coalition to Save Community Benefits, the "direct benefit" test established by the proposed rule effectively precludes a non-profit organization from qualifying for the exemption. *See* Letter from Coalition to Save Community Benefits to Alfred M. Pollard (April 11, 2011) ("Coalition Letter"). This is

because non-profit organizations are, by their very nature, formed for charitable or public services purposes to benefit the public good, rather than private interests. *Id.* This is especially true with respect to environmental organizations, as environmental benefits, such as improved air or water quality, are inherently public goods that cannot *exclusively* benefit any particular property or person, although they may benefit a specific community. Accordingly, this change to the Guidance does not ameliorate the environmental impacts associated with the loss of community benefit PTFs paid to non-profit organizations for the purpose of creating environmental benefits, as discussed in our October letter. *See, e.g.*, October 14, 2010 letter at 4-6. Indeed, the discussion of the proposed rule notes that "the [excluded] activities themselves may be meritorious." 76 Fed. Reg. 6702, 6706. NEPA mandates the FHFA to analyze the potential environmental ramifications of that policy choice in an EA or an EIS before adopting the proposed rule.

3. The Exception for Pre-Existing PTFs Appears to Exclude Numerous Existing Projects that are Dependent on Community Benefit PTFs, but Do not yet Have Recorded Covenants.

The proposed rule would apply "only to mortgages on properties encumbered by private transfer fee covenants created on or after February 8, 2011." Proposed Rule § 1228.3. The rule does not define the term "created," but to the extent this requires a fee covenant to have been recorded, most of the existing projects identified in our October letter would remain subject to the rule's prohibition on PTFs, giving rise to the same potential environmental impacts described in the letter. *See, e.g.*, October 14, 2010 letter at 4-5.

The agreed upon fee covenants for many of the existing programs that depend upon transfer fees to support environmental and community benefits have yet to be recorded. This is especially true in the present economic climate, where many development projects have been put on hold or have been progressing slowly. For example, many of the fee covenants in the projects described in the October 14, 2010 letter (at pages 4-5) have yet to be recorded. If these projects would not be covered by the grandfather provision, the FHFA must prepare an EA or an EIS that examines the potential environmental impacts from the loss of the associated environmental PTFs from these and similarly situated projects. In addition, the proposed rule would preclude the use of PTFs as an environmental and community benefit tool for future projects. As set forth in our October 14, 2010 letter, the agency must analyze the consequent environmental impacts under NEPA, regardless of whether those impacts will result from

numerous actions from varied entities throughout the country, or whether the impacts are difficult to define. *See* October 14, 2010 letter at 7-8.

4. The Proposed Rule Must be Analyzed with Respect to Environmental Justice Considerations.

The Proposed Rule would have a disproportionate and adverse affect on people of color and lower-income homebuyers. This disproportionate affect arises because Fannie Mae, Freddie Mac and the Federal Home Loan Banks ("Regulated Entities") are disproportionately involved in mortgages accessed by people of color and low-income homebuyers. Consistent with the requirements of NEPA to evaluate environmental impacts, including indirect effects, and the requirements of Executive Order 12898, an evaluation of the Proposed Rule's impact on minority and low-income populations is necessary and appropriate. 40 C.F.R. §1508.8(b); Executive Order 12,898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed. Reg. 7629 (1994), 3 C.F.R. § 859, reprinted in 42 U.S.C. § 4321 ("Executive Order 12,898" or "Executive Order").

Specifically, Executive Order 12,898 directs each federal agency to "make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations...." *Id.* at 1-101. Moreover, and as directly applicable to environmental reviews conducted under NEPA, the presidential memorandum accompanying the Executive Order requires each federal agency to analyze all environmental effects, including "human health, economic and social effects" of federal actions when such analysis is required by NEPA and to mitigate significant and adverse effects where feasible. President William J. Clinton, Memorandum on Environmental Justice (Feb. 11, 1994).

Here, the environmental impacts, including the environmental justice effects, of the Proposed Rule have not been analyzed, whatsoever. As established in the October 14, 2010 letter, however, the environmental impacts will be substantial-- park and conservation land opportunities will be lost, public transportation facilities will not be built, and affordable housing will not be undertaken. In addition to direct impacts, consequential adverse effects will be measured in terms of air quality impacts, loss of transportation mobility, and longer commute times. Because people of color and low-income homebuyers disproportionately access mortgages with involvement by the Regulated Entities, the adverse environmental effects will weigh disparately on people of color and low-income homebuyers. At a

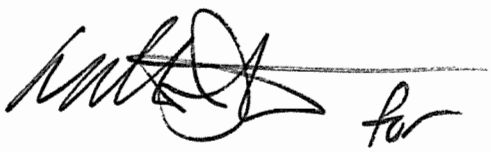
minimum, these effects must be analyzed and significant adverse impacts must be mitigated to the extent practicable.

5. Conclusion.

Adoption of the "community benefits covenant" approach outlined in the Coalition letter would protect PTFs that provide community benefits and thereby avoid the environmental impacts of the proposed rule. However, FHFA may not proceed with the rule in its current form without preparing an EA or an EIS under NEPA.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Amy J. Bricker

Attachments

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October 14, 2010

Via Fed-Ex & E-mail
Alfred M. Pollard
General Counsel
Federal Housing Finance Agency,
Fourth Floor
1700 G Street, NW
Washington, D.C. 20552

Re: Public Comments, "Guidance on Private Transfer Fee Covenants" (No. 2010-N-11)

Dear Mr. Pollard:

On behalf of the Natural Resources Defense Council, the Sierra Club, Audubon California, and the Endangered Habitats League, and the millions of members those groups represent, Shute, Mihaly and Weinberger LLP provides these comments on the issuance of the proposed "Guidance on Private Transfer Fee Covenants" ("Guidance") by the Federal Housing Finance Agency ("FHFA"). Adoption of the proposed Guidance is a major federal action subject to National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 et seq. Because elimination of private transfer fees ("PTFs" or "transfer fees") will substantially impact hundreds of thousands of acres of open space and wildlife habitat to be preserved and restored with such fees under existing and future agreements, deeds, and covenants, FHFA may not adopt the proposed Guidance without first preparing an Environmental Assessment ("EA") or Environmental Impact Statement ("EIS").

1. NEPA's Purpose Is To Ensure That the Environmental Implications of All Major Federal Actions Are Fully Analyzed.

NEPA is the "basic national charter for protection of the environment." 40 C.F.R. §1500.1. Its purpose is to ensure that "public officials make decisions that are

based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment" and to "insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." *Id.* § 1500.1(b)-(c). NEPA is designed to "[e]ncourage and facilitate public involvement in decisions which affect the quality of the human environment." *Id.* § 1500.2(d).

To achieve these purposes, NEPA requires all federal agencies to prepare a "detailed statement," the EIS, regarding all "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(c). Where an agency does not know whether the effects of its proposed action will be "significant," it may prepare an EA. 40 C.F.R. § 1501.4(b). An EA consists of an analysis of the need for the proposed action, of alternatives to the proposed action, and of the environmental impacts of both the proposed action and the alternatives. *Id.* § 1508.9.

2. FHFA's Approval of the Proposed Guidance Is a Major Federal Action Subject to NEPA.

A "major Federal action" is broadly defined under NEPA regulations, to include "projects and programs . . . regulated[] or approved by federal agencies," "new or revised agency rules, regulations, plans, policies, or procedures," and "[a]doption of official policy, such as rules, regulations, and interpretations." 40 C.F.R. §§ 1508.18(a)-(b). FHFA's proposed Guidance clearly falls within this broad definition. If adopted in final form, the Guidance would be a major change in federal policy.

FHFA acknowledges the argument that transfer fees "are beneficial when used to . . . enhance community investments through homeowners associations or through affordable housing groups, environmental groups, or other charitable organizations." 75 Federal Register 49932 (August 16, 2010). It also recognizes that, currently, some states that otherwise restrict transfer fees permit them in cases where they "benefit a homeowners association or community organization." *Id.* at 49933. While recognizing the distinction made by many members of the public and numerous states between transfer fees that benefit private investors or developers and those that provide community benefits, FHFA chooses to ignore this distinction. It summarily concludes, without detailed analysis or evidence, that all transfer fees -- "regardless of their purposes" – are "not counterbalanced by sufficient positive effects." *Id.*

The proposed Guidance therefore directs that Fannie Mae and Freddie Mac "should not purchase or invest in any mortgages encumbered by private transfer fee covenants or securities back by such mortgages" and that the Federal Home Loan Banks

"should not purchase or invest in such mortgages or securities or hold them as collateral for advances." *Id.* at 49934. FHFA's new policy would effectively abolish the use of PTFs nationwide and thus would clearly be a "major Federal action" subject to NEPA. *See Humane Soc'y of the United States v. Johanns,* 520 F.Supp.2d 8, 22 (D.D.C., 2007) (promulgation of Interim Final Rule governing fee-for-inspection program for slaughter facilities "unquestionably constitutes a major Federal action").

3. Approval of the Proposed Guidance Will Have Significant Environmental Impacts.

a. NEPA Requires Analysis of All Reasonably Foreseeable Direct and Indirect Environmental Impacts.

NEPA has two primary goals. "First, it places upon an agency the obligation to consider every significant aspect of the environmental impact of a proposed action." *Baltimore Gas & Elec. Co. v. Natural Res. Def. Council,* 462 U.S. 87, 97 (1983) (internal quotation omitted). "Second, it ensures that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process." *Id.* Compliance with NEPA forces an agency to examine environmental impacts that might otherwise be overlooked:

> Simply by focusing the agency's attention on the environmental consequences of a proposed project, NEPA ensures that important effects will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.

Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349 (1989).

NEPA review is required for all foreseeable direct and indirect impacts of an agency action. Direct effects "are caused by the action and occur at the same time and place." 40 C.F.R. § 1508.8(b). Indirect effects:

> are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include . . . effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Id. § 1508.8(b). "Effects" are defined to include "ecological . . . aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative." *Id.* § 1508.8. "Indirect impacts need only to be 'reasonably foreseeable' to require an assessment of the environmental impact." *Friends of the Earth, Inc. v. United States Army Corps of Eng'rs,* 109 F.Supp.2d 30, 41 (D.D.C. 2000). As explained in *Brady Campaign to Prevent Gun Violence v. Salazar,* 612 F.Supp.2d 1, 22 (D.D.C. 2009), "NEPA requires an agency to consider environmental impacts even if the effects are not entirely certain."

b. The Proposed Guidance Will Have Substantial Environmental Impacts Nationwide.

Because the FHFA has proceeded without NEPA compliance, the proposed Guidance gives no hint as to the scope of the environmental impacts associated with its adoption. In fact, these impacts will be substantial.

The proposed Guidance would halt or substantially interfere with the implementation of existing programs that depend upon transfer fees to support environmental and other community benefits. (Examples of projects and excerpts from fee agreements that would be impacted are attached as exhibits to this letter.) In California alone, this will impact hundreds of thousands of acres of land, including the following:

- **Tejon Ranch.** In May of 2008, a coalition of environmental groups entered into an historic agreement to protect 240,000 acres in Tejon Ranch in southern California, one of the largest conservation deals in the State's history. *See* Exhibit A (Tejon Ranch Conservation & Land Use Agreement). PTFs are an integral part of the Agreement, as the funds generated from these fees will provide permanent funding for the independent non-profit Tejon Ranch Conservancy to protect critical habitat linkages and viewsheds and maintain, restore, and enhance habitat for the California condor and over two-dozen other rare plant and animal species.

- **Martis Valley.** PTFs are a central component of land use management in Lake Tahoe's pristine Martis Valley. There, PTFs provide a funding stream for community benefits, including the preservation and enhancement of open space and natural resources, from a variety of projects. *See, e.g.,* Exhibit B (Truckee Land Stipulation); Exhibit C (Old Greenwood Community Benefit Agreement); Exhibit D (Gray's Crossing Community Benefit Fee Agreement); Exhibit E (Northstar Village Agreement); and Exhibit F (Siller Ranch Settlement Agreement). The Truckee Donner Land Trust, a non-profit organization that

administers PTFs for Martis Valley, has already used a portion of the funding to permanently protect Waddle Ranch, an undeveloped 1,481-acre property serving as a corridor to the Tahoe National Forest, Martis Creek Lake National Recreation Area, and Mount Rose Wilderness Area. *See id.* The proposed Guidance would affect PTFs that attach to thousands of properties in Martis Valley.

- **Placer County.** In 2004, the City of Roseville established a 0.5% PTF on a 3,000 acre development just outside its city limits in Placer County. *See* Exhibit G (Roseville Stipulated Final Judgment). The PTF, which expires 20 years from the sale of each unit, establishes funds to be administered by the non-profit Placer Land Trust for the permanent protection of open space/habitat land. Since the establishment of the PTF program, over 2,000 acres of vernal pool grasslands and habitat in the Central Valley have been preserved, secured by future revenues from the PTF agreement.

- **Ballona Wetlands.** The Ballona Wetlands Conservancy, a non-profit public benefit corporation with directors appointed by the Friends of Ballona Wetlands, City of Los Angeles Council District No. 11, the California State Resources Secretary, and Playa Capital Company LLC, uses PTFs to partially fund operation and maintenance of Playa Vista's Freshwater Wetlands System in southern California. The 51-acre Freshwater Wetlands System includes the Ballona Freshwater Marsh, located on land owned by the State of California, and a riparian corridor, which runs along the base of the Westchester Bluffs. The System provides wildlife habitat and natural stormwater treatment for a watershed in excess of 1,000-acres. In 2000, the Conservancy entered into a Mutual Benefit Agreement with Playa Vista Community Services (formerly called "The Club at Playa Vista") under which proceeds from a 0.75% Community Enhancement Fee levied at the time of transfer of residential condominiums at Playa Vista contribute to Wetlands maintenance costs. *See* Exhibit H (Mutual Benefit Agreement and form Community Enhancement Fee Agreement).

As shown by these examples, by prohibiting the generation of revenue from future sales through transfer fees, FHFA's new PTF policy will cripple open space, wildlife and mitigation programs affecting hundreds of thousands of acres of land in California alone and is likely to cause many other community benefit programs to be significantly reduced or eliminated.

The impacts of the proposed Guidance will, of course, extend nationwide. For example, the September 25, 2010 Comment Letter from Hyatt & Stubblefield, P.C. ("Hyatt & Stubblefield Comment") attaches an exhibit identifying transfer fees on

hundreds of thousands of homes throughout the United States. Many of the fees are designated for the acquisition or management of wildlife habitat, nature preserves, community gardens, conservation easements, and other conservation programs. *See, e.g.,* the Ridge project in Alabama (preservation and restoration of Lake Martin and surrounding forests and wetlands); the Cornerstone project in Colorado (maintenance and preservation of open space); the Frederica Township in Georgia (protection of endangered wood stork colony); and the Reserve at Lake Keowee in South Carolina (protection and preservation of nature preserves and open space); *see also* Exhibit I (management of 1,000 acre nature reserve and other open spaces funded by transfer fees on Spring Island in South Carolina).

These are merely a few of many possible examples of existing transfer fee programs that demonstrate the widespread, immediate environmental impacts of the proposed Guidance if adopted. The impacts clearly would include adverse impacts on open space, wildlife habitat, recreation and wilderness acquisition, management, and preservation programs. In addition, the loss of open space protections is likely to have growth-inducing consequences as new development moves into land that would otherwise be protected. The proposed Guidance would also result in impacts on transportation, air quality, and greenhouse gas emissions due to cuts in transit programs funded by PTFs. *See, e.g.,* Exhibit J (Transit Benefit Fee Agreement for the development and maintenance of the West Dublin/Pleasanton Bay Area Rapid Transit (BART) Station). Cuts in affordable housing programs funded by PTFs would lead to additional social, economic, and environmental justice impacts. In short, the impacts of the proposed Guidance on existing programs would be widespread and cumulatively considerable, and must be analyzed in an environmental review document.

The Guidance would also have enormous impacts on future projects. With a substantial majority of mortgages (by some estimates 90%) insured or backed by Freddie Mac or Fannie Mae, the proposed Guidance would effectively preclude the use of transfer fees for community benefits, removing a critical tool for protecting and preserving important open space and wildlife habitat. The loss of this financing tool is especially devastating in light of the current economic climate, in which both private and public financing for preservation and restoration projects is extremely limited.

c. The FHFA Must Conduct Environmental Review for the Proposed Guidance.

As noted above, the environmental impacts associated with the proposed elimination of transfer fees would be significant and widespread, and have been

documented in many comments submitted to FHFA. *See, e.g.,* September 23, 2010 Letter from Endangered Habitats League *et al.* (noting the essential role played by PTFs in conservation); Hyatt & Stubblefield Comment. These impacts are sufficient to compel review under NEPA. As recently explained in the Ninth Circuit, "The threshold that triggers the requirement for environmental analysis under [NEPA] is relatively low: 'It is enough for the plaintiff to raise substantial questions whether a project may have a significant effect on the environment.'" *California ex rel. Lockyer v. United States Dept. of Agriculture,* 575 F.3d 999, 1012 (9th Cir. 2009) (*quoting Blue Mountains Biodiversity Project v. Blackwood,* 161 F.3d 1208, 1212 (9th Cir. 1998) (citation and internal quotation marks omitted)).

Thus, NEPA review is required whenever the direct or indirect environmental impacts of a federal action are potentially significant. In *Lockyer*, for example, the Court rejected the agency's assertion that new rules governing the consideration of state-specific land management rules were merely "procedural" and therefore exempt from NEPA. *Id.* at 1012-18. Because the rules would repeal existing protections for roadless areas containing protected species and unique wilderness attributes, the Court found that an EA should have been prepared. *Id.* at 1017-18. Likewise, in *Citizens for Better Forestry v. United States Dept. of Agric.,* 341 F.3d 961, 972-974 (9th Cir. 2003), the court held that impacts from a new Plan Development Rule, which affected substantive and procedural standards for future federal land use plans, were not too indirect to support standing for NEPA claims. *See also Reed v. Salazar,* 2010 WL 3853218 (D.D.C. 2010) (U.S. Fish and Wildlife Service required to comply with NEPA before entering into annual funding agreement for operation and management of federal land). NEPA review of proposed guidance or other policy documents is particularly critical where, as here, implementation of the policy is unlikely to be subject to further environmental review. *Forest Service Employees for Environmental Ethics v. United States Forest Service,* 397 F.Supp.2d 1241, 1250 (D. Mont., 2005) (decision to use chemical fire-fighting retardants subject to NEPA where policy is formalized in agency guidance documents and specific application may not be subject to further NEPA review).

The fact that the precise scope of the environmental impacts of FHFA's new policy may be difficult to define does not mean that the policy is exempt from NEPA. Indeed, "one of the functions of a NEPA statement is to indicate the extent to which environmental effects are essentially unknown. . . . Reasonable forecasting and speculation is thus implicit in NEPA . . . ." *Scientists' Inst. for Pub. Info. v. Atomic Energy Comm'n,* 481 F.2d 1079, 1092 (D.C. Cir. 1973). Thus, NEPA analysis must be prepared even where proposed regulations will result in "many actions" by other entities

"all across the country," and where the potential environmental effects are "difficult to predict." *American Pub. Transit Ass'n v. Goldschmidt,* 485 F.Supp. 811, 832-33 (D.D.C. 1980) (EIS must be prepared for federal regulations requiring transit to be accessible to the handicapped), *rev'd on other grounds,* 655 F.2d 1272 (D.C. Cir. 1981).

Nor does the need for more data to determine the full extent of the potential impacts excuse compliance with NEPA. Indeed, gathering relevant data about the potential environmental impacts of a federal rule or action is one of the primary functions of an EIS. "Preparation of an EIS is mandated where uncertainty may be resolved by further collection of data [citation omitted], or where the collection of such data may prevent 'speculation of potential . . . effects.'" *National Parks & Conservation Ass'n v. Babbitt,* 241 F.3d 722, 732 (9th Cir. 2001), *abrogated on other grounds by Monsanto Co. v. Geertson Seed Farms,* 130 U.S. 2743 (2010). Thus, while this letter and other comments provide sufficient evidence to establish the significant environmental impacts on specific projects, it is incumbent upon FHFA under NEPA to gather data on and analyze the full extent of the impacts of its proposed action nationwide.

d. Pursuant to NEPA, FHFA Must Consider Alternatives to the Proposed Guidance That Would Minimize Environmental Impacts.

Compliance with NEPA would not only ensure that FHFA has taken a hard look at the environmental consequences of its actions, it would also require FHFA to consider alternatives that would reduce the environmental impacts of any new regulation. NEPA requires that an EA consider a reasonable range of alternatives to the proposed project that would achieve the project's basic purpose. *See* 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1508.9(b); *Bob Marshall Alliance v. Hodel, 852 F.2d 1223, 1229 (9th Cir. 1988)*; *Native Ecosystem Council v. United States Forest Serv.,* 428 F.3d 1233, 1245-46 (9th Cir. 2005).

We therefore urge the FHFA to seriously consider an alternative that would permit transfer fees that: 1) accrue to non-profit or homeowners associations, and 2) support natural resource protection, acquisition and management, as well as other community benefits, such as schools, transit, and affordable housing. Such an alternative would prohibit the use of PTFs solely for private gain, while eliminating all or most of the adverse environmental impacts associated with implementing the proposed Guidance.

4. Conclusion

For the foregoing reasons, we request that FHFA comply with NEPA before taking any further action on the proposed Guidance. We further request that FHFA narrow the proposed Guidance to protect PTFs that provide community benefits. Finally, we request that the comment period be extended to January 31, 2011 to provide more time for the public and FHFA to address the major environmental consequences of the proposed Guidance.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

Susannah T. French

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LIST OF EXHIBITS

Exhibit A	Tejon Ranch Conservation & Land Use Agreement, June 17, 2008
Exhibit B	*Mountain Area Preservation Foundation v. Town of Truckee et al.* (Nevada County Superior Court, State of California), Stipulation and [Proposed] Order for Entry of Judgment Pursuant to Terms of Settlement
Exhibit C	Old Greenwood Community Benefit Agreement, October 29, 2003
Exhibit D	Gray's Crossing Community Benefit Fee Agreement, December 22, 2003
Exhibit E	Northstar Village Agreement, December 23, 2003
Exhibit F	Settlement Agreement by and between Sierra Watch, Mountain Area Preservation Foundation, Planning and Conservation League, Sierra Club and League to Save Lake Tahoe and DMB/Highlands Groups, LLC, March 23, 2006
Exhibit G	*Catalano et al. v. City of Roseville* (Sacramento County Superior Court, State of California), Stipulated Final Judgment
Exhibit H	Mutual Benefit Agreement (The Club at Playa Vista); form Community Enhancement Fee Agreement (Playa Vista)
Exhibit I	"What is the Spring Island Trust?", www.springislandtrust.org/about.html, October, 13, 2010
Exhibit J	Transit Benefit Fee Agreement (West Dublin Condominiums), March 10, 2006

EXHIBIT A

TEJON RANCH | Conservation & Land Use Agreement

June 17, 2008

PROTECTING A CALIFORNIA TREASURE

TEJON RANCH · SIERRA CLUB · Audubon CALIFORNIA · NRDC

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EXHIBIT W –Form of Reimbursement Request from Escrow Holder
EXHIBIT X – Form of Release of Funds from Escrow Holder
EXHIBIT Y – WCB Conservation Easement Policies
EXHIBIT Z – Conservation Fee Escrow Procedures

TEJON RANCH

CONSERVATION AND

LAND USE AGREEMENT

This Tejon Ranch Conservation and Land Use Agreement ("**Agreement**") is made as of this 17th day of June, 2008 (the "**Effective Date**"), by and among Tejon Ranch Co., a Delaware corporation and Tejon Ranchcorp, a California corporation (collectively, "**TRC**"), and Sierra Club, a California nonprofit public benefit corporation, National Audubon Society, Inc., a New York nonprofit corporation d.b.a. Audubon California, Natural Resources Defense Council, Inc., a New York nonprofit corporation, Endangered Habitats League, a California nonprofit public benefit corporation and Planning and Conservation League, a California nonprofit public benefit corporation (each, a "**Resource Organization**" and collectively, the "**Resource Organizations**"), and the Tejon Ranch Conservancy, a California nonprofit public benefit corporation (the "**Conservancy**"), with Centennial Founders, LLC, a Delaware limited liability company ("**Centennial LLC**"), joining in for the limited purpose of acknowledging the obligations as set forth in Sections 2.2, 8.3, 9.1(b), 9.4 and 9.6, Tejon Industrial Corp., a California corporation ("**TIC Corp.**"), joining in for the limited purpose of acknowledging the obligations as set forth in Sections 8.3, 9.1(d) and 9.6 and Tejon Mountain Village, LLC a Delaware limited liability company ("**TMV LLC**"), joining in for the limited purpose of acknowledging the obligations as set forth in Sections 2.2, 8.3, 9.1(e), 9.4 and 9.6.

RECITALS

A. The Parties to this Agreement desire to protect in perpetuity substantial and significant natural resource values of the 270,000-acre Tejon Ranch. These natural resource values include an extraordinary diversity of native species and vegetation communities, numerous special status plant and animal species, intact watersheds and landscapes supporting natural ecosystem functions and regionally significant habitat connectivity. These important natural resource values exist on Tejon Ranch because historic ranch uses, tracing back to 1843, have largely sustained a natural landscape. The objective of this Agreement is to maintain the bulk of Tejon Ranch in this unaltered condition and, as appropriate, enhance and restore natural resource values. Through a combination of dedicated conservation easements and designated project open space areas, this Agreement permanently protects approximately 178,000 acres and grants the Resource Organizations an option to purchase conservation easements over an additional 62,000 acres of Tejon Ranch, resulting in a total of approximately 240,000 acres of conserved land with provisions for public access and environmental stewardship.

B. Tejon Ranch is the largest contiguous property under single, private ownership in the State of California. It has been owned by the Tejon Ranch Co. since its incorporation in 1936. The Tejon Ranchcorp is a wholly owned subsidiary of the Tejon Ranch Co. that holds title to the lands comprising Tejon Ranch except those owned by TIC Corp., which owns the lands comprising the Tejon Industrial Complex. TRC will continue its historic ranch uses including farming, grazing, wildlife management and filming under this Agreement together with oil drilling and sand and gravel mining within defined areas all consistent with a Ranch Wide Management Plan. TRC has formed Centennial LLC to pursue development in the Centennial

Development Area and TMV LLC to pursue development in the Tejon Mountain Village Development Area. This Agreement allows TRC to pursue development plans in defined development areas without opposition from the Resource Organizations while enabling a conservancy to preserve Tejon Ranch's natural resource values for future generations.

C. The Conservancy has been created by the Resource Organizations as an independent, nonprofit organization to preserve, enhance and restore the native biodiversity and ecosystem values of Tejon Ranch and the Tehachapi Range for the benefit of California's future generations. The Conservancy wishes to work with TRC to develop standards for management and restoration of the conservation lands, as well as to hold and monitor the conservation easements, and to help plan and manage public access on Tejon Ranch. Advances from TRC and Conservation Fees provided for in this Agreement ensure that the Conservancy will have the financial resources to exercise independently its rights and obligations under this Agreement.

D. The long-term conservation of Tejon Ranch has been one of the highest priorities of the Resource Organizations. This unique property lies at the confluence of four major ecological regions — the Sierra Nevada, Mojave Desert, Coastal Range and San Joaquin Valley. This Agreement follows many years of scientific analysis of conservation values on Tejon Ranch by TRC and others, including the Resource Organizations. By comprehensively addressing the entire Tejon Ranch, this Agreement avoids fragmentation of many of the environmentally sensitive areas on Tejon Ranch. The conserved lands will be managed in accordance with a comprehensive Ranch Wide Management Plan that will identify the natural resources and conservation values of the conserved lands as well as opportunities to protect, enhance and restore identified resources and values and establish best management practices for continued use of the conserved lands for existing ranch uses.

E. The Parties place a high priority on ensuring that this Agreement provides important public benefits, specifically including opportunities for the public to enjoy Tejon Ranch through well managed public access. In this Agreement, the Parties have identified the following public access opportunities – a commitment to working together with the Conservancy to establish a California state park, a realignment of 37 miles of the Pacific Crest Trail onto Tejon Ranch and other appropriate public access, including docent-led outings in Bear Trap Canyon. The Parties also expect that the Conservancy will develop and operate environmental education programs, especially to benefit underserved communities and populations.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms, covenants, conditions, promises and benefits contained herein, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS. For the purposes of this Agreement, the following terms shall have the meanings set forth below:

1.1 Access Notice. The term "Access Notice" means a written notice delivered to Owner by the Conservancy or the Resource Organization Designee in accordance with Section 3.6(a)(i), which notice shall include (a) a detailed description of the purpose for

entry on the Conservation Easement Area, (b) the specific portion of the Conservation Easement Area to be accessed, (c) the proposed date(s) of entry on and duration of access to the Conservation Easement Area, and (d) the number of persons who would enter on and access the Conservation Easement Area.

1.2 **Acquisition Area(s)**. The term "Acquisition Area(s)" means the following area(s) generally depicted on the following exhibits:

(a) Bi-Centennial, Exhibit C-1;

(b) Michener Ranch, Exhibit C-2;

(c) Old Headquarters, Exhibit C-3;

(d) Tri-Centennial, Exhibit C-4; and

(e) White Wolf, Exhibit C-5.

1.3 **Activity Notice**. The term "Activity Notice" means a written notice delivered to Owner by the Conservancy in accordance with Section 3.8, which notice shall include (a) the proposed Conservation Activity, (b) a detailed description of the nature, scope, location and purpose of the proposed Conservation Activity (including any proposed building, structure or improvement permitted by Section 3.8(b) and proposed by the Conservancy in connection with such Conservation Activity), (c) a schedule of the work or activities to be performed or conducted on the Conservation Easement Area, and (d) a list of the names of any contractors or other parties and persons who would perform the Conservation Activity.

1.4 **Adaptive Management Standard**. The term "Adaptive Management Standard" is a Management Standard that permits BMPs, Conservation Activities and other actions subject to this standard consistent with the RWMP and the requirements for the RWMP set forth in Article 3, with recognition that (a) the continued economic use of the Conservation Easement Area, as a whole, will be respected, (b) over time the goal is that the native biodiversity and ecosystem values of the Conservation Easement Area will be enhanced, (c) high priority areas of particular sensitivity will be the focus of the Conservancy's Conservation Activities, and in such areas, the Conservation Purpose would take precedence over economic uses, (d) the enhanced biological and physical condition resulting from previously approved Conservation Activities within such areas will be maintained, (e) this standard shall not be less protective of Conservation Values than the Current Stewardship Standard, and (f) Conservation Activities shall be carefully coordinated with Owner's use of the Conservation Easement Area and then-existing leases, easements and other agreements.

1.5 **Advance**. The term "Advance" has the meaning set forth in Section 2.3.

1.6 **Advance Amount**. The term "Advance Amount" has the meaning set forth in Section 2.3.

1.7 **Advance Obligation Period**. The term "Advance Obligation Period" means the period from the Effective Date through December 31, 2014, which may be extended to December 31, 2021 as provided in Section 2.5.

1.8 **Adverse IRS Determination**. The term "Adverse IRS Determination" has the meaning set forth in Section 2.1(d).

1.9 **Affiliate**. The term "Affiliate" means a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another Person. For purposes of this definition, control means the ability to direct or cause the direction of the management and policies of another Person, including, without limitation, by contract, by ownership of its voting securities or membership interests, by having the right to designate or elect members of its governing body, or otherwise. For purposes of this Agreement, a Person is Affiliated with another Person if any one or more officers, directors, employees, partners, members or shareholders of either such Person controls the other Person.

1.10 **Alternate Appraisal Process**. The term "Alternate Appraisal Process" has the meaning set forth in Section 6.7(b).

1.11 **Alternate Easement Holder**. The term "Alternate Easement Holder" means a nonprofit organization exempt from tax under Code Section 501(c)(3) that is designated under the circumstances described in Section 2.1 or Section 8.1, following consultation with TRC and the Conservancy, to act as the holder of a Conservation Easement.

1.12 **Annual Funding Requirement**. The term "Annual Funding Requirement" has the meaning set forth in Section 2.6(b).

1.13 **Applicable Laws**. The term "Applicable Laws" means any one or more present and future laws, ordinances, rules, regulations, permits, authorizations, orders and requirements, to the extent applicable to the Parties or to the Ranch or any portion thereof, whether or not in the present contemplation of the Parties, including, but not limited to, all consents or approvals (including Project Approvals) obtained from, and all rules and regulations of, and all building and zoning laws of, the Resource Agencies and all other federal, state, regional, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, boards of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of, or which may affect or be applicable to, the Ranch or any part thereof, including, but not limited to, any subsurface area, the use thereof and of the buildings and improvements thereon.

1.14 **Appraisal Instructions**. The term "Appraisal Instructions" means those certain appraisal instructions, standards and limitations set forth in Exhibit O.

1.15 **Best Management Practices or BMPs**. The term "Best Management Practices" or "BMPs" means practices and procedures established pursuant to the RWMP that apply to the Reserved Rights, other than the Core Activities, and are (a) based on the best available scientific information, (b) feasible, both economically and technologically, (c) reasonable and practicable methods to reduce or minimize adverse impacts to natural and

conservation resources resulting from such activities that are subject to BMPs, and (d) reasonably necessary to achieve the applicable Management Standard.

1.16 Bi-Centennial Option. The term "Bi-Centennial Option" has the meaning set forth in Section 6.1(a).

1.17 Breaching Party. The term "Breaching Party" has the meaning set forth in Section 12.3(a).

1.18 CE Conveyance Plan. The term "CE Conveyance Plan" means the Dedicated Conservation Easement conveyance plan for Linked Acreage as set forth in Section 5.2.

1.19 CEQA. The term "CEQA" means the California Environmental Quality Act (California Public Resources Code Section 21000 *et seq.*) and the guidelines thereunder (14 California Code of Regulations Section 15000 *et seq.*).

1.20 CERCLA. The term "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 *et seq.*).

1.21 Claims. The term "Claims" means any and all liabilities, penalties, costs, losses, damages, expenses (including, but not limited to, reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments.

1.22 Closing Date. The term "Closing Date" means, with respect to the sale of a Purchased Conservation Easement, the date established pursuant to the terms of Section 6.2 with respect to each Acquisition Area, which date shall be on or before the Outside Closing Date.

1.23 Code. The term "Code" means the Internal Revenue Code of 1986.

1.24 Communication Plan. The term "Communication Plan" has the meaning set forth in Section 3.10(d).

1.25 Confidential Information. The term "Confidential Information" has the meaning set forth in Section 15.22.

1.26 Conservancy Board. The term "Conservancy Board" means the board of directors of the Conservancy.

1.27 Conservancy Agreements. The term "Conservancy Agreements" has the meaning set forth in Section 2.1(d).

1.28 Conservancy Documents. The term "Conservancy Documents" means the articles of incorporation attached as Exhibit K-1 and the by-laws attached as Exhibit K-2 for the Conservancy.

1.29 **Conservancy Indemnified Parties**. The term "Conservancy Indemnified Parties" means, collectively, the Conservancy and its directors, officers, employees, agents, contractors, and representatives and the heirs, representatives, successors and assigns of each of them.

1.30 **Conservation Activities**. The term "Conservation Activities" means those activities set forth in Paragraph 3 of Exhibit M.

1.31 **Conservation Easement Agreement**. The term "Conservation Easement Agreement" means an instrument, in recordable form, evidencing and granting a Conservation Easement.

1.32 **Conservation Easement Area**. The term "Conservation Easement Area" means all of the land encumbered, or proposed to be encumbered, by a Dedicated Conservation Easement or a Purchased Conservation Easement; provided, however, "Conservation Easement Area" shall not include any Unpurchased Acquisition Area.

1.33 **Conservation Easement(s)**. The term "Conservation Easement(s)" means and includes both Dedicated Conservation Easements and Purchased Conservation Easements.

1.34 **Conservation Fee**. The term "Conservation Fee" means a transfer fee as defined in California Civil Code Section 1098.

1.35 **Conservation Fee Covenant**. The term "Conservation Fee Covenant" means a covenant or covenants, in recordable form, which shall be prepared consistent with the Conservation Fee Principles and recorded against the Centennial, Grapevine and TMV Development Areas as provided in Section 2.2.

1.36 **Conservation Fee Principles**. The term "Conservation Fee Principles" means the principles set forth on Exhibit L relating to the Conservation Fee to be used to guide the preparation of the Conservation Fee Covenant.

1.37 **Conservation Purpose**. The term "Conservation Purpose" means to (a) ensure that the Conservation Easement Area will be retained forever in its natural, scenic, and open-space condition, (b) preserve, protect, identify and monitor in perpetuity the Conservation Values of the Conservation Easement Area, (c) prevent any activities on the Conservation Easement Area that will impair the Conservation Values of the Conservation Easement Area, and (d) following the expiration of the Initial Period, enhance and restore the Conservation Easement Area to the extent permitted by Section 3.8, all subject to and in accordance with the terms of this Agreement, including, but not limited to Sections 2.8, 2.9 and 2.10.

1.38 **Conservation Values**. The term "Conservation Values" means those natural resource and conservation values that are identified as being the subject of promotion, protection, maintenance, restoration, or enhancement goals and objectives in the RWMP in Section 3.1(c)(i) through 3.1(c)(vi) and including, where a Conservation Easement Agreement has been recorded, the "Conservation Values" defined therein.

1.39 **Core Activities**. The term "Core Activities" means those Reserved Rights set forth in Paragraph 1(b)(1) of Exhibit M.

1.40 **Cure Period**. The term "Cure Period" means thirty (30) days after receipt of the Notice of Breach; provided, however, that if, by the nature of the default or breach, such cure cannot reasonably be completed within thirty (30) days after receipt of the Notice of Breach, the Breaching Party must commence such cure within such thirty (30) day period and, having so commenced, thereafter prosecute with diligence and dispatch until such default or breach is cured or such dispute is resolved.

1.41 **Current Stewardship Standard**. The term "Current Stewardship Standard" is a Management Standard that permits BMPs and other actions subject to this standard that preserve the Conservation Values which exist as of the Effective Date.

1.42 **Dedicated Conservation Easement(s)**. The term "Dedicated Conservation Easement(s)" means any Conservation Easement tendered, or required to be tendered, pursuant to this Agreement encumbering the Dedicated Conservation Easement Area(s).

1.43 **Dedicated Conservation Easement Area(s)**. The term "Dedicated Conservation Easement Area(s)" means the area(s) generally depicted on Exhibit E.

1.44 **Designated Farm Areas**. The term "Designated Farm Areas" means those portions of the Conservation Easement Area designated as Designated Farm Areas on Exhibit G-1.

1.45 **Designated Mining Areas**. The term "Designated Mining Areas" means (a) those portions of the Conservation Easement Area designated as Designated Mining Areas on Exhibit G-2, and (b) an area not exceeding 800 acres within the "Future Mining Envelope" designated on Exhibit G-2. The specific location of the 800-acre Designated Mining Area within the Future Mining Envelope shall be determined in the reasonable judgment of Owner made in consultation with the Conservancy, with primary consideration given to the location of the minerals, but also taking into account other factors, such as avoiding or reducing impacts of access and operations on Conservation Values.

1.46 **Designated Oil and Gas Areas**. The term "Designated Oil and Gas Areas" means those portions of the Conservation Easement Area designated as Designated Oil and Gas Areas on Exhibit G-3.

1.47 **Designated Water Bank Areas**. The term "Designated Water Bank Areas" means that portion of the Conservation Easement Area designated as the Designated Water Bank Areas on Exhibit G-4.

1.48 **Developed**. The term "Developed" means the area that is actually used for building pads, roads, active open space (such as parks and golf courses), water quality or storm water management and graded slopes, but not including areas used for buffers, fuel management zones, passive open space (such as trails), natural areas or similar uses.

1.49 Development Area(s). The term "Development Area(s)" means the following area(s) generally depicted on Exhibit B:

(a) Bakersfield National Cemetery;

(b) Centennial;

(c) Grapevine;

(d) Tejon Industrial Complex ("TIC");

(e) Tejon Mountain Village ("TMV"); and

(f) TRC Headquarters.

1.50 Development Milestones. The term "Development Milestones" means, with respect to the Centennial, Grapevine and TMV Development Areas, that all Project Approvals necessary to achieve the following two (2) entitlements have been Finally Granted by each of the Governmental Agencies having jurisdiction: (a) the Initial Entitlements, and (b) Final Map recordation for the final phase of the Development Area to be Developed. Specifically, the Initial Entitlements for each Development Area is Development Milestone A for that Development Area, and Final Map recordation for the final phase of the Development Area to be Developed, is Development Milestone B for that Development Area.

1.51 DGS. The term "DGS" means the State of California Department of General Services.

1.52 Disturbance Areas. The term "Disturbance Areas" means those portions of the Conservation Easement Area generally depicted on Exhibit H as Disturbance Areas, the precise boundaries of which shall conform to the boundaries depicted in Exhibits H-1 through H-8, with such minor modifications to such boundaries as Owner and the Conservancy may mutually agree.

1.53 Environmental Laws. The term "Environmental Laws" includes, but is not limited to, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials.

1.54 ESA. The term "ESA" means the Federal Endangered Species Act (16 U.S.C. §1531 *et seq.*).

1.55 Escrow Account. The term "Escrow Account" means the interest-bearing account established by Escrow Holder for any suspension period referenced in Section 12.4.

1.56 Escrow Holder. The term "Escrow Holder" means Chicago Title Company, 4015 Coffee Road, Bakersfield, CA 93308, Attn: Maria F. Biernat, or such other qualified escrow holder as may be mutually agreed on by the Conservancy and TRC.

1.57 **Event of Default**. The term "Event of Default" has the meaning set forth in Section 12.1.

1.58 **Exchange**. The term "Exchange" has the meaning set forth in Section 6.12.

1.59 **Exempt Transfer**. The term "Exempt Transfer" means any sale or other transfer, or any agreement providing a right to the sale or transfer, of real property to: (a) any current and future entities in which either of the entities comprising TRC (or its successors) has an equity, ownership or management interest of at least ten percent (10%) and any corporation or other entity that, directly or indirectly, controls or is controlled by TRC, or that is under common control with TRC; (b) the surviving entity in any merger, consolidation or reorganization to which TRC is a party; (c) any entity which acquires all or substantially all of the outstanding capital stock or assets of TRC; or (d) any entity which is the result of a spin-off of shares or assets of TRC to the shareholders of TRC. The sale of TRC's stock through any public or private offering or over any public exchange shall also be deemed an Exempt Transfer.

1.60 **Existing Contract**. The term "Existing Contract" means a contract that permits the use by a third party, or requires the use by TRC, of the Conservation Easement Area, or a portion thereof (including, but not limited to, a lease or an easement), entered into prior to the Effective Date, including any Required Extension to such contract.

1.61 **Existing Surface Water Diversions**. The term "Existing Surface Water Diversions" means any diversions of surface water flows naturally occurring on the Conservation Easement Area that are not New Surface Water Diversions.

1.62 **Farm Area Standard**. The term "Farm Area Standard" is a Management Standard that permits farming-related uses in accordance with Paragraph 1(b)(2)(B) of Exhibit M in the Designated Farm Areas, and shall permit new facilities and farm-related activities, subject only to BMPs that do not substantially adversely affect Owner's economic use of the Designated Farm Areas for uses permitted by Paragraph 1(b)(2)(B) of Exhibit M.

1.63 **Final Map**. The term "Final Map" means a final subdivision map recorded in accordance with California Government Code Section 66464 *et seq.*

1.64 **Finally Granted**. The term "Finally Granted" means, with respect to any Project Approval, that such Project Approval has been given (and, if applicable, any necessary ordinance, resolution or similar legislative action granting or ratifying the giving of such approval has been adopted) and all applicable appeal periods for the filing of any administrative appeal, and statutes of limitation for the filing of any judicial challenge of such approval shall have expired and no such appeal or challenge shall have been filed, or if any administrative appeal or judicial challenge is filed, such approval shall either (a) have been upheld without modification, imposition of conditions or other change by a final decision in the final such appeal or challenge that is timely filed, or (b) upheld with modification, imposition of conditions or other change by a final decision that is subsequently relied upon to proceed with development authorized by the Project Approval as finally issued. The statute of limitations for the filing of any judicial challenge shall be deemed to be (i) one hundred eighty (180) days as to any Initial

Entitlement, and (ii) one (1) year as to any other Project Approval, except that TRC may, in its sole discretion, by notice to the Conservancy, waive the requirement that the statute of limitations for the filing of any judicial challenge shall have expired, and designate any Project Approval that has been given as having been Finally Granted.

1.65 First Entitlement Date. The term "First Entitlement Date" means the date on which the Initial Entitlements have been Finally Granted in the first of the Centennial, Grapevine or TMV Development Areas.

1.66 Form Conservation Easement. The term "Form Conservation Easement" means that form conservation easement agreement which has been negotiated between the Parties and attached as Exhibit N.

1.67 Governmental Agencies. The term "Governmental Agencies" means any administrative or regulatory agency, board, body, bureau, commission, department, or other authority created or authorized by any federal, state, regional or local government or governmental body, including Resource Agencies.

1.68 Hazardous Materials. The term "Hazardous Materials" includes, but is not limited to, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, RCRA, HTA, HSA, and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the Effective Date.

1.69 HCL. The term "HCL" means the Hazardous Waste Control Law (California Health & Safety Code Section 25100 et seq.).

1.70 HSA. The term "HSA" means the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code Section 25300 *et seq.*).

1.71 HTA. The term "HTA" means the Hazardous Materials Transportation Act (49 U.S.C. Section 5101 *et seq.*).

1.72 Incidental Ranch Facilities. The term "Incidental Ranch Facilities" means all facilities not otherwise described in Paragraph 1(b) of Exhibit M that are incident to a Reserved Right, including, but not limited to, squeezes, loading chutes, holding and feeding fields, corrals, barns, shop and storage buildings, sewage disposal facilities and systems, water distribution and irrigation facilities, Livestock and wildlife watering facilities (including impoundments and related water distribution facilities) and Infrastructure.

1.73 Infrastructure. The term "Infrastructure" means streets, roads and bridges; transit and transportation facilities; water supply lines and water resource systems; storm drains and sewers; wastewater lines and wastewater management systems; electric power generation facilities and transmission lines and other associated facilities; oil and gas pipelines and associated facilities; telecommunications lines and associated facilities; and other similar improvements, utilities and facilities that would serve a Project or a Potential Project, except that power generation facilities are subject to the limitations in Paragraph 2(a)(18) of Exhibit M.

1.74 Initial Entitlements. The term "Initial Entitlements" means county approval of a specific plan (or comparable plan) following certification of environmental review pursuant to CEQA.

1.75 Initial Period. The term "Initial Period" means the period which commences on the Effective Date and expires on the date which is five (5) years thereafter.

1.76 Interim RWMP. The term "Interim RWMP" has the meaning set forth in Section 3.2.

1.77 IRS. The term "IRS" means the Internal Revenue Service.

1.78 Joint Public Statement. The term "Joint Public Statement" means that statement set forth on Exhibit U.

1.79 Linked Acreage. The term "Linked Acreage" means those areas generally depicted on Exhibit F with the precise boundaries to be determined in accordance with Section 5.3 for the tendering of Dedicated Conservation Easements upon the achievement of each applicable Development Milestone, in accordance with the provisions of Section 5.2. Specifically, the area depicted on Exhibit F as:

(a) TMV-A is linked to TMV Development Milestone A;

(b) TMV-B is linked to TMV Development Milestone B;

(c) CENT-A is linked to Centennial Development Milestone A;

(d) CENT-B is linked to Centennial Development Milestone B;

(e) GV-A is linked to Grapevine Development Milestone A; and

(f) GV-B is linked to Grapevine Development Milestone B.

1.80 Livestock. The term "Livestock" means animals typically kept on a farm or ranch, including, but not limited to, cattle, horses, sheep and goats.

1.81 Management Standard. The term "Management Standard" means the applicable standard governing the development of BMPs, Conservation Activities, and other actions as set forth in this Agreement. The Management Standards are, collectively, the Current Stewardship Standard, the Adaptive Management Standard, the Farm Area Standard, the Mining Area Standard, and the Oil and Gas Area Standard.

1.82 Map Act. The term "Map Act" means the California Subdivision Map Act (California Government Code Section 66410 *et seq.*), and any local ordinances adopted pursuant thereto.

1.83 Material Adverse Condition. The term "Material Adverse Condition" means a condition or circumstance relating to a portion of any Conservation Easement Area that

is not known to the Resource Organizations or the Conservancy as of the Effective Date, but is discovered by the Resource Organizations or the Conservancy after the Effective Date, that the Resource Organization Designee or the Conservancy determines, in the exercise of reasonable judgment, would make it imprudent for the Conservancy or an Alternate Easement Holder to accept and hold a conservation easement interest over the affected area because either (a) such condition or circumstance is materially inconsistent with the Conservation Purpose sought to be attained with the Conservation Easement, or (b) such condition or circumstance would cause, or has a reasonable likelihood of causing, the Conservancy or Alternate Easement Holder to assume or incur a material legal liability as a result of holding a conservation easement interest covering such affected area; provided, however, that in no event shall either the Reserved Rights (other than Existing Contracts) or Mitigation be considered a Material Adverse Condition.

1.84 Mining Area Standard. The term "Mining Area Standard" is a Management Standard that permits mineral extraction-related activities and new facilities and additional exploration, development and extraction in the Designated Mining Areas, subject only to BMPs that do not substantially adversely affect Owner's economic use of the Designated Mining Areas for uses permitted by Paragraph 1(b)(2)(F) of Exhibit M.

1.85 Michener Ranch Option. The term "Michener Ranch Option" has the meaning set forth in Section 6.1(b).

1.86 Mitigation. The term "Mitigation" means any actions required to be taken, or any negative covenant or restriction required to be imposed in or on, or fee transfer of, any Mitigation Area(s) to satisfy a requirement or condition of a Project Approval (or any similar approval relating to a Potential Project) or required in connection with the Reserved Rights relating to the mitigation of impacts on natural resources, including without limitation conservation, preservation, monitoring, enhancement and restoration of land and natural resource values within Mitigation Areas to mitigate the natural resource impacts of Projects, Potential Projects, and Reserved Rights.

1.87 Mitigation Area. The term "Mitigation Area" means any area or areas within the Conservation Easement Area designated as provided in this Agreement to satisfy a condition or requirement of any Project Approval (or any similar approval relating to a Potential Project) or required in connection with the Reserved Rights for Mitigation purposes. Mitigation Areas also include areas that have been previously so restricted or transferred.

1.88 Mitigation Bank Area. The term "Mitigation Bank Area" means an area of approximately 16,750 acres to be located generally within the San Joaquin valley floor portion of the Ranch, the specific boundaries of which will be defined in the Tejon Ranch Valley Floor Habitat Conservation Plan.

1.89 Mitigation Costs. The term "Mitigation Costs" means reasonable, actual costs incurred to carry out Mitigation activities after the Mitigation Transition Period.

1.90 Mitigation Implementation Period. The term "Mitigation Implementation Period" means an initial five (5) year period following the date on which a

Project Approval has been Finally Granted, which Project Approval requires Mitigation activities, unless TRC and the Conservancy mutually agree to an alternate period.

1.91 Mitigation Transition Period. The term "Mitigation Transition Period" means that period which commences on the date which is two (2) years prior to the end of the Mitigation Implementation Period.

1.92 National Cement Area. The term "National Cement Area" means the leased area described in the NCA Lease and generally depicted on Exhibit D.

1.93 NCA Lease. The term "NCA Lease" has the meaning set forth in Section 9.5.

1.94 Negotiation Notice. The term "Negotiation Notice" has the meaning set forth in Section 7.4(a)(ii).

1.95 NEPA. The term "NEPA" means the National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*).

1.96 New NCA Lease. The term "New NCA Lease" has the meaning set forth in Section 9.5.

1.97 New Surface Water Diversions. The term "New Surface Water Diversions" means any diversions of surface water flows naturally occurring on the Conservation Easement Area other than diversions of such surface water flows that exist as of the Effective Date. Such existing diversions include, but are not limited to, the amounts of the surface water diversions described in water right Permits 21178, 21179, 21180, 21181, 21182, 21183, 21184, 21189, 21190, 21191 and 21192 issued by the State Water Resources Control Board, and California Department of Fish and Game Agreement Nos. 2006-0157-R4 and 2006-0184-R4; provided, however, new or modified points of diversion and/or diversion facilities that are authorized pursuant to the above-referenced permits and agreements are not "New Surface Water Diversions."

1.98 Non-Breaching Party. The term "Non-Breaching Party" has the meaning set forth in Section 12.3(a).

1.99 Non-Opposition Letters. The term "Non-Opposition Letters" means those certain letters from the Resource Organizations confirming their non-opposition to the Projects and Project Approvals attached collectively as Exhibit S.

1.100 Notice of Breach. The term "Notice of Breach" has the meaning set forth in Section 12.3(a).

1.101 Oil and Gas Area Standard. The term "Oil and Gas Area Standard" is a Management Standard that permits oil and gas extraction-related uses and new facilities and additional exploration, development and extraction in the Designated Oil and Gas Areas, subject only to BMPs that do not substantially adversely affect Owner's economic use of the Designated Oil and Gas Areas for uses permitted by Paragraph 1(b)(2)(E) of Exhibit M.

1.102 Old Headquarters Option. The term "Old Headquarters Option" has the meaning set forth in Section 6.1(c).

1.103 Option. The term "Option" has the meaning set forth in Section 6.1.

1.104 Option Notice. The term "Option Notice" has the meaning set forth in Section 6.2.

1.105 Option Notice Date. The term "Option Notice Date" means November 1, 2010, subject to the extensions pursuant to Section 6.3.

1.106 Option Period. The term "Option Period" means that period commencing on the Effective Date and expiring on the Outside Closing Date.

1.107 Outside Closing Date. The term "Outside Closing Date" means, with respect to sales of Purchased Conservation Easements, December 31, 2010, as such date may be extended pursuant to Section 6.3.

1.108 Owner. The term "Owner" means the fee owner of an interest in any portion of the Conservation Easement Area. As of the Effective Date, TRC is the sole Owner of the Conservation Easement Area. If the Conservation Easement Area is owned by more than one fee owner, the term "Owner" includes each such owner; provided, however, that where this Agreement provides that an approval or determination is to be made by Owner with respect to any Conservation Activity located on, or any requested access to, any portion of the Conservation Easement Area, such approval or determination shall be made only by the fee owner(s) of such portion of the Conservation Easement Area.

1.109 Owner Designee. The term "Owner Designee" means TRC; provided, however, that from time to time on or after January 1, 2022, if the Owner Designee, itself or through its Affiliates, does not own the fee interest in substantially all of the Ranch, then the Owner Designee shall have the right, but not the obligation, upon notice to the Conservancy and the Resource Organizations and subject to the provisions of Section 3.13, to designate a new Owner Designee who must be a single Person then owning the fee interest in any substantial portion of the Ranch, or an entity formed to act as the Owner Designee on behalf of some or all of the owners of a fee interest in the Conservation Easement Area.

1.110 Owner Indemnified Parties. The term "Owner Indemnified Parties" means, collectively, Owner and its directors, officers, employees, agents, contractors, and representatives and the heirs, representatives, successors and assigns of each of them.

1.111 Parties. The term "Parties" means collectively TRC, each of the Resource Organizations, and the Conservancy, and their successors and assigns as permitted in Section 15.4, each of whom are individually sometimes referred to as a "Party."

1.112 PCT. The term "PCT" has the meaning set forth in Section 4.1.

1.113 PCT Realignment. The term "PCT Realignment" has the meaning set forth in Section 4.1.

1.114 PCTA. The term "PCTA" means the Pacific Crest Trail Association, a California nonprofit public benefit corporation.

1.115 Permitted Title Exceptions. The term "Permitted Title Exceptions" means:

(a) liens to secure payment of general and special real property taxes, liens and assessments which are not delinquent, or, if delinquent, are being contested in good faith;

(b) the lien of supplemental taxes assessed pursuant to Chapter 3.5 commencing with Section 75 of the California Revenue and Taxation Code;

(c) any lien, encumbrance, defect, irregularity or other matter affecting title, whether or not of record, in existence on the Effective Date;

(d) covenants, conditions, restrictions or other matters imposed or required in connection with the granting of one or more Project Approvals, including Mitigation requirements;

(e) undetermined liens and charges incident to construction or maintenance, and liens and charges incident to construction or maintenance now or hereafter filed of record which are being contested in good faith by Owner any of which, whether singly or in the aggregate, do not materially adversely affect the interests of the holder of the Conservation Easement;

(f) easements, exceptions or reservations including for the purpose of pipelines, telephone lines, telegraph lines, power lines and substations, roads, streets, alleys, highways, railroad purposes, drainage and sewerage purposes, dikes, canals, laterals, ditches, the removal of oil, gas, coal or other minerals, and other like purposes, or for the joint or common use of real property, facilities and equipment, that (i) were in existence as of the Effective Date, or (ii) do not materially interfere with the ability of the holder of the Conservation Easement to perform its material duties thereunder, or (iii) evidence or implement the Reserved Rights;

(g) defects and irregularities in title that do not materially adversely affect the ability of the holder of the Conservation Easement to perform its obligations, or materially impair the Conservation Values that the Conservation Easement is intended to protect;

(h) rights reserved to or vested in any Governmental Agency to control or regulate or use any portion of the Acquisition Area, or that relate to the imposition or implementation of Mitigation within Mitigation Areas;

(i) the rights of the holder of any Conservation Easement;

(j) statutory liens arising in the ordinary course of business which are not delinquent or are being contested in good faith by Owner;

(k) leases or licenses entered into prior to the Effective Date for the use of portions of the Acquisition Areas for the Reserved Rights;

(l) leases or licenses entered into on or after the Effective Date for the use of portions of the Acquisition Areas for the Reserved Rights which are subject to the terms of this Agreement, including Conservation Easements granted pursuant to this Agreement; and

(m) exceptions created by or at the direction of, or with the written consent of the Resource Organizations through the Resource Organization Designee, which consent shall not be unreasonably withheld, conditioned or delayed.

1.116 Person. The term "Person" means any individual, general partnership, limited partnership, limited liability company, corporation, joint venture, trust, estate, cooperative, association or other entity, whether domestic or foreign, and any Governmental Agency.

1.117 Potential Project. The term "Potential Project" means any permitting, entitlement, development, use, improvement, maintenance, repair, replacement and/or alteration, in any fashion, of an Unpurchased Acquisition Area, other than a Project.

1.118 Private Foundation Period. The term "Private Foundation Period" has the meaning set forth in Section 2.1(f).

1.119 Prohibited Uses. The term "Prohibited Uses" means those uses and activities set forth in Paragraph 2 of Exhibit M.

1.120 Project. The term "Project" means any permitting, entitlement, development, use, improvement, maintenance, repair, replacement and/or alteration, in any fashion, of: (a) Development Areas; (b) the Conservation Easement Area, as may be allowed under the terms of this Agreement or any applicable Conservation Easement; or (c) an Unpurchased Acquisition Area, as would be allowed in the Conservation Easement Area consistent with the applicable terms of Section 3.5.

1.121 Project Approvals. The term "Project Approvals" means, in connection with any Project (or any phase of a Project) any authorization, approval, determination, agreement, entitlement or permit that may be sought or obtained from any Governmental Agency having jurisdiction over any aspect of a Project, including, but not limited to, Initial Entitlements, approval of any CEQA determination, development agreement, specific plan, parcel or subdivision map, zoning approval or determination, conditional use approval, grading permit, or the like. Without limiting the generality of the foregoing, Project Approvals include Resource Agency approvals related to a Project, including the approval of the holder and/or form of a conservation easement for Mitigation Areas required pursuant to the permit approval. As of the Effective Date, Project Approvals from Resource Agencies are anticipated to include, but are not limited to: (a) Habitat Conservation Plans to be obtained from the USFWS pursuant to Section 10 of the ESA and biological opinions to be obtained from USFWS pursuant to Section 7 of the ESA; (b) permits to be obtained from the United States Army Corps of Engineers under Section 404 of the Federal Clean Water Act ("CWA"); (c) streambed alteration agreements and California Endangered Species Act permits and agreements to be obtained from the California

Department of Fish and Game; (d) CWA Section 401 certifications and water quality permits under the Porter-Cologne Water Quality Control Laws ("Porter-Cologne"), and stormwater control plans and permits required under the CWA and Porter-Cologne, from the Regional Water Quality Control Boards subject to review by the State Water Resources Control Board; and (e) natural resource mitigation measures established by the CEQA lead agencies for any Project.

1.122 Project Sponsor. The term "Project Sponsor" means any Person owning, or having a right to acquire, an interest in a Development Area or Unpurchased Acquisition Area; including, but not limited to, Centennial LLC, TIC Corp., and TMV LLC.

1.123 Public. The term "Public" means any person who is not (a) an agent or employee of Owner or the Conservancy, (b) an employee of any local, state, federal, or other governmental agency or body while engaged in the conduct of their official duties for such governmental agency or body, (c) a tenant, licensee, occupant or easement holder that claims an interest in the Conservation Easement Area by or through Owner, or (d) an invitee of Owner.

1.124 Public Access. The term "Public Access" means the Conservancy's right to permit Public access to the Conservation Easement Area, and all access by the Public and other activities related to such right.

1.125 Public Access Plan. The term "Public Access Plan" has the meaning set forth in Section 3.11.

1.126 Purchased Conservation Easements. The term "Purchased Conservation Easements" means those Conservation Easements encumbering the Acquisition Areas which have been tendered, or are to be tendered, pursuant to this Agreement in connection with the sale by TRC and acquisition by the Resource Organizations of such Conservation Easements.

1.127 Qualified Appraisers. The term "Qualified Appraisers" means any of the appraisers listed on Exhibit P (other than the WCB Appraiser), provided that he or she is and remains a licensed appraiser and a member in good standing of the Appraisal Institute and designated as a MAI.

1.128 Qualified Recipient. The term "Qualified Recipient" means a nonprofit organization exempt under Code Section 501(c)(3) or 501(c)(4) that is neither an "association," as defined in California Civil Code Section 1351(a), nor a "community service organization or similar entity" as defined in California Civil Code Section 1368(c), unless the collection of Conservation Fees by such entity would not constitute a violation of California Civil Code Section 1368(c) or other applicable law.

1.129 Ranch. The term "Ranch" means that certain real property commonly known as Tejon Ranch and depicted on Exhibit A.

1.130 Ranch-Wide Management Plan or RWMP. The term "Ranch-Wide Management Plan" or "RWMP" means that certain ranch-wide management plan adopted by the Conservancy from time to time in accordance with the terms of Article 3 and includes the Interim RWMP, initial RWMP, and subsequent updates to the initial RWMP.

1.131 Rangeland Trust. The term "Rangeland Trust" means the California Rangeland Trust, a California nonprofit public benefit corporation.

1.132 Rangeland Trust Easement. The term "Rangeland Trust Easement" means that certain Grant of Conservation Easement dated August 16, 2000, recorded on September 18, 2000 as Document #0200101594 in the Official Records of Kern County, in favor of the Rangeland Trust.

1.133 Rangeland Trust Easement Area. The term "Rangeland Trust Easement Area" means that area generally depicted on Exhibit F as the "Rangeland Trust Area" containing approximately 1,100 acres.

1.134 RCRA. The term "RCRA" means the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.).

1.135 Release Authorization. The term "Release Authorization" has the meaning set forth in Section 12.4(a).

1.136 Request for Payment. The term "Request for Payment" has the meaning set forth in Section 12.4(a).

1.137 Requesting Party. The term "Requesting Party" has the meaning set forth in Section 3.6(a)(i).

1.138 Required Extension. The term "Required Extension" means an extension option contained in an Existing Contract that may be exercised, without consent of Owner, by a party to the Existing Contract other than Owner, and, following such exercise, is binding on all parties to the Existing Contract.

1.139 Required Measures. The term "Required Measures" means those certain measures for each of the Development Areas as set forth in Section 9.1.

1.140 Reserved Rights. The term "Reserved Rights" means, collectively, all rights accruing from Owner's ownership of the Conservation Easement Area, including, but not limited to, the right to engage in or to permit or invite others to engage in all uses of the Conservation Easement Area, that are not prohibited or limited by, and are consistent with the Conservation Purpose of, this Agreement, including all activities and uses expressly permitted by and described in Paragraph 1 of Exhibit M or elsewhere in this Agreement.

1.141 Residential Lot. The term "Residential Lot" means any lot or parcel of land, whether improved or unimproved, intended for residential use, as shown on a duly filed Final Map or parcel map in the Centennial, Grapevine or TMV Development Areas or any portion of any, or any timeshare interest (as defined in California Business and Professions Code Section 11212(x)) derived therefrom, and any and all improvements thereon.

1.142 Resource Agency(ies). The term "Resource Agency(ies)" means any administrative or regulatory agency, board, body, bureau, commission, department, or other authority created or authorized by any federal, state, regional or local government or

governmental body with discretionary approval authority over all or any portion of a Project (or Potential Project) insofar as that Project (or Potential Project) will or may adversely affect any natural resources, including, without limitation, the CEQA lead agencies for any Project.

1.143 Resource Organization Designee. The term "Resource Organization Designee" means the individual or entity identified and duly appointed by the Resource Organizations to take such actions and perform such obligations, on behalf of all Resource Organizations, as may be required pursuant to this Agreement, including keeping the Resource Organizations reasonably informed of its activities pursuant to this Agreement. The Resource Organization Designee may be changed upon not less than thirty (30) days prior written notice to the Owner Designee, duly signed and authorized by at least three (3) Resource Organizations, but in order for such notice to be effective, the notice must designate a replacement Resource Organization Designee. The initial Resource Organization Designee shall be Terrell Watt, AICP.

1.144 Resource Organization Indemnified Parties. The term "Resource Organization Indemnified Parties" means, collectively, each Resource Organization and their directors, officers, employees, agents, contractors, and representatives and the heirs, representatives, successors and assigns of each of them.

1.145 Stewardship Rights and Obligations. The term "Stewardship Rights and Obligations" means (a) the rights and obligations of the holder of a Conservation Easement pursuant to the terms of a Conservation Easement Agreement, (b) any Mitigation, monitoring, enforcement, adaptive management, restoration or enhancement activity undertaken by the Conservancy pursuant to the terms of this Agreement, the Interim RWMP or the RWMP, and all subsequent revisions thereof, and (c) other rights and obligations of the Conservancy arising out of the stewardship of the Conservation Easement Area pursuant to the terms of this Agreement, the Interim RWMP or the RWMP, and all subsequent revisions thereof.

1.146 Supplemental Mitigation Funding. The term "Supplemental Mitigation Funding" means any payments, other than Conservation Fees, required by a Resource Agency to fund Mitigation for a Project, whether payable up-front or periodically, through advances or as an endowment.

1.147 TRC's Current Actual Knowledge. The term "TRC's Current Actual Knowledge" has the meaning set forth in Section 8.8.

1.148 TRC's Representatives. The term "TRC's Representatives" has the meaning set forth in Section 8.8.

1.149 Tri-Centennial Option. The term "Tri-Centennial Option" has the meaning set forth in Section 6.1(d).

1.150 Type III Supporting Organization. The term "Type III Supporting Organization" has the meaning set forth in Section 2.1(c).

1.151 Unpurchased Acquisition Area. The term "Unpurchased Acquisition Area" means any Acquisition Area over which the Resource Organizations have failed to acquire

a Purchased Conservation Easement on or before the Outside Closing Date or the portion of the Conservation Easement Area subject to a Material Adverse Condition that the Resource Organization Designee has directed be removed from the Conservation Easement Area pursuant to Section 8.7.

1.152 USFS. The term "USFS" means the United States Forest Service.

1.153 USFWS. The term "USFWS" means the United States Fish and Wildlife Service.

1.154 Water Transfers. The term "Water Transfers" has the meaning set forth in Section 10.5(b)(vii).

1.155 WCB. The term "WCB" means the State of California Wildlife Conservation Board.

1.156 WCB Appraiser. The term "WCB Appraiser" has the meaning set forth in Section 6.7(a).

1.157 WCB Conservation Easement Policies. The term "WCB Conservation Easement Policies" means those policies adopted by WCB attached as Exhibit Y.

1.158 White Wolf Option. The term "White Wolf Option" has the meaning set forth in Section 6.1(e).

1.159 Williamson Act Contract. The term "Williamson Act Contract" means any contract entered into pursuant to the California Land Conservation Act of 1965 (California Government Code Section 51200 *et seq.*), that affects a portion of the Conservation Easement Area.

2. TEJON RANCH CONSERVANCY.

2.1 Tejon Ranch Conservancy.

(a) The Conservancy is a nonprofit public benefit corporation that has been formed by the Resource Organizations. The mission of the Conservancy is to preserve, enhance and restore the native biodiversity and ecosystem values of the Ranch and Tehachapi Range for the benefit of California's future generations. The Conservancy will work collaboratively with TRC to promote the long-term science-based stewardship of the Ranch and to provide for public enjoyment through educational programs and public access.

(b) The Conservancy shall, within thirty (30) days after the Effective Date, amend its articles of incorporation in substantial accordance with Exhibit K-1 and by-laws in substantial accordance with Exhibit K-2. The Conservancy shall thereafter use its best efforts to obtain a determination letter from the IRS formally recognizing the Conservancy as a charity exempt from federal income tax under Code Section 501(c)(3), and to maintain such status continuously thereafter. The Conservancy shall at all times be operated in a manner consistent with Code Section 501(c)(3), without causing any private inurement or improper private benefit

to occur, and in compliance with applicable federal and state laws governing nonprofit, tax-exempt charitable organizations. The Conservancy has agreed to all provisions of this Agreement as a material inducement to TRC to enter into the Agreement, and acknowledges that it has concluded that all of its obligations hereunder are consistent with its exempt purpose.

(c) The Conservancy shall use its best efforts to (i) obtain a determination letter from the IRS that classifies the Conservancy as an organization that is not a private foundation because it is a publicly supported organization described in either Code Section 509(a)(1) and Code Section 170(b)(1)(A)(vi), or in Code Section 509(a)(2), for an advance ruling period, and (ii) raise sufficient public support to maintain that status during the advance ruling period and thereafter. If the IRS declines to grant the Conservancy an advance ruling that it qualifies as a publicly supported organization under Code Section 509(a)(1) or 509(a)(2), or if at any time after being recognized as a publicly supported organization the Conservancy, based on the advice of legal counsel engaged by the Conservancy, determines that the Conservancy is likely not to pass a public support test and to revert to private foundation status, then the Parties shall take all reasonable steps necessary to convert the Conservancy to an organization described in Code Section 509(a)(3)(B)(iii) (a "Type III Supporting Organization") while continuing to adhere to all the terms of this Agreement. In this event, one or more of the Resource Organizations, the number and identity of which shall be determined by the Resource Organizations in their sole discretion, shall execute any and all documents reasonably required to be named a supported organization of the Conservancy so as to permit the restructuring of the Conservancy as a Type III Supporting Organization. The Parties alternatively may agree to convert the Conservancy to another type of organization described in Code Section 509(a)(3) other than a Type III Supporting Organization.

(d) In the event that the IRS determines (i) that the Conservancy does not qualify as a charity tax-exempt under Code Section 501(c)(3), or (ii) that the Conservancy is a private foundation because it is not as described in Code Section 509(a)(1), (2), or (3) (each an "Adverse IRS Determination"), and the Conservancy in good faith believes based on advice from legal counsel that reversing such Adverse IRS Determination more likely than not will require modifications to this Agreement, including without limitation any of the exhibits attached hereto, to any Conservation Easements, or to any other agreements entered into between TRC or any Project Sponsor and the Conservancy (the "Conservancy Agreements"), or to the articles of incorporation or bylaws of the Conservancy, the Parties shall promptly and diligently negotiate in good faith to modify this Agreement or applicable Conservancy Agreement, to amend the Conservancy's bylaws and articles of incorporation, and to take any other necessary steps to enable the Conservancy to obtain and maintain Code Section 501(c)(3) exempt status and classification as an organization that is not a private foundation under Code Section 509(a). For the purposes of this Section 2.1(d) only, an Adverse IRS Determination shall be deemed to occur when such determination is issued by the IRS in writing or when an IRS agent orally informs the Conservancy's counsel that a written Adverse IRS Determination will be forthcoming unless changes in the Conservancy structure, purpose, or activities are made.

(e) Notwithstanding the foregoing, in no circumstance shall TRC be required (i) to relinquish its right to appoint one-third of the members of the Conservancy Board (or a successor-in-interest to the Conservancy), or (ii) to agree that the Resource Organizations or their Affiliates appoint a majority of the members of the Conservancy Board, or (iii) to agree

to any other governance provision which would give effective control over the Conservancy and the Conservation Fees to one or more of the Resource Organizations or their Affiliates, or (iv) to agree to any material modification of this Agreement, any Conservation Easement or any other Conservancy Agreements.

(f) If at any time the Conservancy is determined by the IRS to be a private foundation within the meaning of Code Section 509, including without limitation an operating foundation within the meaning of Code Section 4942(j)(3), then from the effective date of such IRS determination until the later of (i) the effective date of a subsequent IRS determination that the Conservancy qualifies as an organization that is not a private foundation under Code Section 509(a)(1), (2), or (3) and (ii) the date the Conservancy receives notice of such subsequent determination (the "Private Foundation Period"), the following shall apply:

(i) During the Private Foundation Period, each Party shall use its best efforts to carry out its obligations in a manner that will not cause the Conservancy, any of its foundation managers (as defined in Code Section 4946(b)), TRC or any Project Sponsor to be subject to excise tax liabilities under any provision of the Code as a result of the Conservancy's private foundation status.

(ii) If, in the opinion of a Party's legal counsel, the performance by that Party of any obligation arising under this Agreement, any Conservation Easements held by the Conservancy, or the Conservancy Agreements, more likely than not would subject the Conservancy, any of its foundation managers (as defined in Code Section 4946(b)), TRC or any Project Sponsor to excise tax liability under any provision of the Code as a result of the Conservancy's private foundation status, then the performance of such obligation shall be suspended during the Private Foundation Period. The Conservancy, TRC and the Project Sponsors shall not be in default under this Agreement (or any Conservancy Agreement) by reason of the abeyance of obligations in accordance with this Section 2.1(f) during the Private Foundation Period.

(iii) If and when the Private Foundation Period ends by reason of the attainment of public charity status by the Conservancy, then the Parties shall determine an equitable resolution so that the Parties are returned to the status quo ante as if the Private Foundation Period had not occurred, taking into account the cost of substitute performance, if any. To the extent that TRC or any Project Sponsor performs any Mitigation activities, any allocation of costs shall be determined in accordance with Section 3.10(e) and 3.10(f).

(g) If, despite the efforts of the Parties pursuant to this Section 2.1, either (i) the IRS issues a final determination that the Conservancy is not exempt under Code Section 501(c)(3), or (ii) (x) the Conservancy has not attained or regained its status as an organization that is not a private foundation under Code Section 509(a)(1), (2), or (3) within sixty (60) months after receiving a written IRS determination that it is a private foundation and (y) legal counsel engaged by either TRC or the Conservancy determines that the performance of any of the obligations under the Conservation Easements more likely than not would subject the Conservancy, any of its foundation managers (as defined in Code Section 4946(b)), TRC or any Project Sponsor to excise tax liability under any provision of the Code as a result of the Conservancy's private foundation status, then, either TRC or the Conservancy may elect by

written notice to the other Parties that any Conservation Easements which have not previously been granted, shall be tendered, as and when required to be tendered pursuant to this Agreement, to one or more Alternate Easement Holders selected pursuant to this Section 2.1(g), rather than to the Conservancy, and the Conservancy shall assign any Conservation Easement that it has previously acquired pursuant to this Agreement to one or more Alternate Easement Holders. Upon such election, the Parties shall meet and confer to select an Alternate Easement Holder meeting the qualifications set forth in Section 8.1(a).

(h) If the Parties have been unable to agree on such an Alternate Easement Holder within ninety (90) days after such election, the Parties shall request that The Nature Conservancy (or a mutually acceptable alternative holder) be the Alternate Easement Holder, provided that The Nature Conservancy (or a mutually acceptable alternative holder) is (i) qualified to hold a conservation easement under California Civil Code Section 815.3; and (ii) determined by TRC and the Resource Organization Designee, each in its sole and absolute discretion, to be: (A) experienced in holding and monitoring conservation easements on properties similar to the Conservation Easement Area; (B) willing and financially able to assume all of the responsibilities imposed on the Conservancy under the applicable Conservation Easement Agreement; and (C) otherwise qualified to be a transferee of the applicable Conservation Easement Agreement.

(i) If the criteria in Section 2.1(h) are not met, then TRC and the Resource Organization Designee shall petition a court of competent jurisdiction to transfer the applicable Conservation Easement Agreement(s) to an organization that meets the criteria listed in Section 8.1(a)as the Alternate Easement Holder. The Parties intend that, in the selection of a transferee entity, preference be given to a qualified private nonprofit organization with the requisite experience in holding and monitoring conservation easements on properties similar to the Conservation Easement Area and preserving and protecting the Conservation Values.

2.2 Conservation Fee Covenant.

(a) Recordation of Conservation Fee Covenant. TRC shall cause a Conservation Fee Covenant to be executed, acknowledged and recorded so as to encumber each of the Centennial, Grapevine and TMV Development Areas as soon as reasonably practicable after the Effective Date. Within thirty (30) days after the Effective Date, TRC shall draft and deliver to the Resource Organization Designee a proposed form of Conservation Fee Covenant consistent with the Conservation Fee Principles. The Resource Organization Designee and the Conservancy shall jointly provide TRC any comments on the proposed form of Conservation Fee Covenant within fifteen (15) days after delivery of the draft by TRC. TRC, the Conservancy and the Resource Organization Designee shall thereafter work cooperatively and in good faith to finalize, execute, acknowledge and record the Conservation Fee Covenant as soon as practicable.

(b) Dispute Resolution.

(i) If the Resource Organization Designee, the Conservancy and TRC are unable to agree on the form of the Conservation Fee Covenant within ninety (90) days after the Effective Date, then either the Resource Organization Designee and the Conservancy, acting jointly, or TRC may, by notice to the other, elect to submit the disputed

issues to binding arbitration pursuant to this Section 2.2(b). All subsequent references in this Section 2.2(b) to the Resource Organization Designee shall refer to the Resource Organization Designee and the Conservancy acting jointly. Within fifteen (15) days after such notice, the Resource Organization Designee and TRC shall each deliver to the other a list of their respective outstanding issues and a proposed form of Conservation Fee Covenant incorporating such Party's proposed resolution of each of such issues. The Resource Organization Designee and TRC shall, within the fifteen (15) day period that follows the mutual exchange of such documents, work cooperatively and in good faith to resolve such issues.

(ii) If at the end of such fifteen (15) day period, the Resource Organization Designee and TRC are still unable to agree on the form of the Conservation Fee Covenant, the Resource Organization Designee and TRC shall mutually appoint a retired judge with substantial experience in relevant real estate matters to act as an independent arbitrator. If the Resource Organization Designee and TRC are unable to mutually appoint such arbitrator within fifteen (15) days, either the Resource Organization Designee or TRC shall have the right, to demand, by written notice, that the selection of the arbitrator be made by Judicial Arbitration and Mediation Services in Los Angeles, California. Within five (5) days after the appointment of the arbitrator, the Resource Organization Designee and TRC shall each deliver their respective form of Conservation Fee Covenant to the arbitrator.

(iii) Within thirty (30) days after the appointment of the arbitrator, the arbitrator shall review each of the proposed Conservation Fee Covenants and conduct a hearing, at which the Resource Organization Designee and TRC may each make supplemental oral and/or written presentations. The arbitrator shall select either the Resource Organization Designee's proposed Conservation Fee Covenant or TRC's proposed Conservation Fee Covenant and shall notify the Resource Organization Designee and TRC thereof within sixty (60) days after the appointment of the arbitrator. The arbitrator's decision shall be limited solely to the issue of whether Resource Organization Designee's proposed Conservation Fee Covenant or TRC's proposed Conservation Fee Covenant most closely conforms to the terms and conditions of this Agreement, the Conservation Fee Principles and Applicable Law. The arbitrator shall have no right to propose a middle ground or to modify either of the two proposed Conservation Fee Covenants, the provisions of this Agreement or the Conservation Fee Principles. The decision of the arbitrator shall be binding upon the Parties. The costs and fees of the arbitrator shall be paid one-half by the Resource Organizations and one-half by TRC.

(c) Amendment and Restatement of Conservation Fee Covenant. The Parties acknowledge and agree that each Conservation Fee Covenant that initially encumbers the entirety of each of the Centennial, Grapevine and TMV Development Areas shall explicitly permit such Conservation Fee Covenant to be amended and restated to encumber only Residential Lots in the Centennial, Grapevine and TMV Development Areas as the location of such Residential Lots is finally established. As the location of such Residential Lots is finally established for any portion of the Centennial, Grapevine and TMV Development Areas through the recordation of a Final Map, TRC (or the applicable Project Sponsor) shall have the right to prepare an amended and restated Conservation Fee Covenant for the applicable portion of such Development Area and shall deliver a copy of such amended and restated Conservation Fee Covenant to the Resource Organization Designee and the Conservancy. The approval of the Resource Organization Designee and the Conservancy shall not be withheld, conditioned or

delayed if the amended and restated Conservation Fee Covenant is consistent with the form of the initial Conservation Fee Covenant for such Project. If the Resource Organization Designee or the Conservancy determines that the Conservation Fee Covenant is not consistent with the form of the initial Conservation Fee Covenant, the Resource Organization Designee, the Conservancy, TRC and any affected Project Sponsor shall meet and confer regarding revisions to the proposed amended and restated Conservation Fee Covenant. If they are unable to resolve their differences within ninety (90) days after the delivery of the proposal to the Resource Organization Designee and the Conservancy, then any of TRC, the Resource Organization Designee or the Conservancy may submit the matter to binding arbitration in accordance with Section 2.2(b). The Parties shall cooperate in good faith to ensure that the amended and restated Conservation Fee Covenants are finalized, executed, acknowledged and recorded in a timely manner after the location of such Residential Lots has been finally established, and, if requested in writing by TRC, the Conservancy shall execute, acknowledge and record a quitclaim deed terminating any interest in the original Conservation Fee Covenant that is applicable to non-Residential Lots.

2.3 **Advance Obligation**. To fund the operations of the Conservancy during the Advance Obligation Period, TRC shall make interest-free loans to the Conservancy (each an "Advance") as follows: (a) Eight Hundred Twenty Thousand Dollars ($820,000) for calendar year 2008; (b) One Million Seventy Thousand Dollars ($1,070,000) per year for each of calendar years 2009 and 2010; and (c) Eight Hundred Thousand Dollars ($800,000) per year (to be prorated based on any partial calendar year) for each of calendar years 2011 through 2014, subject to increase as provided in Section 2.4 (for each calendar year, the "Advance Amount"). Unless otherwise agreed by TRC and the Conservancy, such Advances shall be payable as follows: for calendar year 2008, payments shall be made in two installments of Four Hundred Ten Thousand Dollars ($410,000) on or before July 1, 2008 and October 1, 2008 and thereafter Advances shall be paid in equal installments on or before January 1, April 1, July 1 and October 1 of each year the Advance Amount is due and payable.

2.4 **Increase in Advance Amount for Mitigation**. The Advance Amount shall increase to One Million Five Hundred Thousand Dollars ($1,500,000) per year (to be prorated based on any partial calendar year) at such time as the first Mitigation Transition Period for a Project Approval commences as provided in Section 3.10(e). TRC shall also provide: (a) during the Advance Obligation Period, as and when required by the Conservancy, as an Advance to the Conservancy, any Mitigation Costs, and (b) as and when required by Resource Agencies, as an Advance to the Conservancy, any Supplemental Mitigation Funding.

2.5 **Extension of Advance Obligation Period**. If (a) on or before the Outside Closing Date, the Resource Organizations have purchased Conservation Easements over any four (4) or more of the Acquisition Areas, or (b) the Advance Amount has increased as set forth in Section 2.4, then the Advance Obligation Period shall be extended through December 31, 2021.

2.6 **Repayment of Advances**. The Conservancy shall repay TRC for Advances, including any Advances for Mitigation Costs and Supplemental Mitigation Funding, from the Conservation Fees received by the Conservancy and shall not be obligated to make payment from any other source of funds. Until all Advances are repaid, payments shall be made as follows:

(a) In any calendar quarter during the Advance Obligation Period, the Conservancy shall, as Conservation Fees are received by the Conservancy, use those fees to repay TRC for Advances made. Payments for each quarter shall be made no later than fifteen (15) days prior to the end of the calendar quarter.

(b) After the Advance Obligation Period, the amount repaid to TRC for Advances in any one calendar year shall be the amount, if any, by which the Conservation Fees received by the Conservancy in such calendar year exceed an amount equal to the Advance Amount (even though such Advances are no longer required), prorated for any partial year, plus the Mitigation Costs incurred for that year (the "Annual Funding Requirement"). Within forty-five (45) days after the end of each calendar year, the Conservancy shall determine whether a repayment of Advances described in this Section 2.6(b) is due to TRC for that year and remit any such repayment due to TRC within fifteen (15) days.

2.7 Initial Conservancy Operations. TRC and the Conservancy shall work cooperatively to ensure that the Conservancy can function effectively during the Advance Obligation Period, which may include some in-kind contributions from TRC to the Conservancy, including the use of equipment, supplies or other tangible resources, and the occupancy of office space for Conservancy employees in connection with the Conservancy's operations and performance of the Conservancy's Stewardship Rights and Obligations. To the extent that TRC makes in-kind donations to the Conservancy, use of the donated resources shall be under the direction and control of the Conservancy.

2.8 Use of Conservation Fees or Advances. The Conservancy shall spend sums received from the receipt of Conservation Fees (or Advances) for: (a) Conservancy operations and staffing consistent with Land Trust Alliance Standards for conducting necessary activities in connection with the dedication or acquisition of the Conservation Easements; (b) monitoring and enforcing, or causing to be monitored and enforced, the Conservation Easements; (c) monitoring and implementing, or causing to be monitored and implemented, all Mitigation obligations; and (d) developing, implementing and enforcing the RWMP.

2.9 Other Uses of Conservation Fees. The Conservancy may, as an ancillary function of the Conservancy's operations, enhance and restore the Conservation Values of the Conservation Easement Area and acquire in-holding properties or other properties outside of the Ranch that are related to the Conservancy's mission and have a biological nexus to the Ranch; provided, however, that (a) Advances may not be used for such activities, and (b) Conservation Fees can only be used for such activities if, (i) the Conservancy is currently fulfilling and reasonably determines that it will have the future funding to continue to fulfill the obligations and activities set forth in Section 2.8 and (ii) all outstanding Advances have been repaid to TRC. Revenue generated from sources other than Conservation Fees and Advances (including investment income earned on either) shall not be subject to the limitations in this Section 2.9.

2.10 Prohibition on Use of Conservation Fees. In no event shall any proceeds of the Conservation Fees or Advances be: (a) utilized to finance litigation relating to a Project, Project Approvals or a Potential Project (other than as required to collect Conservation Fees and/or defend the Conservancy in connection with a lawsuit relating to the enforcement of the Conservation Fee Covenant); (b) during the Advance Obligation Period, utilized to finance

political action or advocacy except (i) in connection with Governmental Agency funding of Conservancy acquisitions and programs, (ii) in connection with regulation or legislation pertaining to transfer fees (as defined in California Civil Code Section 1098) or (iii) as otherwise approved by the unanimous vote of the Conservancy Board; (c) paid to an entity that is not a Qualified Recipient; or (d) utilized in a manner that would violate the provisions of the Davis-Stirling Common Interest Development Act (California Civil Code Section 1350 *et seq.*) or other applicable laws.

3. RANCH-WIDE MANAGEMENT PLAN.

3.1 Ranch-Wide Management Plan. The Conservancy shall adopt a RWMP for the Conservation Easement Area as provided in this Agreement. The RWMP shall:

(a) Identify and assess the Conservation Values of the Conservation Easement Area and opportunities for protection, enhancement and restoration of those Conservation Values;

(b) Establish sustainable strategies for the stewardship of the Conservation Easement Area with appropriate provision for both the protection of the Conservation Values of the Conservation Easement Area and the continued use of the Conservation Easement Area for the Reserved Rights;

(c) Establish reasonable and economically feasible conservation goals and objectives for the Conservation Easement Area including with regard to the following:

(i) Promotion and restoration of native biodiversity and ecosystem values.

(ii) Protection and enhancement of natural watershed functions and stream and aquatic habitat quality.

(iii) Maintenance of healthy, diverse native forests.

(iv) Protection of human life and property, public safety, and natural resource values from wildfire, recognizing that fire is a natural ecological process.

(v) Protection and appropriate restoration and interpretation of significant historic and cultural resources.

(vi) Protection of scenic vistas and rare visual resources.

(d) Achieve the RWMP goals and objectives through the establishment of BMPs for permitted uses of the Conservation Easement Area, identifying appropriate Conservation Activities, monitoring programs, and research consistent with Paragraph 3 of Exhibit M and providing flexibility to implement BMPs and Conservation Activities in an adaptive fashion to achieve the RWMP conservation goals and objectives all in accordance with the applicable Management Standard;

(e) Provide opportunities for significant, well managed public access through a Public Access Plan developed in accordance with Section 3.11; and

(f) Establish environmental education and outreach programs, including maintaining relationships with local Native American groups.

3.2 **Interim RWMP Process**. Within one (1) year from the Effective Date, TRC shall draft a planning document (the "Interim RWMP") in cooperation with the Conservancy which includes: (a) a list and summary of currently available reports and other materials documenting baseline conditions of the Conservation Easement Area; (b) a list of proposed BMPs for each of the Reserved Rights (other than the Core Activities) consistent with the Current Stewardship Standard; (c) a list of proposed geographic sub-areas which shall receive priority in the development of additional baseline evaluations and sub-area conservation goals in the RWMP; (d) a proposed interim public access plan developed in accordance with Section 3.11 including provision for docent-led tours to specified portions of the Conservation Easement Area and Bear Trap Canyon; and (e) a general process and timeline proposed for implementation of the RWMP, including information needs for future revisions of the RWMP. TRC shall bear all costs in connection with its preparation of the Interim RWMP. TRC shall meet and confer with the Conservancy while developing the Interim RWMP, and TRC and the Conservancy shall work cooperatively and in good faith to finalize a mutually agreeable Interim RWMP for adoption by the Conservancy Board.

3.3 **Initial RWMP**. Upon the Conservancy's adoption of the Interim RWMP, the Conservancy shall commence baseline studies and monitoring of the Conservation Easement Area in accordance with the Interim RWMP and the preparation of the RWMP in accordance with Section 3.1. The initial RWMP shall be completed promptly, but not later than the end of the Initial Period. The initial RWMP shall clearly establish conservation goals and objectives designed to preserve and enhance the Conservation Values present on the Conservation Easement Area on a sub-area or management unit basis as of the Effective Date as documented in the baseline studies and monitoring for any designated sub-area or management unit, taking into account seasonal variations and other climate cycles and the Reserved Rights. Throughout the development of the initial RWMP, TRC and the Conservancy shall meet and confer to discuss the progression of the baseline studies and development of the initial RWMP. TRC and the Conservancy shall work cooperatively and in good faith to ensure the completion of the baseline studies and the initial RWMP. Upon completion of the initial RWMP, the Conservancy Board shall adopt the initial RWMP. The RWMP may include, among other items, BMPs for soil and water conservation, erosion control, grazing management, pest management, nutrient management, wildlife management, public access programs, water quality and habitat protection on the Conservation Easement Area. Subject to the terms of this Agreement, BMPs may include, without limitation: (a) controls on the active introduction and spread caused by TRC of non-native exotic invasive plant and animal species; (b) residual dry matter guidelines, which may vary according to slope, soil, precipitation and other conditions; and (c) other practices to protect water quality, and riparian and other native habitats and species within the Conservation Easement Area, all consistent with the applicable Management Standard.

3.4 **Future Revisions to RWMP**. The Parties recognize that changes in economic conditions, in weather cycles, in technologies, in conservation practices and in the

Conservancy's understanding of Conservation Values will dictate an evolution and adaptation of the management of the Conservation Easement Area, consistent with the purposes of this Agreement. The Conservancy shall update the RWMP (in consultation with the Owner Designee) every five (5) years after the Initial Period and as otherwise needed to address such changes in accordance with Section 3.1. All RWMP updates and amendments shall be approved by the Conservancy Board.

(a) In addition to informal consultations, at least one (1) year prior to adopting a five (5) year RWMP update, the Conservancy shall notify the Owner Designee of its intent to do so and shall invite the Owner Designee to suggest revisions to the RWMP. The Conservancy shall consider these comments in good faith, and at least ninety (90) days prior to adopting a five (5) year RWMP update, the Conservancy shall provide the Owner Designee with a draft of the proposed update together with a report discussing the reasons necessitating such revisions, any impact that the proposed revisions might have on the Reserved Rights, and responding to the suggestions made by the Owner Designee at the commencement of the update process.

(b) In some circumstances it may be necessary or prudent to amend the RWMP independently of the five (5) year update process. Amendments may be initiated by the Conservancy or proposed by the Owner Designee by providing notice of the proposed amendment to the other. Promptly after receipt of such notice, the Owner Designee and the Conservancy shall meet and confer to discuss the revisions proposed in the notice and each shall consider the proposed amendments in good faith. In addition, if the Owner Designee determines in good faith that changing conditions make any BMPs required by the RWMP infeasible, impracticable or ineffective in meeting the applicable Management Standard, the Owner Designee may provide the Conservancy notice of its proposal to suspend the implementation of the BMPs and shall recommend alternative BMPs to the Conservancy, which the Conservancy shall consider in good faith. If the Conservancy has not responded to the Owner Designee's proposed suspension of the original BMPs within ninety (90) days after receipt of the Owner Designee's notice, Owner may suspend the implementation of the original BMPs and shall not be required to re-commence the implementation of such original BMPs unless the Conservancy Board determines that such original BMPs are the most cost-effective, reasonable and practicable methods available to meet the applicable Management Standard.

3.5 Implementation of RWMP. This Agreement provides for the phased acquisition by the Conservancy (or Alternate Easement Holders) of Conservation Easements over the Conservation Easement Area. As such Conservation Easements are granted, each Conservation Easement shall govern the conduct of Reserved Rights and the implementation of the RWMP within the applicable Conservation Easement Area. Nothing in this Agreement shall interfere with Owner's rights to conduct the Core Activities. In order to protect the Conservation Values of the Conservation Easement Area, this Section 3.5 provides for the phased implementation of the BMPs set forth in the RWMP to govern the conduct of the Reserved Rights (other than Core Activities) within the Conservation Easement Area during the period prior to the conveyance of Conservation Easements as follows:

(a) Upon the Effective Date and until the adoption of an Interim RWMP, Owner shall manage and use the Conservation Easement Area in a manner consistent

with Exhibit M, and, recognizing that BMPs have not yet been established, generally consistent with TRC's practices as of the Effective Date, taking into account, where applicable and feasible, the intent of Section 3.1. Owner shall have any and all rights pursuant to Exhibit M.

(b) Following adoption of the Interim RWMP and until the adoption of the RWMP, TRC and Owner shall manage and use the Conservation Easement Area consistent with Exhibit M, and shall commence and diligently pursue implementation of the BMPs set forth in the Interim RWMP for all Reserved Rights on the Conservation Easement Area consistent with Exhibit M. Owner shall have any and all rights pursuant to Exhibit M.

(c) Following adoption of the RWMP pursuant to Section 3.3, or subsequent updates pursuant to Section 3.4, Owner shall manage and use the Conservation Easement Area consistent with Exhibit M, including implementation of BMPs as set forth in the RWMP, and Owner shall have any and all rights pursuant to Exhibit M.

3.6 Entry and Access to Conservation Easement Area.

(a) Access Procedure. In order to provide for Owner's operational, safety and other considerations, all entry on and access to the Conservation Easement Area by the Conservancy and the Resource Organizations (as applicable), and their respective employees, agents and contractors, in connection with this Agreement shall be in accordance with the procedure set forth in this Section 3.6, or such other procedure as Owner and the Conservancy may agree in writing; provided, however, that promptly after the Effective Date, the Conservancy and the Owner Designee shall develop specific policies and procedures that shall permit the Conservancy to access the Conservation Easement Area for routine inspection and monitoring activities consistent with the operational, safety and similar considerations on not more than forty-eight (48) hours prior written notice; and further provided that the Parties shall cooperate with one another to develop an agreement that shall provide the Conservancy and its employees with entry on and access to the Conservation Easement Area with forty-eight (48) hours prior written notice (or less if agreed to by the Parties) for occasional tours in connection with securing funding for the acquisition of an Acquisition Area. This Section 3.6 shall not apply to any Public Access to the extent that such Public Access is permitted by Section 3.11.

(i) If either the Conservancy or the Resource Organizations (the "Requesting Party") desire to enter on and access the Conservation Easement Area to perform an activity that such Requesting Party is permitted to perform under the terms of this Agreement, then the Requesting Party shall provide Owner with an Access Notice at least ten (10) days prior to the date the Requesting Party desires to enter on the Conservation Easement Area. If, in Owner's reasonable determination, there are operational, safety or other reasonable impediments to the entry and access proposed by the Requesting Party, then Owner may respond to the Requesting Party within such ten (10) day period to identify such impediments, and Owner and the Requesting Party shall cooperate with one another to develop a reasonable schedule and manner of entry on and access to the Conservation Easement Area that reasonably addresses the impediments identified by Owner. Notwithstanding the foregoing, the Conservancy shall not be required to follow the access procedure set forth in this Section 3.6(a)(i) in cases where the Conservancy reasonably determines that immediate entry on the Conservation Easement Area is required on account of an imminently threatened or continuing violation of this Agreement,

provided that the Conservancy shall use reasonable efforts to give notice of entry to Owner at the time of entry, and the Conservancy shall give Owner written notice of such entry as soon thereafter as practicable.

(ii) All entry on and access to the Conservation Easement Area shall (A) be at reasonable times (except in cases where the Conservancy reasonably determines that immediate entry on the Conservation Easement Area is required in accordance with Section 3.6(a)(i)), (B) be in accordance with Owner's then-current, reasonable requirements for entry on the Conservation Easement Area (except in cases where the Conservancy reasonably determines that immediate entry on the Conservation Easement Area is required in accordance with Section 3.6(a)(i), any such requirements regarding prior notice of the Conservancy's entry shall apply only to the extent reasonable under the circumstances), and (C) not unreasonably interfere with Owner's authorized use and quiet enjoyment of the Conservation Easement Area. In addition, Owner shall have the right to have one (1) or more representatives accompany the Requesting Party, its employees, agents and contractors, during any entry on and period of access to the Conservation Easement Area, and any entry on and access to the Conservation Easement Area by the Resource Organizations shall be by no more than ten (10) of the Resource Organizations' officers, directors, employees and agents, at any given time, without the prior written consent of Owner.

(b) Insurance Requirements.

(i) The Conservancy, and, as a condition to access to the Conservation Easement Area, any Resource Organization, shall obtain and maintain a policy of commercial general liability insurance insuring against bodily injury and property damage with respect to their respective activities and the activities of their employees, agents, and invitees (including, but not limited to as to the Conservancy's policy, any person who obtains access to the Conservation Easement Area pursuant to Section 3.11) on the Conservation Easement Area. Each policy, which may be in the form of an umbrella policy covering other activities or properties, shall be written as primary insurance, have an initial combined limit of coverage not less than $5,000,000, which shall be adjusted from time to time thereafter as commercially reasonable and provided any increase in coverage is available upon commercially reasonable terms, and shall name Owner, any lender with a loan secured by all or a part of the Conservation Easement Area, as indicated by Owner in writing, and any other party reasonably requested in writing by Owner as additional insureds. The Conservancy and each such Resource Organization shall obtain and maintain a policy of comprehensive automobile liability insurance with a policy limit of not less than $1,000,000 each accident for bodily injury and property damage, and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned, and Worker's Compensation with statutory limits. Not more often than once per year and upon not less than sixty (60) days prior written notice, the Owner Designee may require the Conservancy (and any Resource Organization, as applicable) to increase the insurance limit set forth above or to provide other forms of insurance, as commercially reasonable in light of the activities of the Conservancy (or such Resource Organization) and its employees, agents, and invitees on the Conservation Easement Area, provided that such increase or other forms of insurance is available upon commercially reasonable terms.

(ii) Owner shall obtain and maintain a policy of commercial general liability insurance insuring against bodily injury and property damage with respect to the activities on the Conservation Easement Area(s) of Owner and Owner's employees, agents, and invitees. The policy, which may be in the form of an umbrella policy covering other activities or properties where Owner is involved, shall be written as primary insurance, have an initial combined limit of coverage not less than $5,000,000, which shall be adjusted from time to time thereafter as commercially reasonable, and shall name the Conservancy (and during the Option Period, the Resource Organizations) as additional insureds. Owner shall obtain and maintain a policy of comprehensive automobile liability insurance with a policy limit of not less than $1,000,000 each accident for bodily injury and property damage, and insuring against all loss in connection with the ownership, maintenance and operation of automotive equipment that is owned, hired or non-owned, and Worker's Compensation with statutory limits.

(iii) Promptly following the Effective Date, and no less than fifteen (15) days prior to the expiration of any required coverage, each Party shall deliver to the other a certified copy of its insurance policy or policies or a certificate issued by the insurance company (in a form reasonably satisfactory to the other Party), evidencing compliance with the insurance requirements under this Section 3.6.

(iv) The insurance requirements in this Section 3.6 shall not in any way limit, in either scope or amount, the indemnity obligations separately owed by Owner, the Conservancy and the Resource Organizations under this Agreement.

(c) Indemnifications.

(i) By Owner. Owner shall hold harmless, protect, defend (with counsel reasonably approved by the Conservancy and/or the Resource Organization Designee, as applicable) and indemnify the Conservancy Indemnified Parties and Resource Organization Indemnified Parties from and against any and all Claims arising from or in any way connected with: (A) any violation by Owner of any Applicable Law in connection with the Conservation Easement Area; or (B) except to the extent of the negligence or willful misconduct of any of the Conservancy Indemnified Parties or Resource Organization Indemnified Parties, any injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Conservation Easement Area; provided, however, that Owner's obligations under this Section 3.6(c)(i) shall not apply to the extent that any Claim results from or is in any way connected with the following except to the extent of the gross negligence or willful misconduct of any of the Owner Indemnified Parties: (1) any entry upon the Conservation Easement Area by any of the Conservancy Indemnified Parties or Resource Organization Indemnified Parties or any person permitted access to the Conservation Easement Area in connection with any Public Access or Conservation Activity or pursuant to Article 3 or Section 8.6, (2) any Public Access or Conservation Activity, or (3) any act, omission, condition, or other matter related to or occurring on or about the Conservation Easement Area in connection with any Conservancy Indemnified Party's activities pursuant to Article 3 or the RWMP.

(ii) By the Conservancy. The Conservancy shall hold harmless, protect, defend (with counsel reasonably approved by Owner) and indemnify the

Owner Indemnified Parties from and against any and all Claims arising from or in any way connected with: (A) any violation by the Conservancy of any Applicable Law in connection with the Conservation Easement Area; or (B) any injury to or the death of any person, or physical damage to any property, resulting from or in any way connected with (1) any entry upon the Conservation Easement Area by any of the Conservancy Indemnified Parties or any person permitted access to the Conservation Easement Area in connection with any Public Access or Conservation Activity, (2) any Public Access or Conservation Activity, or (3) any act, omission, condition, or other matter related to or occurring on or about the Conservation Easement Area in connection with the Conservancy's activities pursuant to Article 3 or the RWMP; or (C) any Hazardous Materials generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under or from the Conservation Easement Area by any Conservancy Indemnified Party or by any person permitted access to the Conservation Easement Area pursuant to Article 3 or Section 8.6 or in connection with any Public Access or Conservation Activity, or any exacerbation of an existing condition related to Hazardous Materials or underground storage tanks in, on, under or from the Conservation Easement Area by any Conservancy Indemnified Party or any person permitted access to the Conservation Easement Area pursuant to Article 3 or Section 8.6 or in connection with any Public Access or Conservation Activity; provided, however, that the Conservancy's and the Resource Organizations' obligations under Section 3.6(c)(ii)(B) and (C) shall not apply to the extent that any Claim results from the gross negligence or willful misconduct of any of the Owner Indemnified Parties.

(iii) By the Resource Organizations. The Resource Organizations shall hold harmless, protect, defend (with counsel reasonably approved by Owner) and indemnify the Owner Indemnified Parties from and against any and all Claims arising from or in any way connected with: (A) any violation by the Resource Organizations of any Applicable Law in connection with the Conservation Easement Area; or (B) any injury to or the death of any person, or physical damage to any property, resulting from or in any way connected with any entry upon the Conservation Easement Area by any of the Resource Organization Indemnified Parties; or (C) any Hazardous Materials generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under or from the Conservation Easement Area by any Resource Organization Indemnified Party or by any person permitted access to the Conservation Easement Area pursuant to Section 8.6, or any exacerbation of an existing condition related to Hazardous Materials or underground storage tanks in, on, under or from the Conservation Easement Area by any Resource Organization Indemnified Party or any person permitted access to the Conservation Easement Area pursuant Section 8.6; provided, however, that the Resource Organizations' obligations under Section 3.6(c)(iii)(B) and (C) shall not apply to the extent that any Claim results from the gross negligence or willful misconduct of any of the Owner Indemnified Parties.

(iv) Hazardous Materials Liability. Without limiting the obligations of Owner under Section 3.6(c)(i), Owner hereby releases and agrees to indemnify, protect and hold harmless the Conservancy Indemnified Parties and the Resource Organization Indemnified Parties from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, or otherwise associated with the Conservation Easement Area at any time, except any Hazardous Materials generated, treated, stored, used, released, disposed of, deposited or abandoned on the

Conservation Easement Area (including by migration from adjacent property) by any Conservancy Indemnified Party or Resource Organization Indemnified Party or by any person granted access to the Conservation Easement Area pursuant to Article 3 or Section 8.6 or in connection with any Public Access or Conservation Activity, and except to the extent that any Conservancy Indemnified Party or Resource Organization Indemnified Party or any person granted access to the Conservation Easement Area pursuant to Article 3 or Section 8.6 or in connection with any Public Access or Conservation Activity exacerbates any existing condition related to Hazardous Materials or underground storage tanks in, on, under or from the Conservation Easement Area. This release and indemnification includes, but is not limited to, Claims for (A) injury to or death of any person or physical damage to any property; and (B) the violation or alleged violation of, or other failure to comply with, any Environmental Laws by Owner; provided, however that this release and indemnification shall not apply to the extent that any Claim results from or is in any way connected with the following except to the extent of Owner's gross negligence or willful misconduct: (1) any entry upon the Conservation Easement Area by any of the Owner Indemnified Parties or any person permitted access to the Conservation Easement Area in connection with any Public Access or Conservation Activity or pursuant to Article 3 or Section 8.6, (2) any Public Access or Conservation Activity, or (3) any act, omission, condition, or other matter related to or occurring on or about the Conservation Easement Area in connection with any Conservancy Indemnified Party's activities pursuant to Article 3 or the RWMP. If any action or proceeding is brought against any of the Conservancy Indemnified Parties by reason of any such indemnified Claim, Owner shall, at the election of and upon written notice from the Conservancy and/or the Resource Organization Designee (as applicable), defend such action or proceeding by counsel reasonably acceptable to the Conservancy Indemnified Party and/or the Resource Organization Indemnified Party.

(v) No Owner or Operator Liability. The Parties do not intend this Agreement to be, and this Agreement shall not be, construed such that it creates in or gives to the Conservancy and the Resource Organizations any of the following solely as the result of having entered into this Agreement:

(A) The obligations or liability of an "owner" or "operator" or "arranger," as those terms are defined and used in Environmental Laws, including, but not limited to, CERCLA;

(B) The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4);

(C) The obligations of a responsible person under any applicable Environmental Laws;

(D) The right to investigate and remediate any Hazardous Materials associated with the Conservation Easement Area; or

(E) Any control over Owner's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Conservation Easement Area.

This provision, however, shall not relieve the Conservancy and the Resource Organizations from any obligations or liabilities for any of the foregoing to the extent that such obligations or liabilities arise as a result of or in connection with any activities of the Conservancy, the Resource Organizations, the Conservancy Indemnified Parties or the Resource Organization Indemnified Parties on or about the Conservation Easement Area.

3.7 **Access to Documentation**. As reasonably required in connection with the development of the RWMP, Owner shall provide the Conservancy with reasonable access to documentation in its possession or control that pertains to the Conservation Values of the Conservation Easement Area and the feasibility of BMPs in the Conservation Easement Area with all such access subject to Section 15.22; provided, however, in no event shall Owner be required to provide access to appraisals or valuation documents, attorney-client privileged information or proprietary or other documents or information prohibited or regulated for release as a result of TRC's status as a publicly traded corporation.

3.8 **Conservation Activities**.

(a) Conservation Activity Coordination.

(i) During the Initial Period, the Conservancy, at its sole cost and expense, may perform a Conservation Activity in accordance with this Section 3.8 (and applicable provisions of Paragraph 3 of Exhibit M) with Owner's prior written consent, which may be granted or withheld in Owner's sole and absolute discretion. In connection with any proposed Conservation Activity, the Conservancy shall provide Owner with an Activity Notice at least thirty (30) days prior to the Conservancy's commencement of the proposed Conservation Activity, and all other information reasonably required by Owner in order to evaluate the proposed Conservation Activity.

(ii) After the Initial Period, the Conservancy, at its sole cost and expense, may perform a Conservation Activity in accordance with this Section 3.8 (and applicable provisions of Paragraph 3 of Exhibit M). In connection with any proposed Conservation Activity, the Conservancy shall provide Owner with an Activity Notice at least thirty (30) days prior to the Conservancy's commencement of the proposed Conservation Activity, and all other information reasonably required by Owner in order to evaluate the proposed Conservation Activity. Owner may object to any proposed Conservation Activity that Owner believes is not consistent with the Adaptive Management Standard or otherwise fails to comply with the requirements of Paragraph 3 of Exhibit M, which objection shall describe Owner's objections in reasonable detail. If Owner delivers a notice of objection to the Conservancy, then the Conservancy shall be required to respond, in reasonable detail, to Owner's objections before the Conservancy may enter the Conservation Easement Area to commence the proposed Conservation Activity.

(b) Commercial Activity; Buildings and Facilities. Notwithstanding anything to the contrary contained in this Agreement, in no event shall the Conservancy have the right to (i) conduct or permit to be conducted (except by Owner or any party claiming a right to the Conservation Easement Area by or through Owner) any commercial activity on, under or about the Conservation Easement Area, without the prior written consent of Owner; (ii) construct

any buildings on the Conservation Easement Area, except for a visitor center, not to exceed 2,000 square feet in a location mutually agreed upon by the Conservancy and Owner, constructed in accordance with the Public Access Plan and with Owner's prior written approval pursuant to Paragraph 3 of Exhibit M and Section 3.8(a); or (iii) construct any other structure or improvement of any other kind on the Conservation Easement Area, except (A) as reasonably required to carry out a Conservation Activity consistent with Paragraph 3 of Exhibit M, (B) a facility specifically included in the Public Access Plan, including, without limitation, trail improvements, benches, picnic tables, ramadas, restrooms, and environmental campsites, or (C) a structure or improvement that is consistent with the Conservation Purpose, with Owner's prior written consent, which consent shall not be unreasonably withheld if the proposed structure or improvement is consistent with the Adaptive Management Standard and is not located within a Designated Farm Area, Designated Mining Area, Designated Oil and Gas Area or Designated Water Bank Area.

(c) Documentation of Completion of Conservation Activities. The Conservancy shall give Owner written notice promptly following the successful completion of any Conservation Activity. Following Owner's receipt of such notice, Owner and the Conservancy, at the Conservancy's sole cost and expense, shall jointly and cooperatively document the biological and physical condition of the portion of the Conservation Easement Area affected by the Conservation Activity. Any documentation prepared pursuant to this Section 3.8(c) shall be for informational purposes only in connection with applying subsection (d) of the definition of the Adaptive Management Standard, and shall not be binding on either Party.

(d) Costs and Liabilities.

(i) In General. Except to the extent otherwise stated in this Agreement or to the extent of any Public Access, Conservation Activity or any acts by the Conservancy, pursuant to Sections 3.8(a) or 3.8(b) or the RWMP, (A) Owner retains its respective responsibilities and shall bear its respective costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Conservation Easement Area; and (B) Owner agrees that the Conservancy shall have no duty or responsibility for the operation, upkeep or maintenance of the Conservation Easement Area, the monitoring of hazardous conditions thereon, or the protection of Owner, the public or any third parties (except for members of the Public or third parties that are permitted access in connection with any Public Access or Conservation Activity) from risks relating to conditions on the Conservation Easement Area. Notwithstanding the foregoing provisions of this Section 3.8(d), the Conservancy shall be responsible, and shall bear all costs and liabilities of any kind related to Public Access or to the Conservation Activities, including, but not limited to, the incremental upkeep of the Conservation Easement Area due to Public Access or the Conservation Activities; provided, however, nothing in this Section 3.8(d) shall be construed as limiting Owner's obligations to comply with the applicable BMPs; and provided further that the Conservancy shall not be responsible for costs and liabilities to the extent resulting from Owner's negligence if Owner actively undertakes any Conservation Activity on the Conservancy's behalf. Owner shall be solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Agreement that is undertaken by Owner, and any activity or use shall be undertaken in accordance with all Applicable Laws. The Conservancy shall be solely

responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Agreement that is undertaken by the Conservancy, and any activity or use shall be undertaken in accordance with all Applicable Laws.

(ii) Taxes. Owner shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Conservation Easement Area by competent authority, including any taxes imposed upon, or incurred as a result of, the grant of a Conservation Easement Agreement, and shall furnish the Conservancy with satisfactory evidence of payment upon request. If any such taxes are levied against Owner or the Conservation Easement Area (or if the assessed value thereof is increased) as a result of any activities of the Conservancy on the Conservation Easement Area, including, but not limited to, any Public Access or Conservation Activity, then the Conservancy shall, upon demand, repay to Owner the amount so paid. Nothing in this Section 3.8(d)(ii) shall be interpreted to obligate Owner, and the Conservancy shall remain responsible, to pay any such taxes owed by the Conservancy as a result of a voluntary or involuntary transfer of the Conservancy's interests in a Conservation Easement Agreement.

3.9 Enforcement of RWMP. The Conservancy shall act as the primary monitor of the RWMP and shall have the right to enforce compliance by Owner in accordance with Section 3.5. The Conservancy and the Owner Designee shall cooperatively review the RWMP implementation status periodically and the Conservancy may make recommendations to Owner regarding such implementation efforts which Owner shall consider in good faith. If the Conservancy alleges that Owner has not fulfilled its implementation obligations, including, but not limited to, all obligations of Owner under Section 3.5, then the Conservancy shall deliver written notice to Owner of the alleged failure in implementation. Within fourteen (14) days after delivery of such written notice, Owner and the Conservancy shall meet at a location that Owner and the Conservancy agree upon to discuss the circumstances of the alleged or threatened violation and to attempt to agree on appropriate corrective action. If Owner and the Conservancy determine that it is appropriate and desirable, a duly qualified expert in the subject matter of an alleged violation shall attend the meeting. Owner and the Conservancy shall each pay one-half of the costs of retaining the services of the such expert for such discussion; provided, however, if Owner and the Conservancy are unable to agree upon an expert, Owner and the Conservancy may each retain the services of an expert at its own expense. If Owner and the Conservancy are unable to agree on appropriate corrective action within thirty (30) days after such meeting, then the Conservancy may deliver a Notice of Breach to Owner in accordance with Section 12.3(a) and demand reasonable, particular corrective action to cure the violation and thereafter, if the alleged breach is not cured within the Cure Period, follow the procedures set forth in Sections 12.3(c) and 12.3(d), recognizing that the Conservancy's sole remedy shall be an action for injunction or specific performance. The Resource Organizations acknowledge and agree that they have no right of enforcement under this Agreement for any alleged breach of the RWMP and waive any right or remedy in connection with a breach of this Agreement based on an alleged breach of the RWMP. The Parties agree that the limitation of remedies shall be strictly enforced based on the specifically negotiated terms of this Section 3.9.

3.10 RWMP and Future Mitigation Requirements.

(a) Right to Mitigate. The Parties acknowledge and agree that Mitigation may also be required by Resource Agencies in connection with any Project Approvals (or similar approvals required for Potential Projects), and that pursuant to this Agreement Mitigation Areas within the Conservation Easement Area may be used at TRC's discretion to mitigate the natural resource impacts of such Projects, Potential Projects and other permitted uses on the Ranch. The Parties expect that Mitigation will be consistent with and advance the goals and principles of the RWMP; however, actual Mitigation requirements will be established and enforced by the Resource Agencies. TRC (or a Project Sponsor designated by TRC) has the sole right to negotiate Mitigation requirements with Resource Agencies and TRC may designate any such Mitigation Areas to satisfy Mitigation requirements for Project Approvals (or similar approvals required for Potential Projects) and other permitted uses on the Ranch. TRC shall propose that any such Mitigation requirements in Mitigation Areas be managed by the Conservancy pursuant to those provisions of the RWMP applicable to such areas; provided, however, any Mitigation related requirements (including, but not limited to, land management requirements, conservation requirements, preservation and enhancement requirements, and monitoring and governance requirements) that are included in any Project Approval will apply in the event of any discrepancy (as determined by the Resource Agency or Agencies imposing the Mitigation requirements) between the RWMP and such Resource Agency approval. Nothing in this Section 3.10 shall preclude the Resource Organizations or the Conservancy from exercising any rights they may have to oppose Potential Projects pursuant to Section 10.5(b)(iv).

(b) Resource Agency Conservation Easement Terms and Conditions. The Parties recognize and agree that the Resource Agencies may or will require that Mitigation Areas be placed under a Conservation Easement under terms and conditions that may differ from the Form Conservation Easement, and that the Resource Agencies are not obligated to accept the Conservancy as the holder of a Conservation Easement or as an entity which is otherwise authorized to engage in Mitigation activities on Mitigation Areas. TRC shall in all instances propose to the Resource Agencies that the Conservancy be approved as the holder of the Conservation Easements and as an authorized entity to perform Mitigation activities on Mitigation Areas, and that the form of any required conservation easement be generally consistent with the Form Conservation Easement, including requirements relating to the RWMP. To the extent, however, that one or more Resource Agencies requires an Alternate Easement Holder for a Mitigation Area, or requires the use of a form other than the Form Conservation Easement, the Parties agree that if a Conservation Easement has not been recorded on the Mitigation Area pursuant to this Agreement, the form of conservation easement required by the Resource Agencies shall control and be binding on the Mitigation Area in lieu of the Form Conservation Easement. If a Conservation Easement encumbering the Mitigation Area has previously been granted to the Conservancy pursuant to this Agreement, such Conservation Easement shall (except, in the case of a Purchased Conservation Easement funded by a Governmental Agency, to the extent prohibited by Applicable Law) be modified or restated as required by the Resource Agencies, and the Conservancy agrees to acknowledge to the Resource Agencies, within thirty (30) days after a request by TRC to do so, its agreement to make such modifications or restatement, and thereafter to execute, acknowledge and provide for recordation of the conservation easement required by the Resource Agencies an instrument to such effect within sixty (60) days after TRC approval of the Resource Agency permit(s) imposing such

requirements. The foregoing commitment by the Conservancy potentially to modify the provisions of previously granted Conservation Easements is made with the specific understanding that (i) any such modifications are expected to be designed to further the natural resource protection objectives of the Resource Agencies; (ii) it is in the Conservancy's interest not to delay grant of such Conservation Easements to the final determination of such Resource Agency requirements, and (iii) Mitigation in accordance with Resource Agency requirements is a Core Activity, specifically permitted in the Form Conservation Easement . To the extent that one or more Resource Agencies require an alternate entity to perform Mitigation activities on Mitigation Areas, the Conservancy shall comply with any such requirements.

(c) Information Exchange. Promptly following the filing or submittal of any application for a Project Approval with a Resource Agency that contemplates any Mitigation Area within the Conservation Easement Area by TRC or a Project Sponsor, TRC shall provide a copy of such application to the Conservancy, and at the request of the Conservancy, shall meet and confer with the Conservancy and provide reasonably requested background information describing the proposed Mitigation. Thereafter, during the course of processing any such applications and the negotiation by TRC or the Project Sponsor, TRC and the Conservancy shall meet and confer periodically to keep the Conservancy generally informed of any changes to the proposed Mitigation.

(d) Good Faith Efforts. If TRC receives a written indication from any Resource Agency that indicates a reasonable likelihood that the Resource Agency will not approve the Conservancy as the holder of a Conservation Easement or as an entity which is otherwise authorized to engage in Mitigation activities on Mitigation Areas or will require substantial changes in the Form Conservation Easement (whether to the Conservancy or an Alternate Easement Holder), TRC shall promptly give notice thereof to the Conservancy. Thereafter, TRC and the Conservancy shall meet and confer in a good faith effort to develop a mutually agreeable written plan (the "Communication Plan") that: (i) describes the steps to be taken to persuade the Resource Agency to approve the Conservancy as the holder of the Conservation Easement or as an entity which is otherwise authorized to engage in Mitigation activities on Mitigation Areas and/or (ii) outlines the appropriate responses to the suggested changes in the Conservation Easement Agreement consistent with the purpose and intent of this Agreement. Upon mutual agreement to the Communication Plan, TRC and the Conservancy shall work collaboratively in a good faith effort to implement the Communication Plan. In no event, however, shall TRC or any Project Sponsor be required to materially delay or jeopardize the grant of any Project Approval by a Resource Agency, or to modify the planned Mitigation activities.

(e) Mitigation Implementation. TRC shall be initially responsible for establishing, implementing and monitoring any Mitigation activities required for each Project Approval in a Mitigation Area during each Mitigation Implementation Period, unless otherwise mutually agreed by TRC and the Conservancy. During each Mitigation Transition Period, TRC and the Conservancy (and, if applicable, any Alternate Easement Holder responsible for Mitigation) shall meet and confer periodically to coordinate the transition of the Mitigation activities to the Conservancy (or to the Alternate Easement Holder), including establishing a budget for such activities. After the expiration of each Mitigation Implementation Period, and subject to any required Resource Agency approval, the Conservancy (unless an Alternate

Easement Holder is responsible for such Mitigation Area) shall perform or cause to be performed all Mitigation activities required for the underlying Project Approval in a Mitigation Area as part of the Conservancy's Stewardship Rights and Obligations. Nothing in this Agreement shall preclude the Conservancy, subject to Resource Agency requirements as provided in the applicable Conservation Easement, from contracting with TRC, Owner or any other party to actually perform, at the Conservancy's cost, Mitigation activities for which the Conservancy is responsible. TRC and the Conservancy shall work cooperatively to ensure the efficient management and transition of the Mitigation activities to the Conservancy and the performance of the Conservancy's Stewardship Rights and Obligations. The Parties acknowledge and agree that the amount of the Conservation Fee has been negotiated between the Parties with the expectation that, over time, Conservation Fees will provide adequate funding for satisfying Mitigation requirements for Project Approvals as part of the Conservancy's Stewardship Rights and Obligations. It is also recognized, however, that the Resource Agencies may require TRC or a Project Sponsor to provide Supplemental Mitigation Funding. Supplemental Mitigation Funding provided to the Conservancy shall constitute an Advance which shall be subject to repayment from Conservation Fees as and when set forth in Section 2.6. The Conservancy shall not be responsible for mitigation obligations inside Development Areas or for the mitigation of cultural (historic or prehistoric) impacts unless the Conservancy separately agrees to be responsible for such obligations. Nothing in this Agreement shall obligate the Conservancy to implement or fund in any manner any Mitigation activities required by or otherwise imposed by any Governmental Agency prior to the Effective Date.

(f) Funding of Alternate Easement Holder. If TRC receives a written indication from any Resource Agency that such Resource Agency will require an Alternate Easement Holder, TRC and the Conservancy shall meet and confer in a good faith effort to agree on appropriate procedures, consistent with customary practices, to provide to the extent practicable fiscal controls designed to assure that the Mitigation Costs incurred by the Alternate Easement Holder are reasonable to meet all Resource Agency Mitigation requirements. If a Conservation Easement which includes a Mitigation Area is granted to an Alternate Easement Holder, or if the Resource Agency requires an alternate entity to perform Mitigation activities, the Conservancy shall be required to disburse Conservation Fees (or Advances) to the Alternate Easement Holder or the entity required by the Resource Agency to perform such activity in such a manner and at any such interval(s) required by the Resource Agency, or if no such manner or interval(s) are specified by the Resource Agency, no later than fifteen (15) days after the beginning of each calendar quarter, in an amount equal to the Mitigation Costs reasonably estimated by the Alternate Easement Holder for such calendar quarter. Within thirty (30) days after the end of each calendar year, the Alternate Easement Holder shall submit a report summarizing actual Mitigation Costs for such calendar year, with supporting documentation reasonably required by the Conservancy. In the event such report indicates that the disbursements made to the Conservancy to the Alternate Easement Holder for said calendar year exceed said actual Mitigation Costs, the Conservancy shall deduct the calculated excess from subsequent quarterly disbursement(s) to the Alternate Easement Holder. In the event such report indicates that the actual Mitigation Costs exceed the disbursements made by the Conservancy to the Alternate Easement Holder for each calendar year, the Conservancy shall disburse the calculated deficiency to the Alternate Easement Holder no later than forty-five (45) days after the end of such calendar year.

(g) TRC's Self-Help Right. If the Conservancy or an Alternate Easement Holder fails to perform or cause to be performed any Mitigation activities required to comply with Mitigation requirements for which either is responsible, TRC shall provide the Conservancy (and such Alternate Easement Holder, if applicable) with written notice detailing the alleged non-performance of such Mitigation obligations. TRC, any interested Project Sponsor and the Conservancy or Alternate Easement Holder shall meet and confer within fifteen (15) days after the Conservancy's receipt of TRC's notice to discuss the non-performance of such Mitigation obligations. Unless the Conservancy or Alternate Easement Holder commences the performance of such Mitigation obligations within ten (10) days after such meeting and thereafter diligently continues such performance, TRC may elect, after a further ten (10) day written notice to the Conservancy (and such Alternate Easement Holder, if applicable), to perform such Mitigation obligations, or cause such obligations to be performed, in which case no more than once every calendar month TRC shall submit a report summarizing actual Mitigation Costs for such month, with supporting documentation reasonably required by the Conservancy, and the Conservancy shall reimburse TRC for such costs no later than ten (10) days after receipt of the monthly report from TRC.

3.11 Public Access.

(a) Public Access Plan. Recognizing that the Public enjoyment of the Conservation Easement Area is a high priority for the Parties, and because the Conservation Values, including natural communities and habitats, are pristine and include diverse flora and fauna, scenic resources, and important cultural and historical resources, Owner agrees that significant and appropriate access to the Conservation Easement Area by the Public shall be provided and managed by the Conservancy, for the benefit of the people of the State of California. The Owner Designee and the Conservancy shall jointly and cooperatively prepare a comprehensive plan for access to the Conservation Easement Area by the Public in connection with the development of the RWMP in order to ensure significant, well managed Public Access to the Conservation Easement Area (the "Public Access Plan"). Components of the Public Access Plan shall include, but not be limited to: (i) encouraging and facilitating access by the Public, including to underserved communities and populations; (ii) selecting appropriate locations for Public Access, trails and facilities consistent with the RWMP to preserve the Conservation Values of the Conservation Easement Area; (iii) coordinating such Public Access with the Reserved Rights so that such Public Access does not unreasonably interfere with Owner's or other occupant's operation of the Conservation Easement Area for the Reserved Rights; and (iv) entry and use guidelines to ensure the safety of the Public while on the Conservation Easement Area. In addition, the Public Access Plan shall address private recreational use of the Conservation Easement Area, and may include authorization for such use (including commercial use) by Owner and its invitees in addition to the uses permitted in Paragraph 1(b)(2)(o) of Exhibit M, provided that such uses will not significantly impair the Conservation Values. The finalization and adoption of the Public Access Plan by the Conservancy Board, in accordance with the terms of the RWMP and this Section 3.11, shall be subject to approval by the Owner Designee, which approval shall not be withheld if the Public Access Plan is consistent with the Adaptive Management Standard. The approval of the Public Access Plan by the Owner Designee shall be binding on Owner and the Conservation Easement Area. In no event shall the Public Access Plan be amended without the approval of the Owner Designee, which shall not be unreasonably withheld, conditioned or delayed. The Conservancy

shall have the ability to grant a revocable license to permit Public Access to the Conservation Easement Area for passive recreational uses, such as day hikes and overnight camping, only in accordance with the Public Access Plan and this Section 3.11. In no event, however, will the Conservancy have the right to permit Public Access in the Designated Farm Areas, Designated Mining Areas, Designated Oil and Gas Areas or Designated Water Bank Areas, without the prior written consent of Owner, which may be withheld in Owner's sole and absolute discretion.

(b) No Public Rights Created. Neither the Public Access Plan nor this Agreement conveys any right of access to the public at large or to any individual or entity other than to the Conservancy. Nothing contained in the Public Access Plan or in this Agreement shall be deemed to be a gift or dedication of any portion of the Conservation Easement Area for use by the general public, and in no event shall any third party acquire any prescriptive rights in or over the Conservation Easement Area. Any Public Access authorized by the Conservancy pursuant to this Section shall, in addition to all other restrictions and limitations hereunder, be subject to limitation, modification, or termination by the Conservancy at any time. Owner shall have the right to require that the Conservancy, at its sole cost and expense, post signs on the Conservation Easement Area in accordance with California Civil Code Section 1008 in connection with any Public Access on the Conservation Easement Area.

(c) Bear Trap Canyon. In addition to Public Access in the Conservation Easement Area, TRC agrees that the Conservancy shall manage Public Access to Bear Trap Canyon through the use of docent-led tours consistent with the terms of the Public Access Plan and this Section 3.11(c). Promptly after the Effective Date, the Conservancy, TRC and the Project Sponsor for the TMV Development Area shall develop specific policies and procedures governing such access, consistent with the operational, safety and similar considerations, and subject to reasonable restrictions on the schedule, manner of entry on and access to the area. All such access shall (i) be at reasonable times, (ii) be in accordance with reasonable requirements for entry, including insurance and indemnification requirements, (iii) not unreasonably interfere with the use and quiet enjoyment of the TMV Development Area, and (iv) be respectful of the privacy of future residents, the nature of the development in the TMV Development Area, and the planning and development activities of the Project Sponsor in the TMV Development Area. In addition, Owner shall have the right to have one (1) or more representatives accompany the tour during any entry on and period of access to the area. As soon as reasonably practicable after Effective Date, TRC shall enter into, or shall cause the Project Sponsor for the TMV Development Area to enter into, a license agreement with the Conservancy to allow such access to Bear Trap Canyon by the Conservancy until such time as a permanent access arrangement between the Conservancy and TRC or the Project Sponsor is established. If the Bear Trap Canyon area is transferred prior to such permanent access arrangement, TRC shall require (or TRC shall cause the Project Sponsor for the TMV Development Area to require) any such transferee to assume the obligation to provide access in accordance with this Section 3.11(c).

3.12 Consultation with Conservancy on Leasing.

(a) Upon receipt of a notice of a five (5) year RWMP update pursuant to Section 3.4(a), Owner shall provide to the Conservancy within sixty (60) days a list of leases (including, but not limited to, grazing leases and wildlife management leases) covering any

portion of the Conservation Easement Area with a term that will expire within the following six (6) years (including, without limitation, any Required Extension) together with a list of any new or amended leases Owner expects to enter into within the following six (6) years; provided, however, Owner's failure to list a lease or provide notice of a new or amended lease shall not affect the validity of such lease entered into without such notice. This Section 3.12 shall not apply to leases for employee housing.

(i) As part of the five (5) year RWMP update, Owner may request that the Conservancy review the terms and conditions of any of these leases for the purpose of specifying in the RWMP update BMPs or Conservation Activities applicable to the proposed leased area which shall be applicable for the entirety of the term of the lease. As necessary, Owner and the Conservancy shall meet and confer to discuss BMPs and Conservation Activities that may be applicable in connection with such leases; provided, however, that any such proposal made by Owner regarding BMPs and Conservation Activities shall be subject to the agreement of the Conservancy, in its sole and absolute discretion, on the terms and conditions of any such proposal.

(ii) As part of the five (5) year RWMP update, the Conservancy may request that Owner consider Conservancy proposals to (A) acquire one or more of the leases for the expected term of the lease or such other term as may be mutually agreeable to the Conservancy and Owner and (B) acquire the rights or an interest in the rights to undertake or to cause Owner to refrain from undertaking one or more activities carried out or administered by Owner (e.g., non-leased wildlife management activities). As necessary, Owner and the Conservancy shall meet and confer to discuss the terms and conditions that may be applicable in connection with such proposals; provided, however, that any such proposal made by the Conservancy shall be subject to the agreement by Owner, in its sole and absolute discretion, on the terms and conditions of any such proposal.

(b) Not less than thirty (30) days prior to entering into a new lease or renewing or amending an existing lease covering a part of the Conservation Easement Area that was not included on the most recent list provided by Owner to the Conservancy pursuant to Section 3.12(a), Owner shall provide notice to the Conservancy that it will be entering into or renewing such a lease. If either Owner or the Conservancy wish to utilize the procedures set forth in Sections 3.12(a)(i) and (ii), then Owner or the Conservancy shall provide notice to the other within such thirty (30) day period. If such notice is delivered, the procedures set forth in Sections 3.12(a)(i) and (ii) shall be completed within fifteen (15) days after the delivery of such notice. The thirty (30) day notice period specified above shall be reduced to ten (10) days for (i) a lease that is being entered into following termination of an existing lease due to a default by the prior lessee and (ii) any lease with a term of less than five (5) years, including any renewal options.

3.13 Owner Designee. TRC (and any successor to TRC as the Owner Designee) shall meet and confer with the Conservancy not less than sixty (60) days prior to designating any new Owner Designee to obtain the comments of the Conservancy regarding the appropriate terms and conditions of such designation, which TRC shall consider in good faith. The Owner Designee shall, as a condition to such designation, acknowledge and agree to be bound by the provisions of this Agreement which pertain to the Owner Designee's obligations.

After such designation, TRC (and any successor to TRC as the Owner Designee) shall provide such Owner Designee with access to such information as described in Section 3.7 as may be necessary for the Owner Designee to perform its obligations under this Agreement. The Owner Designee shall keep Owner reasonably informed of its activities pursuant to this Agreement.

3.14 Termination of Sections. As of the date a Conservation Easement on which a Conservation Easement is recorded in favor of the Conservancy or an Alternate Easement Holder over a portion of the Conservation Easement Area, the provisions of Sections 3.2, 3.5, 3.6, 3.8, 3.9, and 3.11 shall not be operative as to such portion of the Conservation Easement Area, and the provisions of the applicable Conservation Easement Agreement shall govern.

4. STATE AND FEDERAL USES.

4.1 Pacific Crest Trail. As soon as reasonably practicable following the Effective Date, TRC shall dedicate an easement, or alternatively grant a permit, license or other comparable property interest, which shall in no event be a grant of fee interest, to up to 10,000 acres of the Ranch, in the general location identified on Exhibit I, to enable the realignment of the Pacific Crest Trail ("PCT") through the Ranch (the "PCT Realignment"). The Parties shall work cooperatively and expeditiously following the Effective Date with the USFS and the PCTA: (a) to finalize the trail alignment and corridor location for the PCT Realignment, including the final boundaries of the PCT Realignment; (b) to negotiate acceptable terms and conditions of the easement, permit, license or other comparable property interest and other required legal documentation necessary to formalize the PCT Realignment; and (c) in connection with any necessary NEPA review and approvals or authorizations from Governmental Agencies for the PCT Realignment. As soon as the documentation for the PCT Realignment has been approved by TRC, the Resource Organization Designee, the Conservancy, USFS and PCTA and all required approvals required in connection therewith have been secured and the easement, permit, license or other comparable property interest has been executed and acknowledged by USFS and/or PCTA, TRC shall execute and acknowledge, deliver and cause to be recorded the easement, permit, license or other comparable property interest in the Official Records of Kern and Los Angeles Counties, respectively. USFS and/or PCTA and TRC shall each also sign and exchange any other required legal documentation. Subject to the approval of USFS, if the property interest effecting the PCT Realignment is not in the form of a conservation easement, TRC shall dedicate to the Conservancy (or Alternate Easement Holder) at the same time the PCT Realignment such property interest is recorded, a conservation easement covering the 10,000 acre portion of the Ranch in the general location identified in Exhibit I, which shall include the portion of the Ranch subject to the PCT Realignment. In designing and negotiating the terms of the PCT Realignment, TRC, the Resource Organizations and the Conservancy shall use their best efforts to ensure that the PCT Realignment shall not have a material adverse impact on any Conservation Values of the Conservation Easement Area or any impact on the Reserved Rights. Additionally, neither the Resource Organizations nor the Conservancy shall be required to assume any management, operation or maintenance obligations or costs respecting the PCT Realignment unless those obligations and costs have been agreed upon in a legally binding written agreement signed by the TRC and the Conservancy assuming such obligations and/or costs, other than in connection with any Conservation Easement granted to the Conservancy.

4.2 **California State Park**. Subject to the terms and conditions of Sections 7.2 and 7.3, it is the intention of the Parties that a State Park be created within the Dedicated Conservation Easement Areas and/or the Acquisition Areas. Following the Effective Date, the Parties agree to use their reasonable best efforts to work with California State Parks to: (a) define the size and location of the proposed State Park; (b) study the operational and infrastructure needs for the proposed State Park; (c) resolve issues relating to the operation of a State Park and its effect on Conservation Activities, Mitigation, Reserved Rights and the Conservation Easement Area; (d) determine appropriate property interests required to operate the State Park; (e) acquire such other information and conduct such studies as may be required to understand and fulfill the objective of creating a State Park; and (f) cooperate with California State Parks in connection with any necessary CEQA review, approvals or authorizations from Governmental Agencies for such a State Park; provided, however, that TRC is not obligated to incur any costs on behalf of the Resource Organizations, the Conservancy or any third party in pursuing this objective (except that the Conservancy may use Advances for this purpose). As part of any acquisition of an interest in the Ranch for the purposes of a State Park, TRC and the Conservancy shall work cooperatively with California State Parks to develop a comprehensive land use plan for the integration of the State Park into the Ranch which may allow for structures and other appurtenant improvements and uses consistent with future State Park uses and needs. Any sale of a fee interest in the Dedicated Conservation Easement Areas, the Acquisition Areas and/or the Unpurchased Acquisition Areas for the State Park shall be subject to the terms and conditions of Sections 7.2 and 7.3.

4.3 **University of California Natural Reserve**. After the Effective Date, TRC and the Conservancy shall work cooperatively with the University of California Natural Reserve System to determine whether a portion of the Conservation Easement Area might be (a) viable for inclusion as a future University of California Natural Reserve or (b) utilized by students, teachers, and researchers from the University of California for scientific study. Any use of the Conservation Easement Area by the University of California must be approved by both TRC and the Conservancy as to the location, size and specific use of any such areas and consistent with terms and conditions of the RWMP and the applicable Conservation Easement Agreement. TRC and the Conservancy shall work cooperatively with the University of California in connection with any necessary CEQA review, approvals or authorizations from Governmental Agencies for any such University of California Natural Reserve.

4.4 **Bakersfield National Cemetery**. In connection with the contemplated transfer of the Bakersfield National Cemetery to the United States Department of Veterans Affairs, TRC shall request that the deed conveying fee interest in the Bakersfield National Cemetery to the United States Department of Veterans Affairs contain a reversionary right in favor of TRC if the Bakersfield National Cemetery is devoted to any use other than as a National Cemetery; provided, however, that TRC is under no obligation to require such a reversionary right as a condition to any such transfer. If fee interest in the Bakersfield National Cemetery reverts to TRC, TRC shall tender to the Conservancy, without payment of further consideration to TRC, a conservation easement over the Bakersfield National Cemetery area generally consistent with the Form Conservation Easement on the later of (a) the date on which the Conservation Easement Agreement for White Wolf is tendered to the Conservancy or an Alternate Easement Holder or (b) ninety (90) days after the fee interest reverts to TRC.

5. DEDICATED CONSERVATION EASEMENTS.

5.1 Dedicated Conservation Easements. At the times specified in Section 5.2 and substantially in conformance with the CE Conveyance Plan, TRC shall tender to the Conservancy (or Alternate Easement Holder) the Dedicated Conservation Easements encumbering the Dedicated Conservation Easement Areas. The provisions of Article 8 shall apply, where applicable, to Dedicated Conservation Easements.

5.2 Dedicated Conservation Easement Phasing. Within ninety (90) days after a Development Milestone is achieved (or sooner, as to all or portions of such Linked Acreage, at TRC's election), TRC shall tender to the Conservancy (or an Alternate Easement Holder, as applicable) a Dedicated Conservation Easement encumbering the Linked Acreage identified on Exhibit F, associated with such Development Milestone. Notwithstanding the foregoing, TRC shall be obligated to promptly execute and tender to the Conservancy (or an Alternate Easement Holder, as applicable) all Conservation Easement Agreements as to the Linked Acreage for the Centennial, Grapevine and TMV Development Areas in accordance with the following schedule:

(a) TRC shall tender the Dedicated Conservation Easements encumbering the Linked Acreage for the Centennial Development Area not more than twenty-five (25) years after the First Entitlement Date;

(b) TRC shall tender the Dedicated Conservation Easements encumbering the Linked Acreage for the Grapevine Development Area not more than thirty (30) years after the First Entitlement Date; and

(c) TRC shall tender the Dedicated Conservation Easements encumbering the Linked Acreage for the TMV Development Area not more than twenty (20) years after the First Entitlement Date.

5.3 Dedicated Conservation Easement Area Legal Descriptions.

(a) TRC shall, not less than six (6) months prior to the date on which it is anticipated that TRC shall tender a particular Dedicated Conservation Easement, at TRC's sole cost and expense, provide a surveyed metes and bounds legal description for that Dedicated Conservation Easement Area to the Conservancy consistent with this Section 5.3.

(b) The Parties recognize that the size and location of the Dedicated Conservation Easement Areas as depicted on Exhibit E are general and imprecise given the size of the areas depicted and that subsequent surveying of such Dedicated Conservation Easement Areas is likely to result in deviations from the attached depictions based on terrain and natural resource considerations. TRC, in consultation with the Conservancy, shall have the right to make adjustments in the boundaries of the Dedicated Conservation Easement Areas as depicted on Exhibit E (while maintaining the total approximate area in each such Dedicated Conservation Easement Area) to avoid areas that TRC reasonably determines could be required as Mitigation Areas. Furthermore, in all cases, recordation of a Final Map will be required to define the boundaries of each Development Area (and, if applicable, Unpurchased Acquisition Area). Accordingly, the Parties acknowledge and agree that the Dedicated Conservation Easement

Areas have been designed with a buffer zone of approximately five hundred (500) feet between the initial Dedicated Conservation Easement Area boundary and the expected Development Area boundary (and, if applicable, Unpurchased Acquisition Area boundary) so as to allow TRC to make final boundary adjustments to Dedicated Conservation Easement Areas where Development Areas (and, if applicable, Unpurchased Acquisition Areas) are adjacent to existing or contemplated Dedicated Conservation Easement Area(s). TRC and the Conservancy (or Alternate Easement Holder) shall amend in writing the legal description in the applicable Dedicated Conservation Easement Agreement to include the buffer zone areas which are not included in the Development Area (and, if applicable, Unpurchased Acquisition Area), and shall record such amendment in the Official Records of the applicable County, not later than the earlier of (i) the date boundaries of the adjoining Development Area (and, if applicable, Unpurchased Acquisition Area) have been finalized pursuant to a Final Map or (ii) thirty (30) years after the First Entitlement Date. The area included in the supplemental dedication shall fairly approximate the area included in the buffer zone at the time of the initial dedication. TRC shall, at its sole cost and expense, obtain a surveyed metes and bounds legal description for the supplemental dedication area and, for each supplemental dedication, an amended policy of title insurance including such supplemental dedication area.

(c) Prior to finalizing each legal description, TRC shall provide a draft of the legal description to the Resource Organization Designee for review and approval which shall not be unreasonably withheld, conditioned or delayed.

5.4 Dedicated Conservation Easement Agreements. Not less than six (6) months prior to the date on which it is anticipated that TRC shall tender a particular Dedicated Conservation Easement, TRC shall commence drafting a Conservation Easement Agreement and enter into related discussions with the Conservancy (or Alternate Easement Holder) regarding area-specific inclusions to the Form Conservation Easement which shall be otherwise consistent with the provisions of Article 8. TRC and the Conservancy agree, and each Alternate Easement Holder shall agree as a condition to its appointment, to undertake diligent efforts to finalize the form of each Conservation Easement Agreement within the aforementioned six-(6) month period.

5.5 Dedicated Conservation Easement Agreement Recordation.

(a) No later than date set forth in Section 5.2, TRC and the holder of the applicable Dedicated Conservation Easement shall each deposit one (1) fully executed counterpart of the Conservation Easement Agreement into an escrow established at a title company selected by TRC. The Conservation Easement Agreement shall be promptly recorded in the Official Records of the County of Kern or Los Angeles, as applicable. TRC shall pay all recording fees and costs of escrow in connection with the recordation of such Conservation Easement Agreements. Each of the Parties agree to provide such other documents and instruments, duly executed and/or acknowledged, as may be reasonably required, in order to consummate the conveyance of the Dedicated Conservation Easements in accordance with the terms and conditions of this Agreement, such as appropriate escrow instructions, customary documents necessary for the conveyance, evidence of authority and any documents evidencing the subordination of monetary liens as required by Section 5.5(b).

(b) Upon the recordation of the Conservation Easement Agreement, TRC shall cause the title company to issue to the holder of the Dedicated Conservation Easement a standard CLTA owner's title policy insuring the holder's interest in the Dedicated Conservation Easement. In connection with the issuance of such CLTA policy TRC shall remove, bond over, subordinate or otherwise cause to be endorsed over (at TRC's cost), as of the date of the recordation, all liens evidencing any deed of trust (and related documents) securing financing, all mechanics' liens relating to work performed by TRC and all judgment and other monetary liens (other than the lien for non-delinquent taxes and assessments) against TRC or the Dedicated Conservation Easement Area. TRC shall pay for the cost of the CLTA policy for the Conservation Easement for the Pacific Crest Trail and the first Dedicated Conservation Easement granted thereafter with coverage amounts equal to the estimated value of such Dedicated Conservation Easements. The cost of any endorsements (other than those referenced above) or difference in the premiums between CLTA and ALTA coverage for such Dedicated Conservation Easements shall be borne by the holder of the Dedicated Conservation Easement. All costs of any title policies obtained for any subsequent Dedicated Conservation Easements (other than the costs of any endorsements obtained by TRC as referenced above) shall be borne by the holder of the Dedicated Conservation Easement.

(c) In no event shall TRC have any obligation to tender a Dedicated Conservation Easement during any period in which a Notice of Breach by the Resource Organizations (or a Resource Organization) or the Conservancy has been delivered to the Resource Organization Designee and the Conservancy, and the Resource Organizations (or a Resource Organization) or the Conservancy has failed to cure the breach. In such circumstances, the Dedicated Conservation Easement shall be tendered not more than thirty (30) days after the cure of the breach.

5.6 Rangeland Trust Easement Area. The Parties acknowledge that the Rangeland Trust Easement Area, a portion of the Dedicated Conservation Easement Area, is subject to the Rangeland Trust Easement pursuant to requirements previously imposed by the USFWS. The Parties acknowledge that the Rangeland Trust Easement is a Permitted Title Exception and that any activities of the Rangeland Trust or TRC reasonably required to comply with the Rangeland Trust Easement are Core Activities. It is acknowledged that any Dedicated Conservation Easement over the Rangeland Trust Easement Area (a) may be subject to approval or modification by USFWS, (b) will in any event be subordinate to the Rangeland Trust Easement, and (c) may require modification to the Form Conservation Easement in light of the foregoing, but the Parties shall use good faith efforts to include in such Dedicated Conservation Easement all requirements set forth in the Form Conservation Easement, including requirements relating to the RWMP, not in conflict with the Rangeland Trust Easement. TRC and the Conservancy shall work cooperatively with the Rangeland Trust and USFWS, including to negotiate any such modifications to the Dedicated Conservation Easement over the Rangeland Trust Easement Area prior to the tender of such Dedicated Conservation Easement. For so long as USFWS does not permit the recordation of a Dedicated Conservation Easement over the Rangeland Trust Easement Area in favor of the Conservancy or an Alternate Easement Holder, no such Dedicated Conservation Easement shall be required under this Agreement.

6. OPTIONS TO PURCHASE CONSERVATION EASEMENTS.

6.1 Options to Purchase Conservation Easements. TRC hereby grants to the Resource Organizations the following five (5) separate options to purchase a Purchased Conservation Easement covering each Acquisition Area on the terms and conditions provided herein (each, an "Option" and collectively, the "Options"), each of which shall be a separate and enforceable option without regard to whether one, some or all of such Options are exercised by the Resource Organizations:

(a) an individual Option to purchase a Purchased Conservation Easement covering Bi-Centennial, as generally depicted on Exhibit C-1 (the "Bi-Centennial Option");

(b) an individual Option to purchase a Purchased Conservation Easement covering Michener Ranch, as generally depicted on Exhibit C-2 (the "Michener Ranch Option");

(c) an individual Option to purchase a Purchased Conservation Easement covering Old Headquarters, as generally depicted on Exhibit C-3 (the "Old Headquarters Option");

(d) an individual Option to purchase a Purchased Conservation Easement covering Tri-Centennial, as generally depicted on Exhibit C-4 (the "Tri-Centennial Option"); and

(e) an individual Option to purchase a Purchased Conservation Easement covering White Wolf, as generally depicted on Exhibit C-5 (the "White Wolf Option").

6.2 Exercise of Each Option to Purchase. Each of the Bi-Centennial Option, the Michener Ranch Option, the Old Headquarters Option, the Tri-Centennial Option and the White Wolf Option shall be exercised separately and may be exercised, if at all, only by the Resource Organization Designee giving notice to exercise such Option and identifying the individual Option so exercised (each, an "Option Notice") to TRC, not later than the Option Notice Date (as such date may be extended pursuant to Section 6.3). Subject to the limitations set forth in Section 6.6, each Option Notice shall designate a Closing Date as to the Acquisition Area to which such Option Notice applies, which Closing Date shall be not less than thirty (30) days and not more than one hundred twenty (120) days after the giving of the Option Notice.

6.3 Extensions of Option Period. The Option Notice Date and the corresponding Outside Closing Date for each individual Option shall be extended as set forth in this Section 6.3, with the extensions in (a), (b) and (c) running concurrently, not sequentially to the longest applicable period. If the Option Notice Date and the corresponding Outside Closing Date are extended pursuant to this Section 6.3, the Resource Organization Designee and TRC shall work cooperatively to document, in writing, each such extended Option Notice Date and Outside Closing Date before any such extension shall become effective.

(a) If WCB has not approved the Form Conservation Easement (with such modifications that are acceptable to the Parties consistent with the provisions of Section 6.13) on or before December 31, 2008, then the Option Notice Date and the Outside Closing Date shall automatically be extended, on a day-for-day basis, for the period of time between December 31, 2008 and the date upon which WCB approves the Form Conservation Easement (with such modifications that are acceptable to the Parties consistent with the provisions of Section 6.13), but neither the Option Notice Date nor the Outside Closing Date shall be extended beyond December 31, 2011 under this Section 6.3(a).

(b) If TRC fails to deliver (i) a preliminary title report and the accompanying exception documents for each Acquisition Area, or (ii) the depiction which exists on the Effective Date of each Acquisition Area showing the approximate location (if locatable) of major encumbrances (determined in TRC's good faith judgment) which are known to TRC and that have facilities or improvements in such Acquisition Area, to the Resource Organization Designee on or before September 30, 2008, then the Option Notice Date and the Outside Closing Date shall automatically be extended, on a day-for-day basis, for the period of time between September 30, 2008 and the date on which the last of such items has been provided to the Resource Organization Designee.

(c) If TRC fails to deliver within a reasonable amount of time any information reasonably requested by WCB, as set forth in a written notice from WCB, the Conservancy or the Resource Organization Designee to TRC, in connection with the WCB Appraisal Process as required in Section 6.7(a) or Section 6.9, and such failure results in, or materially contributes to, a material delay in completion of the WCB Appraisal Process, the Resource Organization Designee shall provide written notice to TRC of the delay. If TRC fails to deliver the requested information within ten (10) days after the notice of the delay from the Resource Organization Designee, the Option Notice Date and the Outside Closing Date shall be automatically extended, on a day-for-day basis, for the period of time between the expiration of such ten (10) day period and the date on which the information requested by WCB is provided by TRC to WCB.

(d) With respect to any individual Option that has not been exercised by the Resource Organizations on or before the Option Notice Date, the Resource Organizations shall have the right to extend the Option Notice Date for one or more of such unexercised Option(s) to December 31, 2011, and the Outside Closing Date(s) to February 28, 2012; provided, however, that as condition precedent to such extension (i) the WCB Appraisal Process for the Purchased Conservation Easements shall have been completed for the Option(s) subject to extension hereunder and (ii) the funds shall have been committed for the purchase of such Purchased Conservation Easement(s) but have not yet been funded by the State of California, another specific Governmental Agency, or other specific foundation(s) or funding entity(ies). The Resource Organization Designee may exercise such extension right only by giving written notice to TRC exercising such right and specifying the individual Option(s) to which such extension(s) applies, not later than the Option Notice Date.

(e) If the Resource Organizations irrevocably elect to proceed with the Alternate Appraisal Process for a Purchased Conservation Easement for any Acquisition Area pursuant to Section 6.7(b), the Option Notice Date for the Option(s) relating to such Purchased

Conservation Easement(s) subject to such election shall be automatically extended until December 31, 2011, and the Outside Closing Date for such Option(s) shall be automatically extended until February 28, 2012.

(f) If the Resource Organizations irrevocably elect to proceed with the Alternate Appraisal Process for a Purchased Conservation Easement for any Acquisition Area pursuant to Section 6.7(b), the Option Notice Date for the Option(s) relating to such Purchased Conservation Easement(s) subject to such election shall be automatically extended from December 31, 2011 to May 31, 2012, and the Outside Closing Date from February 28, 2012 to June 30, 2012; provided, however, that as condition precedent to such extension (i) the Alternate Appraisal Process shall have been completed for the Purchased Conservation Easement(s) subject to such election and (ii) the funds shall have been committed for such purchase of the Purchased Conservation Easement(s) but have not yet been funded by the State of California, another specific Governmental Agency, or other specific foundation(s) or funding entity(ies).

(g) If TRC's appraisal of a Purchased Conservation Easement required by the Alternate Appraisal Process pursuant to Section 6.7(b) has not been completed within the designated six (6) month period, the applicable Option Notice Date and the Outside Closing Date for such Purchased Conservation Easement shall automatically be extended, on a day-for-day basis, for the period of time between the end of such six (6) month period and the completion of TRC's appraisal.

6.4 Legal Description of Acquisition Areas. TRC shall deliver to the Conservancy and the Resource Organization Designee on or before March 31, 2009, at TRC's sole cost and expense, a separate surveyed metes and bounds legal description for each of the Acquisition Areas. The Parties recognize that the size and location of the Acquisition Areas as depicted on Exhibit C are general and imprecise given the size of the areas depicted and that subsequent surveying of such Acquisition Areas is likely to result in deviations from the attached depictions based on terrain and natural resource considerations. Prior to finalizing each legal description, TRC shall provide a draft of the legal description to the Resource Organization Designee for review and approval which shall not be unreasonably withheld, conditioned or delayed.

6.5 Assignment of Options by Resource Organizations. The rights of the Resource Organizations under the Options may not be transferred or assigned to any other Person (other than the transfer or assignment of an exercised Option pursuant to Section 6.10(a)), and any attempt to do so shall be void and of no force and effect; provided, however, TRC shall consider in good faith a request by the Resource Organizations to assign one or more of the unexercised Options to the Conservancy. No person other than the Resource Organization Designee shall have any right to exercise the Options, and any attempt to do so shall be void and of no force and effect.

6.6 Restriction on Order of Acquisition. The Resource Organizations may exercise the Options in any order; provided, however, that the Resource Organizations may not acquire a Purchased Conservation Easement for Bi-Centennial until they have acquired the Purchased Conservation Easement for each of Old Headquarters, Tri-Centennial and White Wolf.

6.7 Appraisal Process.

(a) State Appraisal. TRC and the Resource Organizations shall, in cooperation with each other, use their best efforts to cause WCB to conduct and proceed through to completion with the independent appraisal process required under California law for WCB to provide funding for the acquisition of each individual Purchased Conservation Easement (the "WCB Appraisal Process"), which includes WCB obtaining an independent appraisal of the fair market value (as defined in California Code of Civil Procedure Section 1263.320) of each Purchased Conservation Easement prepared by a State-qualified independent appraiser selected by, and placed under contract with, WCB, obtaining a review of such appraisal(s) by a State-qualified independent appraiser selected by, and placed under contract with, WCB (each, a "WCB Appraiser"), and obtaining the approval of DGS of such independent appraisals and appraisal reviews, all in accordance with California Public Resources Code Sections 5096.511 and 5096.512 and California Fish and Game Code Section 1348.2. The Parties shall work cooperatively with WCB as may be required or requested by WCB throughout the WCB Appraisal Process, which cooperation is expected to involve the following: (i) providing as soon as possible, but in no event later than thirty (30) days after receipt of the written request (unless an alternate date is mutually agreed upon between TRC and the requestor), to any WCB Appraiser or DGS, at the request of WCB or a WCB Appraiser, relevant property information within such Parties' possession or control that may be required in preparing such appraisal, such as descriptions of improvements, preliminary title reports, comparable sales data gathered by the Parties, and other pertinent, non-privileged information (or privileged information which has previously been provided to or prepared by the Parties' respective appraisers) as reasonably requested by WCB or a WCB Appraiser and otherwise designed to assure proper valuation of the property consistent with the Uniform Standards of Professional Appraisal Practice and applicable legal requirements; and (ii) making appropriate staff, representatives or agents available to inspect the Acquisition Areas and/or to discuss any questions or explain any conditions relating to the Acquisition Areas that are relevant to the WCB Appraisal Process.

(b) Alternate Appraisal.

(i) The Resource Organization Designee may elect to have the purchase price of any Purchased Conservation Easement(s) be determined based on the fair market value of each such Purchased Conservation Easement(s), each as a separate parcel, utilizing the process set forth in this Section 6.7(b) (the "Alternate Appraisal Process"), only if: (A) the WCB Appraisal Process has not been completed for any Purchased Conservation Easement on or before December 31, 2009, by giving irrevocable written notice to TRC on or before January 31, 2010; or (B) WCB notifies the Resource Organization Designee in writing of its final decision not to commence or complete the WCB Appraisal Process for one or more of the Purchased Conservation Easements, by giving irrevocable written notice to TRC within thirty (30) days after WCB's notice. Following any such election, TRC and the Resource Organizations shall each obtain an appraisal (and shall obtain a third appraisal as described in Section 6.7(b)(ii)) of the fair market value of each Purchased Conservation Easement subject to the Alternate Appraisal Process, which TRC and the Resource Organizations shall endeavor to cause to be completed within six (6) months after the Resource Organization Designee's election.

(ii) TRC has selected Hulberg & Associates, Inc. and the Resource Organizations have selected Buss-Shelger Associates to conduct their respective appraisals, but TRC and the Resource Organizations shall each be permitted to select an alternate appraiser from the list of Qualified Appraisers. In addition, TRC and the Resource Organization Designee shall mutually select a third appraiser from the list of Qualified Appraisers within fifteen (15) business days after the such election. If TRC and the Resource Organization Designee are unable to mutually select a third appraiser, the Resource Organization Designee shall eliminate one (1) name from the list of Qualified Appraisers, then TRC shall eliminate one (1) name from the list of Qualified Appraisers and the elimination process shall continue until only one (1) name remains on the list of Qualified Appraisers and such remaining name shall be the third appraiser. TRC shall pay the cost of its appraisal(s) and the cost of the third appraisal(s), and shall reimburse the Resource Organizations for the cost of any appraisal(s) prepared by Buss-Shelger Associates for the Resource Organizations or for up to a cumulative Twenty-Five Thousand Dollars ($25,000) toward the cost of appraisal(s) prepared by any alternate appraiser(s) selected by the Resource Organizations in connection with the Alternate Appraisal Process.

(iii) Both TRC and the Resource Organizations shall instruct the appraisers to (A) strictly adhere to the Appraisal Instructions and (B) periodically (not less than once per month) meet and confer during the appraisal process to exchange information, but not to exchange or discuss their final conclusions as to value. Upon finalization of each Party's appraisal for each Purchased Conservation Easement subject to the Alternate Appraisal Process, the respective Party shall send written notice to the other of completion of its appraisal. Upon completion of the third appraisal, the third appraiser shall deliver notice to TRC and the Resource Organization Designee of the completion of the appraisal and shall deliver two (2) sealed copies of the appraisal to the Escrow Holder or as otherwise jointly directed by TRC and the Resource Organization Designee. The Escrow Holder shall be instructed not to open the envelopes or deliver the appraisals to any party unless jointly requested in writing by TRC and the Resource Organization Designee in connection with the process set forth in Section 6.7(b)(iv).

(iv) Within five (5) days after the completion of the three (3) appraisals of each Purchased Conservation Easement subject to the Alternate Appraisal Process, TRC and the Resource Organization Designee shall exchange their appraisals. If the higher of the two (2) appraised values prepared by TRC and the Resource Organizations for any Purchased Conservation Easement is less than or equal to one hundred fifteen percent (115%) of the lower appraised value of such Purchased Conservation Easement, the values determined by the two (2) appraisals shall be added together and divided by two (2) to determine their arithmetic average, which shall be the purchase price for such Purchased Conservation Easement. If the higher of the two (2) appraised values prepared by TRC and the Resource Organizations for any Purchased Conservation Easement exceeds one hundred fifteen percent (115%) of the lower appraised value of such Purchased Conservation Easement, TRC and the Resource Organization Designee shall jointly request that the Escrow Holder release the third appraisal for such Purchased Conservation Easement to both TRC and the Resource Organization Designee. The values determined by the two (2) of the three (3) appraisals that are the closest in value shall be added together and divided by two (2) to determine their arithmetic average, which shall be the purchase price for such Purchased Conservation Easement.

6.8 **Purchase Price**.

(a) The purchase price for any Purchased Conservation Easement for which WCB has completed the WCB Appraisal Process shall be the fair market value of such Purchased Conservation Easement as determined by the WCB Appraisal Process.

(b) The purchase price for any Purchased Conservation Easement for which WCB has not completed the WCB Appraisal Process on or before the Resource Organization Designee's election pursuant to Section 6.7(b) shall be equal to the fair market value of such Purchased Conservation Easement as determined by the Alternate Appraisal Process.

6.9 **Purchased Conservation Easement Agreements**. TRC and the Conservancy (or Alternate Easement Holder) shall, within sixty (60) days after the receipt of an Option Notice or upon the reasonable request of the Conservancy, finalize the form of the applicable Conservation Easement Agreement consistent with the provisions of Article 8; provided, however, if the Conservancy is securing funding from WCB for the acquisition of a Purchased Conservation Easement, TRC shall provide as soon as reasonably possible a Conservation Easement Agreement for each such Purchased Conservation Easement consistent with the Form Conservation Easement (including revisions thereto that the Parties and WCB have previously approved pursuant to Section 6.13) and shall, consistent with Section 6.13, negotiate in good faith and in a timely manner any further revisions required to such Conservation Easement Agreement based on Acquisition Area specific conditions.

6.10 **Purchased Conservation Easement Closing and Recordation**.

(a) Assignment of Exercised Option. The Resource Organizations may, upon not less than ten (10) days prior written notice (but in any event not less than thirty (30) days prior to the applicable Closing Date) from the Resource Organization Designee to TRC, transfer and assign the rights and obligations of the Resource Organizations with regard to each exercised Option to the Conservancy (or if an Alternate Easement Holder has been designated pursuant to Section 8.1, to such Alternate Easement Holder), without obtaining TRC's consent. The Resource Organizations and the Conservancy or an Alternate Easement Holder shall execute an assignment and assumption of such Option (and if assigned to an Alternate Easement Holder, the Alternate Easement Holder must specifically acknowledge the provisions of Section 8.5), a copy of which shall be delivered to TRC along with the required notice. Any other transfer or assignment of the rights and obligations of the Resource Organizations with regard to each exercised Option shall be subject to TRC's prior written consent, which TRC may withhold or grant in its sole and absolute discretion.

(b) Condition of Title. Title to each Purchased Conservation Easement shall be subject only to Permitted Title Exceptions existing as of the applicable Closing Date; provided, however, TRC shall remove, bond over, subordinate or otherwise cause to be endorsed over (at TRC's cost), as of the Closing Date, all liens evidencing any deed of trust (and related documents) securing financing, all mechanics' liens relating to work performed by TRC and all judgment and other monetary liens (other than the lien for non-delinquent taxes and assessments) against TRC or the applicable Acquisition Area. TRC shall cause the title company

to issue to the Conservancy or Alternate Easement Holder, on each applicable Closing Date, a standard CLTA owner's title policy insuring the Conservancy's or Alternate Easement Holder's interest in the Purchased Conservation Easement(s) subject only to the Permitted Title Exceptions (as modified to address TRC's obligations with regard to the judgment or monetary liens described above) and with a coverage amount equal to the purchase price of the Purchased Conservation Easement(s) covered by such policy.

(c) Escrow. The sale of each Purchased Conservation Easement shall be consummated on the applicable Closing Date through an escrow established at a title company selected by TRC. To the extent not paid for by the State or any other public or private funder, all recording and escrow fees, title insurance premiums for standard CLTA coverage and documentary transfer tax, if any, due in connection with the sale of the Purchased Conservation Easements shall be paid by TRC. Except as provided in Section 6.10(b), the costs of any endorsements or the difference in the premiums between CLTA and ALTA coverage shall be borne by the holder of the Purchased Conservation Easement.

(d) Delivery of Documents and Funds. Not less than two (2) business days prior to the applicable Closing Date, TRC shall deliver to escrow its executed and acknowledged counterpart copy of the Conservation Easement Agreement for the applicable Acquisition Area. Not less than two (2) business days prior to the applicable Closing Date, the Conservancy (or Alternate Easement Holder) shall deliver to escrow an executed and acknowledged counterpart copy of the Conservation Easement Agreement for the applicable Acquisition Area and funds in the amount of the full purchase price for such Purchased Conservation Easement. Each of the Parties agrees to provide such other documents and instruments, duly executed and/or acknowledged, as may be reasonably required, in order to consummate the sale of the Purchased Conservation Easement in accordance with the terms and conditions of this Agreement, such as appropriate escrow instructions, customary documents necessary for the conveyance and evidence of authority, including, but not limited to, a certification signed by TRC and the Conservancy (or Alternate Easement Holder) of the final baseline conditions report prepared for the Purchased Conservation Easement, any documents evidencing the subordination of monetary liens as required by Section 6.10(b) and any reasonable documents required by WCB or other entity funding the acquisition that are consistent with the terms of this Agreement.

(e) Closing. On the applicable Closing Date, provided that all required documents and funds have been deposited into escrow, the escrow holder shall simultaneously record the Purchased Conservation Easement for the applicable Acquisition Area and disburse all purchase funds to TRC. In no event shall TRC have any obligation to tender a Purchased Conservation Easement during any period in which a notice of a breach by the Resource Organizations (or a Resource Organization) or the Conservancy has been delivered to the Resource Organization Designee and the Conservancy, and the Resource Organizations (or a Resource Organization) or the Conservancy has failed to cure the breach.

6.11 Termination of Option. Time is of the essence with respect to each of the provisions and time periods in this Article 6. If (a) the Resource Organization Designee fails to provide an Option Notice with respect to any individual Option strictly in the manner specified in Section 6.2 on or before the Option Notice Date (as such date may be extended

pursuant to Section 6.3), or (b) the Resource Organizations (or a permitted assignee of the exercised Option pursuant to Section 6.10(a)) have not completed the acquisition of any Purchased Conservation Easement on or before the Outside Closing Date (as such date may be extended pursuant to Section 6.3), unless such failure is caused by a default on the part of TRC, such Option shall expire and be of no further force and effect, and the Resource Organizations (and a permitted assignee of the exercised Option pursuant to Section 6.10(a)) shall have no further right to acquire the Purchased Conservation Easement subject to such Option. Upon the occurrence of either event, the Resource Organizations (and a permitted assignee of the exercised Option) shall within five (5) business days, upon demand by TRC or its title insurer, sign, acknowledge and deliver to TRC quitclaim deeds releasing any encumbrance or cloud on title to the Unpurchased Acquisition Area(s). If the Resource Organizations fail to acquire any of the Purchased Conservation Easements, then, within a reasonable amount of time after the Outside Closing Date, the Parties shall meet and confer to discuss the future possibility of the Resource Organizations' acquiring a Purchased Conservation Easement over the Unpurchased Acquisition Areas, the Parties acknowledging and agreeing that this language carries no obligation, including good faith obligation, to come to any agreement. In addition, such meet and confer process does not relieve the Resource Organizations (and a permitted assignee of the exercised Option) from its obligation to sign, acknowledge and deliver quitclaim deeds to TRC as provided in this Section 6.11. TRC acknowledges and agrees that TRC shall have no remedy against the Resource Organizations if the Resource Organization Designee exercises an Option to acquire a Purchased Conservation Easement but the Resource Organizations fail to acquire a Purchased Conservation Easement on or before the Outside Closing Date. Notwithstanding the termination of the Option, any ranching and Livestock management or wildlife management activities performed in the Unpurchased Acquisition Areas shall be performed in accordance with BMPs established for such use consistent with Exhibit M; provided, however, there shall be no limitations on other activities performed in the Unpurchased Acquisition Areas, specifically, there shall be no restrictions on the right to develop the Unpurchased Acquisition Areas nor any obligation to continue ranching and Livestock management and wildlife management activities in the Unpurchased Acquisition Areas.

6.12 Exchanges. The Conservancy or Alternate Easement Holder agree to cooperate with TRC in structuring one or more tax-deferred exchanges under the provisions of Code Section 1031 (each, an "Exchange"). If TRC elects to structure an Exchange, the following terms shall apply:

(a) The Conservancy or Alternate Easement Holder shall, promptly following any written request by TRC, execute such documents (including, but not limited to, escrow instructions and amendments to escrow instructions) as may be reasonably required to effect any such Exchange, provided that the Conservancy or Alternate Easement Holder shall not be required to make any representations or warranties, nor assume any obligations, nor spend any out-of-pocket sum in connection with the Exchange;

(b) The Conservancy or Alternate Easement Holder will not be required to pay any escrow costs, brokerage commissions, title charges, survey costs, recording costs or other charges incurred with respect to TRC's replacement property in the Exchange;

(c) Escrow shall timely close in accordance with the terms of this Agreement notwithstanding any failure, for any reason, of the consummation of the Exchange;

(d) The Conservancy or Alternate Easement Holder shall have no responsibility or liability on account of the Exchange to any third party involved in the Exchange;

(e) The Conservancy or Alternate Easement Holder shall not be required to take title to any exchanged real property in connection with the Exchange; and

(f) TRC shall not be released from any of its obligations under this Agreement.

6.13 Cooperation to Obtain Funding.

(a) The Parties acknowledge that their collective objective is to secure the conservation of each of the Acquisition Areas through the purchase of the Purchased Conservation Easements in accordance with the terms of this Agreement. The Parties shall work cooperatively in an effort to obtain funding from the State of California and potentially other funders toward the acquisition of the Purchased Conservation Easements over the Acquisition Areas.

(b) TRC acknowledges that as a requirement of obtaining such funding for the acquisition of the Purchased Conservation Easements, a Governmental Agency proposing to provide funding for the purchase of the Purchased Conservation Easement may seek modifications to the Form Conservation Easement. The Parties agree to cooperate with any such Governmental Agency to negotiate in good faith any such modifications required to facilitate the use of such funding in the acquisition of the Purchased Conservation Easements so long as such modifications are consistent with the intent and purpose of this Agreement and do not materially change the Reserved Rights. It is not TRC's intent that its right to subdivide the Conservation Easement Area subject to Purchased Conservation Easements preclude use of Government Agency funding of such purchase. TRC agrees to negotiate in good faith reasonable restrictions of such right in any Purchased Conservation Easements as necessary to secure Government Agency funding, including if required a prohibition on subdivision.

(c) TRC, the Resource Organization Designee and the Conservancy shall as soon as reasonably possible following the Effective Date jointly provide a copy of the Form Conservation Easement to WCB, and thereafter, at the request of WCB, shall negotiate in good faith and in a timely manner revisions to such approved Form Conservation Easement as provided in Section 6.13(b). The Parties acknowledge that the WCB Conservation Easement Policies are consistent with the intent and purpose of this Agreement and do not materially change the Reserved Rights.

7. POSSIBLE PURCHASE AND SALE OF FEE INTERESTS.

7.1 Fee Acquisition of Acquisition Area(s). Subject to the terms and conditions of Sections 7.2 and 7.3, TRC will consider the possible sale at fair market value of a fee interest, rather than a sale of a Purchased Conservation Easement, to one or more of the

Acquisition Areas or any portion thereof to the extent that purchase of such a fee interest is a condition to obtaining substantial funding. TRC agrees that upon receipt, not later than one hundred eighty (180) days prior to the expiration of the Option Period, of a written request from the Resource Organization Designee to do so, TRC will enter into good faith negotiations with respect to the terms and conditions for a possible purchase by the Resource Organizations, the Conservancy, or any substantial source of funding for the acquisition of fee title to a portion of the Acquisition Areas. Any such request shall specify (a) the property as to which purchase of the fee interest is sought, (b) the specific funding source proposed to fund the acquisition of such fee which fee title is sought, and (c) the intended use of the property proposed to be purchased. The Resource Organizations acknowledge and agree that a failure by the Parties to agree on the terms and conditions of a purchase and sale shall not, in and of itself, indicate a lack of good faith on the part of any Party.

7.2 Conditions of Fee Purchase. Any sale by TRC of the fee interest in any portion of the Ranch pursuant to Section 4.2 or 7.1 shall be subject to the future agreement by TRC, in its sole and absolute discretion after good faith negotiations pursuant to Section 7.1, on the terms and conditions of any such sale, including, without limiting the generality of the foregoing, reaching agreement on the fair market value of the fee interest to be sold, including (to the extent applicable) any severance damages or similar diminution of value that may be suffered by the remainder of the Ranch, as well as the scope of easements and other rights to be reserved by TRC. Notwithstanding any other provision of this Article 7, in no event shall TRC have the obligation to consider or negotiate with respect to the sale of any interest in any portion of the Ranch at a price less than fair market value, or if such sale would, in TRC's sole and absolute judgment, exercised in good faith, be likely to have a substantial adverse effect on any Project or Project Approvals, on the conduct of the Reserved Rights or on TRC's status as a publicly traded corporation.

7.3 Compliance with the Map Act. Any transfer of fee title to real property within the Ranch shall be subject to and conditioned on compliance with the applicable requirements of the Map Act. To the extent that the Resource Organizations are permitted to acquire fee title to any land pursuant to this Agreement, and any portion of the land to be acquired does not comply with the Map Act, then TRC shall have the right to adjust the boundaries of any such parcel of real property, if doing so will cause the property to comply with the Map Act, or to take other commercially reasonable efforts to cause such land to comply with the Map Act; but TRC shall have no obligation to transfer (and the Resource Organizations shall have no obligation to accept a conveyance of) any property that does not comply with the Map Act, unless there exists an applicable existing exemption from the requirements of the Map Act.

7.4 Right of First Negotiation.

(a) Right of First Negotiation.

(i) TRC agrees that it will not market for sale any portion of the Conservation Easement Area or enter into a binding contract to sell the fee interest in any portion of the Conservation Easement Area (other than a marketing notice or an agreement that is expressly subject to the rights of the Conservancy hereunder) without first affording the

Resource Organizations an opportunity to negotiate for the fee purchase of such portion of the Conservation Easement Area.

(ii) If TRC decides to market any portion of the Conservation Easement Area or desires to enter into a binding contract to sell the fee interest in any portion of the Conservation Easement Area, TRC shall give written notice to the Resource Organization Designee of TRC's intention to market such portion of the Conservation Easement Area (the "Negotiation Notice").

(iii) If the Resource Organization Designee wishes to enter into negotiations for the fee purchase of such portion of the Conservation Easement Area, the Resource Organization Designee shall so indicate by responsive written notice to TRC given within thirty (30) days after the date of the Negotiation Notice. Thereafter, TRC and the Resource Organization Designee shall have ninety (90) days after the date of the Negotiation Notice to negotiate, on an exclusive basis, mutually acceptable terms and conditions for the fee acquisition of such portion of the Conservation Easement Area

(iv) If the Resource Organization Designee fails to respond in writing to the Negotiation Notice within such thirty (30) day period or if the ninety (90) day exclusive negotiation period expires without TRC and the Resource Organizations executing a definitive purchase and sale agreement, TRC shall be free to market or sell such portion of the Conservation Easement Area to a third party free and clear of the Resource Organizations' right of first negotiation, and TRC shall have no further obligation to notify or negotiate with the Resource Organizations with respect to any subsequent proposed marketing or sale of such portion of the Conservation Easement Area.

(v) In no event shall the right of first negotiation be applicable in connection with an Exempt Transfer or in connection with the sale of property for Infrastructure permitted to be located in the Conservation Easement Area under this Agreement or any applicable Conservation Easement Agreement.

(vi) The Resource Organizations may only assign the right set forth in this Section 7.4(a) to the Conservancy, and the Conservancy is prohibited from further assigning the right set forth in this Section 7.4(a).

(b) Incorporation into Conservation Easements. Each Conservation Easement Agreement shall include a right of first negotiation in favor of the Conservancy which incorporates the provisions of Section 7.4(a) as to the Conservancy in place of the Resource Organizations. Section 7.4(a) shall not be operative as to any portion of the Conservation Easement Area over which a Conservation Easement Agreement has been recorded.

8. CONSERVATION EASEMENTS.

8.1 Alternate Easement Holders.

(a) Designation of Alternate Easement Holder. The Parties shall work cooperatively with reasonable efforts to cause all applicable Resource Agencies to support and approve the Conservancy as the holder of all Conservation Easements granted pursuant to this

Agreement. If, prior to the tender of a Conservation Easement, one or more Mitigation Areas have been identified within the Conservation Easement Area, and any Resource Agency with a right to approve the identity of the holder of such Conservation Easement refuses to approve the Conservancy as holder of such Conservation Easement (or conditionally approves the Conservancy as holder subject to satisfaction of conditions that cannot reasonably be satisfied at or within the time required), then the Parties shall cooperate to recommend an Alternate Easement Holder (or list of holders) that shall be: (i) a nonprofit organization that has qualified for exempt status under Code Section 501(c)(3) and is not a private foundation under Code Section 509; (ii) an environmental organization qualified under California Civil Code Section 815.3; (iii) experienced in the oversight of large, biologically sensitive land holdings; (iv) experienced in the conservation of ranch and agricultural lands; and (v) experienced in the primary area of expertise related to the Mitigation obligation in the Conservation Easement Area. TRC and the Conservancy shall cooperatively seek any applicable Resource Agency's written approval of the Alternate Easement Holder (or holders) recommended jointly by TRC and the Conservancy. If TRC and the Conservancy are unable to jointly select an Alternate Easement Holder to recommend, TRC and the Conservancy shall each be permitted to recommend up to two (2) Alternate Easement Holders to the applicable Resource Agency. Additionally, if a Governmental Agency contributing funding towards a Purchased Conservation Easement does not approve the Conservancy as holder of such Conservation Easement, TRC and the Resource Organizations shall cooperate to recommend an Alternate Easement Holder (or list of holders) that meets the qualifications set forth above and is acceptable to the Governmental Agency. The Parties shall work in good faith to transfer the Conservation Easement from the Alternate Easement Holder to the Conservancy at such time, if ever, as would be acceptable to the Resource Agency or Governmental Agency that initially would not approve the Conservancy as the holder of the Conservation Easement.

(b) Alternate Easement Holder Coordination with Conservancy. As a condition of receiving any Conservation Easement, and subject to the approval of any applicable Governmental Agency, the Alternate Easement Holder shall be required to coordinate its activities in any Conservation Easement Area with the Conservancy. In connection with the designation of any Alternate Easement Holder, the Parties shall meet and confer with the Alternate Easement Holder to prepare a coordination agreement documenting the rights and obligations of the parties to the coordination agreement with respect to implementation of the RWMP, Mitigation, and financial support for the Alternate Easement Holder's easement monitoring and enforcement activities from Advances and Conservation Fees.

8.2 Form of Conservation Easement Agreement.

(a) Generally. Each Conservation Easement Agreement shall: (i) subject to the provisions of Section 3.10 with respect to requirements of Resource Agencies for Mitigation Areas and Section 6.13 with respect to requirements of a Governmental Agency providing funding for the purchase of a Purchased Conservation Easement, be generally consistent with the Form Conservation Easement; (ii) incorporate the appropriate provisions relating to the Designated Farm Areas, Designated Mining Areas, Designated Oil and Gas Areas, and Designated Water Bank Areas; and (iii) incorporate the appropriate maps included in Exhibit G and Exhibit H. TRC and the Conservancy shall identify specific Conservation Values and Conservation Purposes applicable to each Conservation Easement Area in question and

incorporate those Conservation Values and Conservation Purposes into the applicable Conservation Easement Agreement. The final form and content of any Conservation Easement shall be subject to the reasonable approval of TRC, the Resource Organization Designee and the Conservancy (if the Conservancy is the holder of the Conservation Easement in question) or, if applicable, the Alternate Easement Holder. If the Conservancy is not the holder, then prior to the execution and recordation of a Conservation Easement Agreement, the Conservancy may make reasonable comments (consistent with the terms and conditions of this Agreement and the RWMP) on the form and content of such Conservation Easement Agreement, which comments shall be considered by TRC in good faith.

(b) Dispute Resolution.

(i) If TRC and the Conservancy are unable to finalize a Conservation Easement Agreement on the date which is sixty (60) days prior to the date on which such Conservation Easement Agreement is to be recorded, the Conservancy and TRC shall each deliver to the other a list of their respective outstanding issues and a revised Conservation Easement Agreement incorporating such Party's proposed resolution of each of such issues. The Conservancy and TRC shall, within the fifteen (15) day period that follows the mutual exchange of such documents, work cooperatively and in good faith to resolve such issues.

(ii) If at the end of such fifteen (15) day period, the Conservancy and TRC are still unable to finalize the Conservation Easement Agreement, the Conservancy and TRC shall each within an additional fifteen (15) days appoint an independent arbitrator, who shall be or have been either (a) the director of a land trust that meets Land Trust Alliance Standards for a period of more than three (3) years, which three (3) year period shall have been in the last ten (10) years or (b) a licensed attorney with substantial experience in conservation easement transactions. The two arbitrators so appointed shall appoint a third arbitrator, similarly qualified, or a retired judge with substantial experience in relevant real estate matters within ten (10) days after the appointment of the last appointed arbitrator, and shall notify the Conservancy and TRC of the identity of such third arbitrator. Within five (5) days after the appointment of the third arbitrator, the Conservancy and TRC shall each deliver their respective Conservation Easement Agreement and a copy of this Agreement to the three (3) arbitrators.

(iii) Within thirty (30) days after the appointment of the third arbitrator, the three (3) arbitrators shall review each of the proposed Conservation Easement Agreements and this Agreement and conduct a hearing, at which the Conservancy and TRC may each make supplemental oral and/or written presentations. A majority of the three (3) arbitrators shall select either the Conservancy's proposed Conservation Easement Agreement or TRC's proposed Conservation Easement Agreement and shall notify the Conservancy and TRC thereof. The determination of the majority of the three (3) arbitrators shall be limited solely to the issue of whether the Conservancy's proposed Conservation Easement Agreement or TRC's proposed Conservation Easement Agreement most closely conforms to the terms and conditions of this Agreement, the Form Conservation Easement (with such modifications as may be required by a Governmental Agency so long as such modifications are consistent with the intent and purpose of this Agreement and do not materially change the Reserved Rights) and Applicable Law. The arbitrators shall have no right to propose a middle ground or to modify either of the two (2)

proposed Conservation Easement Agreements, the provisions of this Agreement or the Form Conservation Easement. The decision of a majority of the three (3) arbitrators shall be binding upon the Parties. Each Party shall pay the costs and fees of the arbitrator appointed by such Party. The costs and fees of the third arbitrator shall be paid one-half by the Conservancy and one-half by TRC. All references to the Conservancy in this Section 8.2(b) shall be deemed references to the Alternate Easement Holder if the Conservation Easement Agreement in question will be held by the Alternate Easement Holder.

(iv) If the dispute resolution provisions of this Section 8.2(b) are invoked, TRC's obligation to tender a Conservation Easement shall be extended on a day-for-day basis commencing upon the appointment of the two (2) initial arbitrators and ending on the date that the binding final decision has been made by the arbitrators.

8.3 Infrastructure in the Conservation Easement Area. As of the Effective Date, TRC does not anticipate that new Infrastructure to serve the Centennial, Grapevine or TMV Development Areas will be required in the Conservation Easement Area. Notwithstanding the foregoing, TRC and any Project Sponsor shall not be prohibited from constructing or causing to be constructed Infrastructure to serve Projects or Potential Projects subject to the terms of this Section 8.3. TRC and any Project Sponsor shall use good faith efforts to locate all Infrastructure for Projects or Potential Projects within the Development Areas or the Unpurchased Acquisition Areas, and to avoid or minimize the footprint of such Infrastructure within the Conservation Easement Area and to use BMPs in the design and construction of such Infrastructure, subject in all events to the approval of Governmental Agencies and/or public utilities. If such Infrastructure is proposed to be located in the Conservation Easement Area, TRC shall consult with the Conservancy (and the Resource Organization Designee, if the Infrastructure will be constructed within five (5) years after the Effective Date) to solicit feedback from the Conservancy on the location, footprint and BMPs for the Infrastructure, which TRC agrees to consider in good faith. Nothing in this Section 8.3 shall preclude the Resource Organizations or the Conservancy from exercising any rights they may have to oppose Infrastructure associated with Potential Projects pursuant to Section 10.5(b)(iv).

8.4 Subdivision and Sale of the Conservation Easement Area. Other than as set forth in Section 7.4 and this Section 8.4, there shall be no restriction on the right of TRC to subdivide or sell the fee interest, or any portion thereof, in all or any part of the Conservation Easement Area. The following restrictions shall be applicable in connection with the subdivision or sale of the Conservation Easement Area (none of which shall apply in connection with a sale of TRC's fee interest pursuant to Sections 4.2 or 7.1, to the sale of the National Cement Area, or, after the date on which a Conservation Easement Agreement has been recorded, on the portion of the Conservation Easement Area subject to such recorded Conservation Easement Agreement):

(a) TRC shall not transfer fee title to any Acquisition Area, or portion thereof, to any third party (other than to an Affiliate of TRC, and in the event of such transfer, only subject to such Affiliate's express assumption of the obligations of this Agreement relating to such transferred Acquisition Area) prior to the earlier of the recordation of a Purchased Conservation Easement over such Acquisition Area or the Outside Closing Date, without the prior written consent of the Resource Organization Designee. TRC shall not transfer fee title to any Dedicated Conservation Easement Areas, or portion thereof, to any third party (other than to

an Affiliate of TRC, and in the event of such transfer, only subject to such Affiliate's express assumption of the obligations of this Agreement relating to such transferred Dedicated Conservation Easement Area) until a Conservation Easement Agreement has been tendered to the Conservancy for such portion of the Dedicated Conservation Easement Area which will be conveyed; provided, however, the Conservancy shall consider in good faith a proposal by TRC to transfer such portion of the Dedicated Conservation Easement Areas prior to the tender of the Conservation Easement Agreement subject to such transferee's express assumption of the obligations of this Agreement, including to convey such Dedicated Conservation Easement. In addition, if TRC seeks to pledge any portion of the Ranch, the Resource Organizations and the Conservancy shall consider commercially reasonable modifications to this Agreement or a Conservation Easement Agreement which are consistent with the Conservation Values requested by TRC's mortgagee to provide such mortgagee with reasonable means to protect or preserve the lien of its mortgage; provided, however, in no event shall the Conservancy be required to subordinate its interest in a Conservation Easement Agreement to a new mortgage.

(b) The act of subdividing or transferring into separate ownership(s) all or any portion of the Conservation Easement Area (including creation and transfer of the transferred property as a separate legal lot, and any further subdivision or transfer thereof) does not create any new rights in the fee owner or the Conservancy, or expand the scope of any rights in either the fee owner or the Conservancy, to use the subdivided and/or transferred portions of the Conservation Easement Area (including, but not limited to, any rights to build new structures and improvements or expand existing structures, and any rights of access) beyond the intensity that would be permitted thereon under this Agreement in the absence of the subdivision or transfer. The Parties further acknowledge that the Adaptive Management Standard recognizes that continued economic use of the Conservation Easement Area, as a whole, will be respected, but does not recognize any separate ownerships within that area.

(c) Owner covenants to include recitals in any deed or other legal instrument conveying an interest in the Conservation Easement Area or any portion thereof to a third party substantially consistent with the following: (i) except retained development rights reserved to Owner in this Agreement or a recorded Conservation Easement Agreement, the transferred property comes with no development rights, including but not limited to the right to construct dwelling units on the transferred property, (ii) the transferred property is subject to significant use restrictions and to additional requirements pursuant to the Ranch-Wide Management Plan, including, but not limited to, the right of the Conservancy to carry out Conservation Activities, permit Public Access, and establish Best Management Practices, all as set forth in this Agreement, (iii) the Adaptive Management Standard, established pursuant to this Agreement, recognizes that continued economic use of the Conservation Easement Area, as a whole, will be respected, but does not require recognition of continued economic use of any separate ownerships within those areas, (iv) the effect of Conservation Activities and Best Management Practices required pursuant to this Agreement may result in disproportionate restrictions on or may effectively preclude some, and potentially even all, uses of the transferred property, or portions thereof, that are otherwise generally permitted on the Conservation Easement Area consistent with this Agreement, and (v) the act of subdividing or transferring into separate ownership(s) all or any portion of the Conservation Easement Area (including creation and transfer of the transferred property as a separate legal lot, and any further subdivision or transfer thereof) does not create any new rights in the fee owner or the Conservancy, or expand

the scope of any rights in either the fee owner or the Conservancy, to use the subdivided and/or transferred portions of the Conservation Easement Area (including, but not limited to, any rights to build new structures and improvements or expand existing structures, and any rights of access) beyond the intensity that would be permitted thereon under this Agreement in the absence of the subdivision or transfer. Prior to or at the time of any such transfer, Owner shall obtain from any such third party purchaser a written instrument signed by such purchaser wherein such purchaser acknowledges the foregoing recitals.

(d) Owner shall not grant, transfer or otherwise convey any surface rights to extract any minerals, oil, gas or hydrocarbons, except within the Designated Mining Areas and the Designated Oil and Gas Areas. Nothing in this Agreement shall prohibit or limit Owner's right to extract minerals, oil, gas and hydrocarbons from any portion of the Conservation Easement Area through the surface of the Designated Mining Areas and the Designated Oil and Gas Areas, provided that such extraction does not cause material damage to the surface of the Conservation Easement Area (including groundwater), or the structures thereon, outside of the Designated Mining Areas and the Designated Oil and Gas Areas.

8.5 **As-Is**. The Resource Organizations and the Conservancy acknowledge and agree that, if they elect to accept a Dedicated Conservation Easement or to exercise any of the Options, they must do so based solely upon their own inspection and investigation of the applicable Conservation Easement Area in question, and further acknowledge and agree that the acceptance of the Conservation Easement and/or exercise of an Option is deemed to mean that they will have had an adequate opportunity to undertake such inspections and investigations as they deem appropriate or waived the right to do so. Each Conservation Easement Area, and any rights granted by a Conservation Easement Agreement, shall be taken strictly on an "AS IS, WHERE IS" basis, without reliance upon any representations or warranties, express, implied or statutory, of any kind (except as expressly set forth in this Agreement or any document or instrument executed in connection with or as contemplated by this Agreement). Without limiting the above, the Resource Organizations and the Conservancy acknowledge and agree that, except as expressly set forth in this Agreement or any document or instrument executed in connection with or as contemplated by this Agreement, neither TRC nor any other Person has made any representations or warranties, express or implied, as to any matters, directly or indirectly, concerning the Conservation Easement Area, including, but not limited to, the acreage thereof, the scope of existing development rights, permissible uses, title exceptions, water or water rights, topography, utilities, zoning of the Conservation Easement Area, soil, subsoil, the purposes for which the Conservation Easement Area is to be used, drainage, environmental or building laws, rules or regulations, hazardous materials or any other matters affecting or relating to the Conservation Easement Area. The acceptance of a Dedicated Conservation Easement and/or exercise of an Option hereunder shall be conclusive evidence that the Resource Organizations and the Conservancy (a) have fully and completely inspected (or have caused to be fully and completely inspected) the Conservation Easement Area which has been accepted or for which an Option has been exercised, and (b) unconditionally accept and approve the condition thereof and any law or regulation applicable thereto, and the Resource Organizations and/or the Conservancy shall thereafter have no right to disapprove the condition of such Conservation Easement Area (regardless of any facts or circumstances of which the Resource Organizations or the Conservancy failed to investigate and/or may later become aware).

8.6 **Due Diligence**.

(a) The Conservancy, through its employees, representatives and consultants, shall have a right to enter upon any portion of the Conservation Easement Area from time to time in a manner consistent and in accordance with the provisions of Section 3.6 to conduct such investigations of the physical condition of any portion of the Conservation Easement Area as it deems necessary and appropriate to satisfy itself as to the matters described in Section 8.5, including, but not limited to, conducting a Phase I Environmental Site Assessment. During the Option Period, these entry rights shall also extend to the Resource Organizations, as coordinated by the Resource Organization Designee. WCB and other entities providing significant funding shall also be permitted to enter onto the Acquisition Areas to conduct such investigations subject to WCB and/or such entities entering into a reasonable entry agreement with TRC consistent with the terms of Section 3.6.

(b) In connection with the due diligence being conducted by the Conservancy, the Resource Organizations or entities providing significant funding on the Conservation Easement Area, TRC will provide or make available to the Conservancy, and during the Option Period, the Resource Organizations and entities providing significant funding (subject to execution of appropriate confidentiality agreement consistent with the provisions of Section 15.22, or, with respect to Governmental Agencies, the process set forth in Section 8.6(c)), all of the following documents which are known to exist in TRC's Current Actual Knowledge and are in TRC's possession or control, all of which are subject to the provisions of Section 15.22 (except that TRC will not disclose appraisals or valuation documents, attorney-client privileged information or proprietary or other documents or information prohibited or regulated for release as a result of TRC's status as a publicly traded corporation):

(i) Existing Contracts;

(ii) Environmental reports, including Phase I Environmental Site Assessments, relating to the Conservation Easement Area, if any;

(iii) Written notices of uncured violations of any Applicable Laws relating to the Conservation Easement Area, if any;

(iv) Written notices of pending or threatened condemnation actions relating to the Conservation Easement Area, if any;

(v) Written notices of pending or threatened litigation relating to the Conservation Easement Area, if any;

(vi) Governmental Agency approval documents and other documents pertaining to any Mitigation in Mitigation Areas;

(vii) Documents and other information pertaining to a condition or circumstance relating to the Conservation Easement Area that, in the good faith judgment of the TRC Representatives, is materially inconsistent with the Conservation Purpose.

(c) In the event that any of the documents set forth in Section 8.6(b) are being requested by a Governmental Agency, TRC shall have the opportunity to meet and confer with such Governmental Agency to agree on an appropriate level of confidentiality consistent with laws applicable to such Governmental Agency prior to providing or making available such documents.

(d) No invasive testing, including, but not limited to, soil or groundwater sampling, may be conducted unless and until the testing plans and procedures are approved in writing by TRC, which approval may be withheld, or granted upon such conditions as TRC may determine, in TRC's reasonable discretion. Any such inspection shall be at no cost to TRC, and the Conservancy and/or the Resource Organizations shall return the area being tested as nearly as possible to the same condition it was in prior to such entry or activities.

(e) No entry shall unreasonably interfere with the use of the Conservation Easement Area by TRC or its tenants, easement holders, licensees, permittees or other third parties.

(f) The Conservancy and/or the Resource Organization Designee shall provide TRC with copies of the results of all analytical tests, photos, geological logs, and drafts of any and all reports generated as the result of such inspections and activities as soon as they are available. TRC shall have ten (10) business days to provide written clarifications and corrections thereto. Thereafter, the Conservancy and/or the Resource Organization Designee shall forward TRC's written clarifications and corrections to the individual or entity that prepared such reports for consideration before such reports are prepared in final form. The Conservancy and/or Resource Organization Designee shall provide TRC with copies of any and all final reports as soon as they are available. The Conservancy and the Resource Organizations shall keep such reports confidential as more specifically set forth in Section 15.22.

(g) All references to the Conservancy in this Section 8.6 shall be deemed references to the Alternate Easement Holder if the Conservation Easement Agreement in question will be held by the Alternate Easement Holder. Any Alternate Easement Holder shall, in a separate agreement with TRC, acknowledge and agree to the provisions contained in Sections 3.6, 3.7, 8.5, and 15.22.

8.7 Material Adverse Condition. If, during the Option Period, the Resource Organizations or the Conservancy discover a Material Adverse Condition which affects any portion of an Acquisition Area, the Resource Organization Designee shall provide written notice to TRC specifically stating the Material Adverse Condition, the location of the affected area and the proposed cure of such condition (if any). Within thirty (30) days after receiving such notice, TRC may elect to either (a) cure the Material Adverse Condition to the reasonable satisfaction of the Resource Organization Designee and the Conservancy or (b) allow the Resource Organization Designee to elect within fifteen (15) days to exclude that portion of the Conservation Easement Area subject to such Material Adverse Condition from the Conservation Easement Area to be dedicated or acquired. If TRC elects to cure the Material Adverse Condition, but fails to do so within ninety (90) days after TRC's election, or if TRC fails to respond to the notice within such thirty (30) day period, the affected area may be excluded from the Conservation Easement Area upon notice from the Resource Organization Designee. If an

area is excluded from the Conservation Easement Area: (i) the Resource Organizations and Conservancy's obligations under this Agreement shall in no way be modified by such exclusion; (ii) the Resource Organizations shall promptly, upon demand by TRC or its title insurer, sign, acknowledge and deliver to TRC a quitclaim deed releasing any encumbrance or cloud on title relating to this Agreement or the RWMP; (iii) the excluded area shall deemed to be an Unpurchased Acquisition Area. As to Dedicated Conservation Easement Areas, the foregoing procedure shall apply during the time prior to recordation of the applicable Conservation Easement Agreement and TRC's obligation to tender the Dedicated Conservation Easement shall be delayed for a reasonable period of time to effectuate any required changes to the Conservation Easement Agreement and the rights of the Resource Organization Designee shall be the rights of the Conservancy. All references to the Conservancy in this Section 8.7 shall be deemed references to the Alternate Easement Holder if the Conservation Easement Agreement in question will be held by the Alternate Easement Holder.

8.8 TRC Representations. As used in this Agreement, the term "TRC's Current Actual Knowledge" means the current actual knowledge of Joseph E. Drew, Allen Lyda, Kathleen J. Perkinson, Dennis Atkinson and E. Andrew Daymude ("TRC's Representatives") as of the Effective Date, and such term shall not include the knowledge of any other Person or firm, it being understood by the Resource Organizations and the Conservancy that TRC's Current Actual Knowledge shall not apply to, or be construed to include, information or material which may be in the possession of TRC generally or incidentally, but of which TRC's Representatives are not actually aware. TRC represents and warrants to the Resource Organizations and the Conservancy as follows, which representations and warranties shall survive until the end of the Initial Period:

(a) To TRC's Current Actual Knowledge, other than the Rangeland Trust Easement, TRC has neither granted any, nor is a party to, or bound by, any rights of first refusal, rights of first negotiation, option rights, or other agreements or commitments to sell or transfer any fee or conservation easement interest (whether of record or otherwise) in all or any portion of any Conservation Easement Area.

(b) To TRC's Current Actual Knowledge, TRC has provided or made available, or will provide or make available in accordance with the terms of this Agreement, all documents set forth in Section 8.6(b).

9. DEVELOPMENT.

9.1 Development Areas. TRC shall include, or shall cause the applicable Project Sponsor to include, the following Required Measures in each application for Initial Entitlements for the Projects in the following Development Areas:

(a) Bakersfield National Cemetery. TRC is not involved in the planning, regulatory approval or development of the Bakersfield National Cemetery Development Area and there are no Required Measures applicable.

(b) Centennial. The Required Measures set forth in Exhibit Q-1.

(c) Grapevine. If a Project in the Grapevine Development Area is proposed to include development similar to that currently approved for the Tejon Industrial Complex Development Area, the Required Measures shall be as or more stringent than those set forth in Exhibit Q-2 for TIC–East. While TRC does not currently envision single family residential development or the master planning of a substantial residential community (consisting of a broad range of uses including a mix of multiple residential product types, school(s), and neighborhood-serving retail uses), if single family residential or master planned community development is proposed in the Grapevine Development Area, the Required Measures for the Centennial Development Area set forth in Exhibit Q-1 would be applicable to the Grapevine Development Area, exclusive of any such measures that are specific to the biological and other existing physical conditions on the Centennial Development Area, or to measures that refer specifically to land use designations or other jurisdictional requirements of Los Angeles County that cannot be feasibly implemented at the Grapevine Development Area.

(d) TIC. The Required Measures for TIC–East are set forth in Exhibit Q-2 and the Required Measures for TIC–West are set forth in Exhibit Q-3.

(e) TMV. The Required Measures set forth in Exhibit Q-4.

(f) TRC Headquarters. Although no planning for the TRC Headquarters Development Area exists, the future development may include expansion of TRC's existing headquarters compound, including additional office space and employee housing, new or expansion of existing highway-oriented commercial and light industrial, and low, medium and high density residential uses. The Required Measures for the TRC Headquarters Development Area are the same as those for the Grapevine Development Area as provided in Section 9.1(c).

9.2 Scope of Obligation and Modification of Required Measures. The sole obligation of TRC under Section 9.1 is to include, or cause the applicable Project Sponsor to include, the applicable Required Measures in each application for Initial Entitlements as part of the proposed Project or as recommended conditions or mitigation measures. It is recognized that Governmental Agencies with jurisdiction over the Projects may require modification of the submitted Required Measures and/or may refuse to impose some of the Required Measures as requirements of Project Approvals; and in no event shall TRC or the Project Sponsor be in breach of its obligations under Section 9.1 on account of any such action. As to any Required Measures that are required by Governmental Agencies as part of Project Approvals, any Project Sponsor shall thereafter have the right to apply to such Governmental Agencies to require substitute or modified programs or measures in lieu of such Required Measures provided that any such application shall request a determination by such Governmental Agencies that the substitute or modified programs or measures achieve the same or better performance criteria. Neither TRC nor any Project Sponsor shall have any enforceable obligation under this Agreement to implement the Required Measures whether or not the Required Measures are included in the Project Approvals.

9.3 Limited Remedies. In no event shall a breach of Section 9.1 be deemed to have occurred if (a) a Governmental Agency modifies, changes or fails to include in a Project Approval any of the Required Measures, or (b) any of the Required Measures included in the Project Approvals are not carried out or implemented. Each Party agrees that an action filed by

the Resource Organization Designee for specific performance and/or injunctive relief shall be the sole and exclusive remedy for any breach by TRC of the provisions of Section 9.1. Each Resource Organization hereby waives all other remedies for a breach of Section 9.1 that might be otherwise available to it at law or in equity, including, but not limited to, claims for damages. In no event shall TRC or any Project Sponsor be liable for any damages whatsoever (including without limitation, consequential, incidental, indirect or special damages, whether foreseeable or unforeseeable). The Parties agree that this limitation of remedies and liabilities provision shall be strictly enforced based on the specifically negotiated terms contained in this Section 9.3. Notwithstanding the foregoing, the Resource Organization Designee shall not be prohibited from requesting that the applicable Governmental Agency enforce any Required Measures included in the Project Approvals.

9.4 Developed Area Limitations in Centennial, Grapevine and TMV. TRC shall cause the applicable Project Sponsor to limit the total area within the Centennial Development Area that is Developed to no more than approximately 7,900 acres, and to locate such Developed areas in a manner generally consistent with Exhibit J-1, but no portions of the "Pullback Areas" depicted on Exhibit J-1 shall be Developed. TRC shall cause the applicable Project Sponsor to limit the total area within the Grapevine Development Area that is Developed to no more than approximately 12,400 acres, and to locate such Developed areas in a manner generally consistent with Exhibit J-2 provided that the areas to be Developed may be adjusted during the planning process for the Grapevine Development Area subject to the reasonable approval of the Conservancy and the Resource Organization Designee. TRC shall cause the applicable Project Sponsor to limit the total area within the TMV Development Area that is Developed to no more than approximately 5,300 acres, and to locate such Developed areas within the "Development Envelope" depicted on and in a manner generally consistent with Exhibit J-3, but no portion of the areas to be Developed depicted on Exhibit J-3, except for the "Reconfigured Emergency Access Road/Utility Corridor/Revegetated Slope," shall extend beyond the "Stop Development Line" depicted on Exhibit J-3.

9.5 National Cement Area. The Parties acknowledge and agree that the National Cement Area is subject to a long term lease (the "NCA Lease"). TRC, and any successor to TRC as owner of the National Cement Area, shall have the right, in its sole and absolute discretion, to: (a) extend the term of the NCA Lease and modify other terms and conditions of the NCA Lease, provided that the boundaries of the National Cement Area are not increased; (b) enter into a new lease over the National Cement Area for substantially similar uses and purposes as permitted under the NCA Lease (a "New NCA Lease"); (c) utilize the National Cement Area for substantially similar uses and purposes as permitted under the NCA Lease; and (d) assign its interest in the NCA Lease (or any New NCA Lease) or sell the National Cement Area as long as the assignment or sale is expressly subordinate to TRC's obligation to convey the Dedicated Conservation Easement described herein. Prior to negotiating a renewal of the term of the NCA Lease (or the negotiation of any New NCA Lease), TRC shall meet and confer with the Conservancy to discuss the possibility of including as a requirement in the NCA Lease (or New NCA Lease) a comprehensive reclamation plan, which shall include as a component, wildlife habitat connectivity considerations; provided, however, that TRC is under no obligation to impose such a requirement as a condition to any such renewal or New NCA Lease. Provided that the Resource Organizations have acquired a Purchased Conservation Easement over both Bi-Centennial and Tri-Centennial, if as of such time as (y) the National Cement Area is no longer

subject to the NCA Lease or any New NCA Lease and (z) the use of the National Cement Area for substantially similar uses and purposes as existed under the NCA Lease or New NCA Lease has ceased for a continuous period of two (2) years without the intent to resume operations, TRC or any successor owner of a fee interest in the National Cement Area shall promptly tender to the Conservancy, without payment of further consideration to TRC or such successor owner, a conservation easement over the National Cement Area generally consistent with the Form Conservation Easement. Prior to the transfer of any fee interest in the National Cement Area, the transferee shall execute and deliver to the Conservancy a written instrument acknowledging the provisions of this Section 9.5.

9.6 Nuclear Energy Facilities. There shall be no development of nuclear energy facilities in any of the Development Areas, except that this provision does not preclude such use of radioactive materials, or machines generating radioactive waves or beams, as may be incidental to and typically co-located with ordinary residential and commercial uses (e.g., medical offices).

9.7 Unpurchased Acquisition Areas. Nothing in this Agreement shall (a) restrict the right of TRC and/or any Project Sponsor to pursue and implement the permitting, entitlement, development and use of the Unpurchased Acquisition Areas for any purpose whatsoever or (b) preclude the Resource Organizations from exercising any rights they may have to oppose Potential Projects pursuant to Section 10.5(b)(iv).

10. FUTURE STATEMENTS, SUPPORT AND CHALLENGES.

10.1 Future Statements. No Party, without the prior written consent of all other Parties, shall submit, issue or make any official statements or comments (whether oral or written) to the press or public contradicting the Joint Public Statement.

10.2 Future Support. At TRC's written request, the Resource Organizations (and any of them) may elect to participate in public hearings, press conferences and other public contexts in support of a Project or Project Approvals.

10.3 Confirmation of Non-Opposition. Each Resource Organization has executed a Non-Opposition Letter confirming its non-opposition to the Projects and Project Approvals. Within fifteen (15) days after the request of TRC, but no more often than every five (5) years, an authorized representative of each Resource Organization shall provide a currently dated Non-Opposition Letter to TRC (or at TRC's written direction to any Project Sponsor or Governmental Agencies) in order to update such Resource Organization's continued non-opposition to the Projects and Project Approvals. TRC or any Project Sponsor shall have the right to submit the letter to any court or administrative body so as to serve as conclusive evidence of such Resource Organization's non-opposition to the Projects and Project Approvals.

10.4 Confirmation of Consistency. Within fifteen (15) days after the request of TRC, each Resource Organization and the Conservancy shall provide written confirmation to TRC (or at TRC's written direction to any Project Sponsor or Governmental Agencies) that a Project proposed by or Project Approval(s) obtained by TRC or a Project Sponsor is consistent with the terms of this Agreement. Such written confirmation shall be generally in the form

attached hereto as Exhibit T. At the request of a Resource Organization or the Conservancy, TRC shall provide such reasonable documentation as may be required for the Resource Organization or the Conservancy to make the determination of consistency. TRC agrees to reimburse, or to cause a Project Sponsor to reimburse, each Resource Organization and the Conservancy for all reasonable attorneys' fees incurred in connection with reviewing any documentation required to make the determination of consistency.

10.5 Future Challenges.

(a) Comprehensive Restrictions. The Conservancy and each Resource Organization and their respective employees, officers, governing boards and committees, either directly through its own group or indirectly through forming or funding another group's efforts, covenant not to take any action to challenge, administratively or judicially, actions taken by TRC, Project Sponsor or others in pursuing the entitlement and development of a Project as permitted by this Agreement, including any Project Approvals. The Conservancy and each Resource Organization also covenant that neither they nor their respective employees, officers, governing boards or committees, shall counsel, provide information to or assist in any manner others to challenge, administratively or judicially, such actions in pursuing the development of a Project as permitted by this Agreement, including any Project Approvals. Specifically, the Conservancy and each Resource Organization and their respective employees, officers, governing boards and committees, covenant not to oppose, take any action to seek the application or enforcement of any Applicable Laws, including, but not limited to, any new federal, state or local legislation, rules or regulations that may become effective, or advocate for the modification or conditioning of, in any administrative, regulatory, governmental, judicial or other public forum any of the following:

(i) Any Project or Project Approvals requested from or granted by any Governmental Agencies.

(ii) Any permits or approvals, or the perfection of permits or approvals, for the Existing Surface Water Diversions.

(iii) Any regional plan or amendment thereto that is substantially limited to the Ranch and would directly affect a Project or Project Approval.

(iv) The implementation of the Resource Agency policy conclusions contained in the letters collectively attached as Exhibit R.

(v) The Tehachapi Mountain Upland Multi-Species Habitat Conservation Plan prepared pursuant to Section 10 of the ESA and the Tejon Ranch Valley Floor Habitat Conservation Plan provided it lies entirely within the Ranch.

(b) Limitations. Nothing in this Section 10.5 shall preclude the Conservancy and the Resource Organizations from the following:

(i) Challenging or otherwise opposing any project to be undertaken by a public agency or utility on land to be condemned within the Ranch, but not including any Infrastructure reasonably required for any Project.

(ii) Supporting, challenging, or otherwise opposing any decision by the Resource Agencies with respect to listing or de-listing any species as threatened or endangered, or designating or modifying the designation of critical habitat other than designation of critical habitat that is substantially limited to the Development Areas.

(iii) Challenging or otherwise opposing any condemnation proceeding that would not have a material impact on TRC's ability to permit, entitle, develop or use a Project.

(iv) Challenging or otherwise opposing any Potential Project in the Unpurchased Acquisition Areas or any Infrastructure or Mitigation related to such Potential Project.

(v) Challenging or otherwise opposing any proposed development or other activities on inholdings within the perimeter boundaries of the Ranch.

(vi) Supporting, challenging or otherwise opposing any regional plan of general applicability, except where the effect of the regional plan is substantially limited to the Ranch and would directly affect a Project or Project Approval.

(vii) Challenging or otherwise opposing any transfers, acquisitions, or exchanges of water, or any contracts, entitlements, approvals or other arrangements pertaining to the transfer, acquisition or exchange of water or water rights (including transfers or exchanges for the purpose of water banking) (collectively "Water Transfers"), but excepting any Water Transfer that is solely for the purpose of serving any use or activity on the Ranch that is consistent with this Agreement or a Conservation Easement granted pursuant to this Agreement, including without limitation, any Project in the Centennial, Grapevine or TMV Development Areas, but not including Water Transfers for storage on the Ranch that will ultimately be used for the purpose of serving some use or activity other than on the Ranch.

(viii) Challenging or otherwise opposing any action of TRC that is inconsistent with this Agreement, subject to the specific limitations set forth in the Agreement; provided, however that as to Development Areas, the Resource Organizations may only exercise their rights pursuant to Section 9.3 in connection with a breach of Section 9.1.

(c) Critical Habitat Listing. If a Resource Organization (other than Sierra Club) or the Conservancy takes any action pursuant to Section 10.5(b)(ii), such Resource Organization (or the Conservancy) shall, as a condition to the right to take such action, not use such listing or critical habitat designation as a basis for modification of a Project (or the Project Approvals) and shall state that pursuant to the Agreement the Resource Organizations and the Conservancy are not advocating that the species listing and/or the designation of critical habitat requires changes to any Project or Project Approvals.

10.6 Sierra Club.

(a) Comprehensive Restrictions. The Sierra Club and its respective employees, officers, governing boards and committees covenant not to take any action to challenge, in a formal administrative or judicial proceeding, any of the following:

(i) Any Project or Project Approvals requested from or granted by any Governmental Agencies.

(ii) Any permits or approvals, or the perfection of permits or approvals, for the Existing Surface Water Diversions.

(iii) Any regional plan or amendment thereto that is substantially limited to the Ranch and would directly affect a Project or Project Approval.

(iv) The implementation of the Resource Agency policy conclusions contained in the letters collectively attached as Exhibit R.

(v) The Tehachapi Mountain Upland Multi-Species Habitat Conservation Plan prepared pursuant to Section 10 of the ESA and the Tejon Ranch Valley Floor Habitat Conservation Plan provided it lies entirely within the Ranch.

(b) Limitations. Nothing in Section 10.6(a) above shall preclude the Sierra Club from engaging in any of the activities set forth in Section 10.5(b) above.

(c) Critical Habitat Listing. If the Sierra Club takes any action pursuant to Section 10.5(b)(ii), the Sierra Club shall not, as a condition to the right to take such action, use such listing or critical habitat designation as a basis for modification of a Project (or the Project Approvals).

11. ASSISTANCE IN ACHIEVING GLOBAL ACCEPTANCE OF RESOLUTION. The Parties shall work cooperatively and use their best efforts to obtain global acceptance of the terms, provisions and conditions of this Agreement. The Parties shall meet and confer on a quarterly basis (until such time as the Parties mutually agree to another interval or that the meetings are no longer necessary) to discuss the implementation of this Agreement.

12. REMEDIES.

12.1 Available Remedies in the Event of Breach. The Parties agree that, in the event of a breach under this Agreement that is not cured, and following exhaustion of the process set forth in Section 12.3(a)-(c) (an "Event of Default"), the sole and exclusive remedies available to the other Parties shall be to: (a) enforce, by specific performance, the obligations hereunder of the Breaching Party; or, (b) obtain an appropriate injunction to ensure compliance with the terms of this Agreement; or, (c) exercise any other rights or remedies specifically set forth herein. No Party shall be required or compelled to take any action, or refrain from taking any action, other than those actions required or prohibited by this Agreement.

12.2 No Monetary Damages. Other than as specifically permitted in Sections 2.3 through 2.7, 3.6(c), 3.8(d), 3.10(g) and 15.6, no Party shall seek or be entitled to any monetary damages in the event of any breach or default under this Agreement; provided, however, this Section 12.2 shall not preclude monetary damages that are specifically permitted pursuant to a recorded Conservation Easement Agreement.

12.3 Processes in the Event of Breach.

(a) Notice of Breach. After the determination by a non-breaching Party ("Non-Breaching Party") that another Party ("Breaching Party") has breached or defaulted in the performance of any obligation under this Agreement, the Non-Breaching Party shall notify the Breaching Party (with a copy to any other Parties) of the determination in writing and provide a written explanation of the basis of the determination ("Notice of Breach"), and the Non-Breaching Party shall cure said breach or default or resolve the dispute with regard to the alleged breach or default within the Cure Period.

(b) Breach of Non-Opposition Provisions. If TRC claims that the Conservancy or a Resource Organization has acted in breach of its obligations under Section 10.5 or 10.6, TRC shall provide a Notice of Breach to the Breaching Party and (even if not the Breaching Party) the Conservancy, and the Breaching Party shall cure said breach or default within the Cure Period. If such breach relates to comments made in any administrative, regulatory, governmental, judicial or other public forum the Breaching Party shall deliver a letter consistent in the form attached hereto as Exhibit S to TRC and any applicable Governmental Agency prior to the earlier of the expiration of the Cure Period or (if there is a public hearing, meeting or comment period that is still open at the time the notice of the breach is received) the closing of the public hearing, meeting or comment period, which delivery shall fully cure the breach. If such breach pertains to the filing of a legal action in state or federal court, or any other action in a formal administrative or judicial proceeding, such breach may be fully cured by dismissal of such action by the Breaching Party during the Cure Period, so long as such dismissal results in full termination of such action with prejudice.

(c) Meet and Confer Obligation. Should the Parties disagree with the determination of breach of this Agreement, or the remedy necessary to cure any alleged breach, or if a breach has not been cured prior to the expiration of the Cure Period, as soon as is feasible, but in no event later than fifteen (15) days after receipt of the Notice of Breach or the expiration of the Cure Period, as applicable, or other mutually agreeable date, the senior management representatives of the Breaching Party and Non-Breaching Party shall meet and confer in good faith in an attempt to resolve any differences.

(d) Court Resolution of Breaches. It is the intent of the Parties that the Superior Court for the State of California in and for the County of Kern shall be the appropriate venue for resolving any disputes between the Parties as to the enforcement or interpretation of this Agreement except where the dispute concerns a Project or a Conservation Easement, in which case venue shall be in the County in which the Project or the majority of the land covered by the Conservation Easement is located. If an alleged breach or default is not resolved through the procedures set forth in Section 12.3(a)-(c) (and Section 3.9, where applicable), then the Non-Breaching Party shall be entitled immediately to seek relief from the court. No Party shall be

entitled to seek relief from the court or any other court of competent jurisdiction without having complied with procedures set forth in this Section 12.3(a)-(c) (and Section 3.9, where applicable), except where the alleged breach would result in irreparable harm if immediate relief were not obtained; provided that if the alleged breach is of the non-opposition obligations set forth in Section 10.5 or 10.6, the Breaching Party shall be given written notice and such opportunity to fully cure as is reasonable in the circumstances to avoid the irreparable harm (but in no circumstances longer than the period provided in Section 12.3(b)) prior to the filing of suit by the Non-Breaching Party.

(e) Notice of Cure. Within five (5) business days after the cure of any breach of this Agreement, the Breaching Party and Non-Breaching Party shall each deliver written notice to the other Parties that the breach has been cured.

12.4 Suspension of Conservation Fees and Advances.

(a) Breach by the Resource Organizations or Conservancy. In addition to the remedies specified in Section 12.1, upon the occurrence of an Event of Default by the Conservancy or the Resource Organizations (or a Resource Organization) arising under Article 10, it is the intent of the Parties that until the Event of Default has been cured, the Conservancy shall not have access to any Advances or Conservation Fees except to the extent required to pay for Mitigation Costs for which it is responsible. Accordingly, any Advances required by TRC or Conservation Fees received by the Conservancy shall be immediately deposited into the applicable Escrow Account commencing upon the expiration of the Cure Period until the Event of Default has been cured in accordance with Section 12.3. No more than once in any calendar month during any period of such suspension, the Conservancy shall request, and is entitled to receive, payment from the Escrow Holder, from amounts deposited into the Escrow Account, in an amount equal to: (i) the Mitigation Costs for the previous month, including any Mitigation Costs incurred by an Alternate Easement Holder or by TRC pursuant to Section 3.10(g), and (ii) the repayments of Advances due to TRC pursuant to Section 2.6. The request for payment shall be generally in the form attached as Exhibit W (a "Request for Payment"), except that the Escrow Holder shall be instructed to remit any amounts due to an Alternate Easement Holder or TRC directly to the Alternate Easement Holder or TRC, as applicable. Upon the cure of the Event of Default in accordance with Section 12.3 and the receipt of an authorization generally in the form attached as Exhibit X (a "Release Authorization"), the balance of funds in the Escrow Account, including all interest earned, shall be released to the Conservancy by the Escrow Holder. TRC, the Conservancy and the Resource Organization Designee each shall promptly execute and deliver each Request for Payment, and a Release Authorization upon the cure of an Event of Default, as described in this Section 12.4(a).

(b) Third-Party Challenges. If any third party files any legal action which challenges any Project Approval, or which could in any way have the effect of invalidating or modifying any Project Approval previously granted, or which could in any way have the effect of preventing or delaying any Project Approval, it is the intent of the Parties that until the legal action has been withdrawn or a final non-appealable judgment has been entered in the legal action, the Conservancy shall not have access to any Conservation Fees from the Development Area for which the Project Approval has been challenged, except to the extent that Conservation Fees from other Development Areas are not sufficient to satisfy the Annual

Funding Requirement or are paid to TRC to repay Advances pursuant to Section 2.6. If the Conservancy disputes that the legal action requires the deposit of the Conservation Fees into the Escrow Account pursuant to the terms of this Section 12.4(b), the Conservancy may request to meet and confer with TRC regarding the legal action. Regardless of whether the meet and confer process is requested, upon receipt of notice from TRC, the Conservancy shall immediately deposit such Conservation Fees into the applicable Escrow Account. Within thirty (30) days of the Effective Date, the Parties will agree on the specific procedures for the escrow and release of funds consistent with the intent set forth above, which shall be attached hereto as Exhibit Z. On the date on which a final non-appealable judgment has been entered in the legal action, regardless of whether the Project Approval is upheld, and upon receipt of a Release Authorization, the balance of funds in the Escrow Account, including all interest earned, shall be released to the Conservancy by the Escrow Holder. TRC, the Conservancy and the Resource Organization Designee each shall promptly execute and deliver each Request for Payment, and a Release Authorization when a final non-appealable judgment has been entered in the legal action, as described in this Section 12.4(b). For the purposes of this Section 12.4(b), the term "Project Approval" does not include any CEQA determination, development agreement, specific plan, parcel or subdivision map, zoning approval or determination, conditional use approval, grading permit, or the like that applies to a lot or lots that have been previously developed for the purposes contemplated by the Initial Entitlements or subsequent amendments thereto.

13. TERM OF AGREEMENT. The term of this Agreement shall commence on the Effective Date and expire on the date which is ninety-nine (99) years after the Effective Date; provided, however, that the expiration of the term of this Agreement shall not affect the term of any Conservation Easement or other documents executed and recorded hereunder that by its terms survives in perpetuity, including, but not limited to, the new agreement(s) entered into pursuant to Section 15.25.

14. REIMBURSEMENT OF FEES AND COSTS. Within five (5) business days after the receipt of documentation of the reasonable attorneys' and professional fees and costs incurred by the Resource Organizations in negotiating this Agreement between January 1, 2006 and the Effective Date, TRC shall deliver to Shute, Mihaly & Weinberger, LLP a check payable to Shute, Mihaly & Weinberger LLP to reimburse the Resource Organizations for those costs.

15. MISCELLANEOUS.

15.1 Sierra Club Exclusions. The term "Resource Organizations", "Party" and "Parties" as used in Articles 5, 6, 7, 8 and 11 and Sections 1.99, 1.144, 3.6, 10.1, 10.3, 10.4, 10.5 (except as cross referenced in Section 10.6(b)) and 15.6 shall include all of the Resource Organizations except the Sierra Club.

15.2 Binding on Successors. The covenants, terms, conditions, and restrictions of this Agreement shall be binding upon, and inure to the benefit of, the Parties hereto and their respective personal representatives, heirs, successors, and assigns, subject to the limitations on assignment set forth in Section 15.4. Where in this Agreement, any rights accrue to or obligations are imposed on an "Owner", such rights and obligations shall constitute a servitude running with the applicable portion of the Ranch, and shall run with the land:

15.3 **Right To Enforce.** Only the Parties may enforce this Agreement against any other Party and any such enforcement shall be subject to the terms and limitations set forth in this Agreement.

15.4 **Assignment.** Neither the Resource Organizations, collectively and individually, nor the Conservancy shall be entitled to assign or otherwise transfer their respective rights under this Agreement without the prior written consent of TRC, which consent may be withheld in the sole and absolute discretion of TRC; provided, however, that a Resource Organization shall be permitted to assign its interest in this Agreement without the consent of TRC, but only to a Successor which is acquiring all or substantially all of the assets of such Resource Organization as a result of a grant, merger, consolidation or by operation of law. TRC may assign its rights under this Agreement, in part or in whole, by written assignment executed by TRC and such assignee without the consent of the Resource Organizations but only to a Project Sponsor or in connection with the transfer or pledge of real property within the Ranch or in connection with an Exempt Transfer.

15.5 **Acreages Approximate**. Each Party acknowledges that the scale of the Ranch makes it difficult to estimate acreages and boundaries with precision and that all acreages referred to in this Agreement are approximate.

15.6 **No Brokers**. Each Party represents and warrants to the others that it has not dealt with any real estate broker or finder with respect to the negotiation of this Agreement or the transactions contemplated hereby. If any Claims for brokers' or finders' fees are made in connection with the consummation of this Agreement or the dedication or purchase of any Conservation Easement by virtue of the acts of the Resource Organizations or the Conservancy, or any contacts between any of the Resource Organizations or the Conservancy and the Person(s) making such claim, then the Resource Organizations and the Conservancy shall indemnify, defend (with counsel approved by TRC), protect and hold harmless TRC from and against such Claims if they are based upon any statement or representation or agreement by any of the Resource Organizations. If any claims for brokers' or finders' fees are made in connection with the consummation of this Agreement or the dedication or purchase of any Conservation Easement by virtue of the acts of TRC, or any contacts between TRC and the Person(s) making such claim, then TRC shall indemnify, defend (with counsel approved by the Resource Organization Designee), protect and hold harmless the Resource Organizations and the Conservancy from and against such Claims if they are based upon any statement or representation or agreement by TRC. This Section 15.6 shall survive the termination of this Agreement and the closing of any transaction for a Purchased Conservation Easement.

15.7 **Entire Agreement.** This Agreement constitutes the entire agreement among the Parties. Any amendment of this Agreement shall only be valid upon written execution of such amendment by the Parties. Further, none of the Parties shall be bound by any representations, warranties, promises, statements, or information unless expressly set forth herein.

15.8 **Factual Investigation.** Each Party acknowledges that it has conducted its own factual investigation, is not relying on any other Party, and assumes the risk that there are material unknown facts or that facts are other than as is presumed. The Parties further

acknowledge that they are aware that they may hereafter discover material facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Agreement, and further acknowledge that there may be future events, circumstances, or occurrences materially different from those they know or believe likely to occur, but that it is their intention to enter into and be bound by this Agreement.

15.9 Captions. The captions of the various sections in this Agreement are for convenience and organization only, and are not intended to be any part of the body of this Agreement, nor are they intended to be referred to in construing the provisions of this Agreement.

15.10 Exhibits. All exhibits referenced in this Agreement are attached hereto and made a part of and incorporated herein.

15.11 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

15.12 Statutory References. All statutory references in this Agreement shall mean and include the applicable statute, as amended from time to time, or, if such statute is repealed and replaced, any successor statute.

15.13 Notices, Demands and Communications Between the Parties. Formal written notices, demands, correspondence and communications between the Parties shall be sufficiently given if delivered personally (including delivery by private courier), dispatched by certified mail, postage prepaid and return receipt requested, or delivered by nationally recognized overnight courier service, or by electronic facsimile transmission followed by delivery of a "hard" copy to the offices of the Parties indicated below; provided, however, to the extent this Agreement specifies that notice shall be directed to the Resource Organization Designee, TRC shall not be obligated to deliver notice to all of the Resource Organizations if such notice is delivered to the Resource Organization Designee.

If to Resource Organizations:

Sierra Club
3435 Wilshire Boulevard, Suite 660
Los Angeles, CA 90010
Fax: (213) 387-8348
Attn: Bill Corcoran
Senior Regional Representative

National Audubon Society, Inc., d.b.a. Audubon California
4225 Hollis Street
Emeryville, CA 94608
Fax: (510) 601-1954
Attn: Graham Chisholm
Deputy Director, Director of Conservation

Natural Resources Defense Council, Inc.
1314 Second Street
Santa Monica, CA 90401
Fax: (310) 434-2399
Attn: Joel Reynolds
Senior Attorney

Endangered Habitats League
8424-A Santa Monica Boulevard, Suite #592
Los Angeles, CA 90069
Fax: (323) 654-1931
Attn: Dan Silver
Executive Director

Planning and Conservation League
1107 9th Street, Suite 360
Sacramento, CA 95814
Fax: (916) 448-1789
Attn: Executive Director

With a copy to:

Shute, Mihaly & Weinberger, LLP
396 Hayes Street
San Francisco, CA 94102
Fax: (415) 552-5816
Attn: William White

Sierra Club
Environmental Law Program
85 Second Street, Second Floor
San Francisco, CA 94105-3441
Fax: (415) 977-5793
Attn: Aaron Isherwood
Coordinating Attorney

National Audubon Society
225 Varick Street, 7th floor
New York, NY 10014
Fax: (212) 979-3024
Attn: General Counsel

If to Resource Organization Designee:

Terrell Watt, AICP
1937 Filbert Street
San Francisco, CA 94123
Fax: (415) 563-8701

With a copy to:	Shute, Mihaly & Weinberger, LLP 396 Hayes Street San Francisco, CA 94102 Fax: (415) 552-5816 Attn: Richard Taylor
If to TRC, Owner or the Owner Designee:	Tejon Ranch Corporation P.O. Box 1000 Lebec, CA 93243 Fax: (661) 248-3100 Attn: Teri Bjorn, General Counsel Overnight mail address: 4436 Lebec Road Lebec, CA 93243 Attn: Teri Bjorn, General Counsel
With a copy to:	Coblentz, Patch, Duffy & Bass, LLP One Ferry Building, Suite 200 San Francisco, CA 94111 Fax: (415) 989-1663 Attn: Harry O'Brien
If to Conservancy:	Tejon Ranch Conservancy c/o National Audubon Society, Inc., d.b.a. Audubon California 4225 Hollis Street Emeryville, CA 94608 Fax: (510) 601-1954 Attn: Graham Chisholm, Chair
With a copy to:	Caplan & Drysdale 1 Thomas Circle N.W. Washington, D.C. 20005 Fax: (202) 429-3301 Attn: Douglas Varley

Such written notices, demands, correspondence and communications may be sent in the same manner to such persons and addresses as any Party may from time-to-time designate in writing at least fifteen (15) days prior to the name or address change and as provided in this Section 15.13.

Notices personally delivered shall be deemed to have been received upon delivery. Notices delivered by certified mail, as provided above, shall be deemed to have been given and received on the first to occur of: (a) actual receipt by any of the addressees designated above as the Party to whom notices are to be sent; or (b) within five (5) days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Notices

delivered by nationally recognized overnight courier service (such as Federal Express) as provided above shall be deemed to have been received upon delivery. Notices delivered by electronic facsimile transmission shall be deemed received upon receipt of the sender of electronic confirmation of delivery, provided that a "hard" copy is delivered by overnight courier as provided above.

15.14 Counterparts. This Agreement may be executed in one or more counterparts, and all the counterparts shall constitute but one and the same Agreement, notwithstanding that all Parties hereto are not signatories to the same or original counterpart.

15.15 Nonwaiver. Unless otherwise expressly provided in this Agreement, no waiver by a Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party. No delay or omission in the exercise of any right or remedy accruing to any Party upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by a Party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant or condition.

15.16 Authority. Each of the persons signing this Agreement on behalf of a Party hereby represents that he or she has the requisite authority to bind the Party on whose behalf he or she is signing this Agreement, and that all requisite approvals of such Party, its board of directors, shareholders, members, general partners, or others have been obtained. Upon the request of any Party, each Party shall deliver evidence of such authorization to all other Parties. Each of the Parties represents and warrants that the execution and delivery of this Agreement by such Party, and the performance of such Party's obligations hereunder, have been duly authorized by such Party, and that all consents or approvals necessary to cause this Agreement to be binding upon such Party have been obtained and are in full force and effect.

15.17 Understanding of Terms. The Parties each hereby affirm and acknowledge that they have read this Agreement, that they know and understand its terms, and have signed it voluntarily and after having been advised by counsel. The Parties have had a full and unhindered opportunity to consult with their attorneys, accountants, financial advisors and such other consultants, as they may have desired prior to executing this Agreement.

15.18 Construction. The Parties acknowledge that each Party and its counsel have reviewed this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendment or exhibits hereto.

15.19 No Third Party Beneficiaries. This Agreement shall not create or bestow any lien or property right in any third party. The Parties agree that no third party beneficiary to this Agreement exists and that nothing contained herein shall be construed as giving any other Person third party beneficiary status.

15.20 No Requirement to Build. The Parties hereto agree that, notwithstanding anything to the contrary herein, this Agreement shall not obligate TRC to undertake all or any part of a Project or Potential Project; however, if and when TRC proceeds to permit, entitle,

develop or use a Project, TRC shall do so in conformance with the applicable provisions of this Agreement.

15.21 No Acquisition Funding. The Parties acknowledge that no acquisition funding is a required condition precedent to the Parties' execution and performance of the terms and provisions of this Agreement.

15.22 Confidentiality. Unless disclosure is otherwise required under this Agreement or under Applicable Law, the Resource Organizations and the Conservancy shall keep and shall cause their respective agents, consultants and employees to keep confidential all tests, reports, documents, analyses, and opinions obtained by the Resource Organizations or the Conservancy with respect to any portion of the Conservation Easement Area or the Ranch, including, but not limited to, any information provided by TRC or received or prepared by the Resource Organizations or the Conservancy in connection with their factual, physical and legal examinations and inquiries regarding any portion of the Conservation Easement Area (collectively, "Confidential Information"), except that the Resource Organizations, and the Conservancy may disclose Confidential Information to their respective consultants and legal counsel and funders (subject to Sections 8.6(b) and 8.6(c)), provided that the Resource Organizations, and/or the Conservancy obtain an agreement in writing of such consultants and counsel (and if applicable, funders) to keep the Confidential Information confidential. Neither the contents nor the results of any Confidential Information shall be disclosed by the Resource Organizations or the Conservancy or their respective agents, consultants and employees without TRC's prior written approval, which TRC may grant or withhold at TRC's sole and absolute discretion, unless and until the Resource Organizations, and/or the Conservancy are legally compelled to make such disclosure. This Section 15.22 shall terminate with respect to Confidential Information specific to (a) the Centennial, Grapevine and TMV Development Areas, on the earlier of (i) thirty (30) days after the Environmental Impact Report for the applicable Project is circulated for public comment as required by CEQA or (ii) June 30, 2009, or (b) the Tehachapi Mountain Upland Multi-Species Habitat Conservation Plan covered lands, on the earlier of (i) thirty (30) days after the Environmental Impact Statement is circulated pursuant to NEPA, or (ii) June 30, 2009, or (c) any other areas on the Ranch, on June 30, 2009.

15.23 Severability. The invalidity of any portion of this Agreement shall not invalidate the remainder. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction, the Parties shall amend this Agreement and/or take other action necessary to achieve the intent and purpose of this Agreement in a manner consistent with the ruling of the court.

15.24 Further Assurances. The Parties shall promptly perform, execute and deliver or cause to be performed, executed and delivered any and all acts, deeds and assurances, including the delivery of any documents, as any Party may reasonably require in order to carry out the intent and purpose of this Agreement. As Final Maps are recorded within each Development Area, TRC will cause permanent restrictions to be recorded against: (a) the "Not Developed" areas, as generally described on Exhibits J-1 and J-2, (b) the areas outside of the "Development Envelope," as generally described on Exhibit J-3, and (c) the areas which lie outside of areas that may be Developed within the "Development Envelope," as generally

described on Exhibit J-3, with the precise boundaries of all such areas to be finally determined consistent with this Agreement.

15.25 Termination of Agreement Following Recordation of Last Conservation Easement. At any time after the recordation of the last Conservation Easement that is required to be tendered by TRC pursuant to this Agreement, the Conservancy and the Resource Organizations agree, upon the written request of the Owner Designee, to execute, acknowledge and deliver a document or instrument reasonably required to evidence the termination of this Agreement of record with respect to the Ranch, provided that Owner (and the owners of each Development Area) simultaneously enter into a new agreement with the Conservancy and the Resource Organizations, in form and substance reasonably satisfactory to the Conservancy and the Resource Organizations, which new agreement shall include the obligations, requirements, conditions and provisions of this Agreement which have not been fully and finally satisfied and recognize the termination, with regard to the Ranch, of the obligations, requirements, conditions and provisions of this Agreement contained in Article 5, Article 6, Article 8 and such other Articles and Sections which have been fully and finally satisfied.

15.26 Memorandum of Agreement. TRC shall cause a memorandum of this Agreement to be recorded against the Ranch in the Official Records of the Counties of Kern and Los Angeles. The memorandum shall (a) include a declaration of restrictions or similar provision to ensure the applicable provisions of this Agreement run with the land and (b) provide record notice of the terms and conditions of this Agreement. Within thirty (30) days after the Effective Date, TRC shall draft and deliver to the Resource Organization Designee a proposed form of memorandum consistent with this Agreement. The Resource Organization Designee shall provide TRC any comments to the proposed form of memorandum within fifteen (15) days after delivery of the draft by TRC. TRC and the Resource Organization Designee shall thereafter work cooperatively and in good faith to finalize, execute, acknowledge and record the memorandum as soon as practicable. Promptly upon TRC or the Owner Designee's request following the expiration or termination of this Agreement, the Conservancy and the Resource Organizations shall deliver to TRC and/or the Owner Designee a duly executed and acknowledged quitclaim deed suitable for recordation in the Official Records of the Counties of Kern and Los Angeles and in form and content reasonably satisfactory to TRC and the Owner Designee, for the purpose of evidencing in the public records the termination of this Agreement. After the initial recordation of the memorandum and at the reasonable request of any Party, the Parties shall cooperate to re-record the memorandum as reasonably necessary.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed one or more copies of this Agreement as of the Effective Date.

TRC:

TEJON RANCH CO.,
a Delaware corporation

By: _____
Name: Robert A. Stine
Title: President and Chief Executive Officer

TEJON RANCHCORP,
a California corporation

By: _____
Name: Robert A. Stine
Title: President and Chief Executive Officer

Signing for the limited purposes of acknowledging the obligations as set forth in Sections 2.2, 8.3, 9.1(b), 9.4 and 9.6:

CENTENNIAL FOUNDERS LLC,
a Delaware limited liability company

By: _____
Name: Greg Medeiros
Title: Authorized Signator

Signing for the limited purposes of acknowledging the obligations as set forth in Sections 8.3, 9.1(d) and 9.6:

TEJON INDUSTRIAL CORP.,
a California corporation

By: _____
Name: Robert A. Stine
Title: President

Signing for the limited purposes of acknowledging the obligations as set forth in Sections 2.2, 8.3, 9.1(e), 9.4 and 9.6:

TEJON MOUNTAIN VILLAGE LLC,
a Delaware limited liability company

By: _____
Name: Enc.s A. Ka.ia
Title: Authorized Signator

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Title: President and Chief Executive Officer

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By: _____
Name: Robert A. Stine
Title: President and Chief Executive Officer

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a Delaware limited liability company

By: Greg Medeiros
Name: Greg Medeiros
Title: Authorized Signator

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By: _____
Name: Robert A. Stine
Title: President

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a Delaware limited liability company

By:_____
Name: Enea A. Kane
Title: Authorized Signator

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TEJON MOUNTAIN VILLAGE LLC,
a Delaware limited liability company

By:_____
Name: Eneas A. Kane
Title: Authorized Signator

[SIGNATURES CONTINUE ON NEXT PAGE]

RESOURCE ORGANIZATIONS:

SIERRA CLUB,
a California nonprofit public benefit corporation

By: Bill Corcoran
Name: Bill Corcoran
Title: Senior Regional Representative

By: _____
Name: Jim Dodson
Title: Authorized Representative

NATIONAL AUDUBON SOCIETY, INC., a New York nonprofit corporation, D.B.A. Audubon California

By: _____
Name: Graham Chisholm
Title: Deputy Director, Director of Conservation

NATURAL RESOURCES DEFENSE COUNCIL, a New York nonprofit corporation

By: _____
Name: Joel Reynolds
Title: Senior Attorney

ENDANGERED HABITATS LEAGUE,
a California nonprofit public benefit corporation

By: _____
Name: Dan Silver
Title: Executive Director

PLANNING AND CONSERVATION LEAGUE, a California nonprofit public benefit corporation

By: _____
Name: Bill Center
Title: President, Board of Directors

By: _____
Name: Gary A. Patton
Title: General Counsel

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Name: Dan Silver
Title: Executive Director

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By: _____
Name: Bill Center
Title: President, Board of Directors

By: _____
Name: Gary A. Patton
Title: General Counsel

[SIGNATURES CONTINUE ON NEXT PAGE]

CONSERVANCY:

TEJON RANCH CONSERVANCY,
a California nonprofit public benefit corporation

By: _____
Name: Graham Chisholm
Title: Chair

[no text on this page]

LIST OF EXHIBITS

EXHIBIT R – Resource Agency Letters re Mitigation
EXHIBIT S – Non-Opposition Letters
EXHIBIT T – Form of Conformity Letter
EXHIBIT U – Joint Public Statement
EXHIBIT V – Form of Resource Organization Breach Letter
EXHIBIT W –Form of Reimbursement Request from Escrow Holder
EXHIBIT X – Form of Release of Funds from Escrow Holder
EXHIBIT Y – WCB Conservation Easement Policies
EXHIBIT Z – Conservation Fee Escrow Procedures

EXHIBIT L

Conservation Fee Principles

- The Conservation Fee shall equal one quarter percent (0.25%) of the retail sales price of each covered transaction.
- The retail sales price shall specifically include:
    - The sum of actual cash paid, the fair market value of services performed or real and personal property delivered or conveyed in exchange for the covered transaction (or interest therein).
    - The amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the sales price, or remaining unpaid on the property at the time of the transfer thereof, but excluding any Conservation Fees.
- The retail sales price shall specifically exclude:
    - Any amount paid to acquire a membership or similar interest in any club, association or other organization offering its members access to recreational facilities including, but not limited to, any golf course, fitness facility or the like, provided that membership in any such organization is optional and not required to be purchased along with the covered transaction. If, in connection with a covered transaction, a membership is transferred and the contract does not separately specify the amount paid for the membership, the Conservancy may reasonably determine the portion of the total price fairly allocable to the price of the membership and the portion fairly allocable to the covered transaction.
- Covered transactions shall specifically include:
    - Initial sales and resales of custom lots. Custom lots shall include homesites in any Development Area such as those depicted as "Custom Home Sites" on Exhibit J-3.
    - Initial sales and resales of single family attached and detached homes.
- Covered transactions shall specifically exclude:
    - Production lot sales, except in the event a lot is acquired by an adjacent homeowner
    - Sales of single family attached or detached homes that are designated workforce or affordable housing for moderate or lower income families.
    - Sales of lots or parcels intended for the construction of multi-family, rental units or the sale of parcels on which multi-family, rental units are constructed.
    - Any sale or transfer that does not result in a "change in ownership" as defined in California Revenue and Taxation Code Section 60 et seq.

- A reservation of easements, access rights or licenses, water rights or other similar rights benefitting or encumbering the Residential Lots or any common areas, or any subsequent transfer of any such easements or rights.
- A transfer of real property to any public agency, entity or district, or any utility service provider.
- A transfer to an association (defined in California Civil Code Section 1351(a)) as common area (defined in California Civil Code Section 1351(b)).
- A transfer of Residential Lots to one or more TRC Entities.

- The Conservation Fee shall be established consistent with California Civil Code Section 1098 and shall be payable in perpetuity.
- The Conservancy, or its qualified successor, shall be the recipient of the Conservation Fees.
- TRC shall be authorized to receive reimbursement of Advances pursuant to Section 2.6 of this Agreement.
- TRC (or the applicable Project Sponsor) shall have the right to amend and restate each initial Conservation Fee Covenant in accordance with Section 2.2(e) of this Agreement.

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NEVADA

MOUNTAIN AREA PRESERVATION FOUNDATION,

Petitioner/Plaintiff,

v.

TOWN OF TRUCKEE, TOWN COUNCIL OF THE TOWN OF TRUCKEE, and DOES 1 through 10, inclusive,

Respondents/Defendants.

TRUCKEE LAND LLC, and DOES 11 through 20, inclusive,

Real Parties in Interest.

Case No. T02/0318C

STIPULATION AND [PROPOSED] ORDER FOR ENTRY OF JUDGMENT PURSUANT TO TERMS OF SETTLEMENT

[Code Civ. Proc., § 664.6]

Assigned for all purposes:
Honorable Carl F. Bryan II
Department: 5

Filing date of action: July 26, 2002
Trial date: January 31, 2003

Pursuant to Code of Civil Procedure section 664.6, Petitioner/Plaintiff Mountain Area Preservation Foundation ("MAPF"), Respondents/Defendants Town of Truckee and Town Council of the Town of Truckee (collectively, "Town"), and Real Party in Interest Truckee Land LLC ("Truckee Land") stipulate and agree to settle the complaint and petition for writ of mandate filed in this action (the "Petition") on the following terms:

1. Truckee Land shall record a transfer fee covenant meeting the requirements of this paragraph in the Official Records of the County of Nevada. The transfer fee covenant shall be by and between the Truckee Donner Land Trust (TDLT) and each owner of a residential lot or of an undivided fractional interest in the Old Greenwood development. The transfer fee covenant shall provide that each owner of a residential lot or an undivided fractional interest within the Old Greenwood master planned community, other than the Old

Greenwood Master Association with respect to common area, shall pay to the TDLT a transfer fee equal to one-fourth of 1% of the consideration paid upon the conveyance of each such lot or fractional undivided interest. The covenant shall state that it is a covenant and/or equitable servitude that runs with the land. The covenant shall provide that the following transfers shall be exempt from, and shall not be subject to, the transfer fee: bulk or wholesale conveyances of lots or subdivision interests from Truckee Land or other Truckee Land related entity to another entity, or any intermediate, subsequent and successive bulk or wholesale conveyances to an entity who intends to sell to members of the public on a retail basis; conveyances for utilities; conveyances to the Old Greenwood Master Association with respect to common areas; and conveyances by the owner of a subdivision interest as security for a loan, or into an inter vivos or similar trust for estate planning purposes, or to a spouse or other closely related family members for estate planning purposes, or any other conveyance ordinarily exempted from transfer fee covenants (similar to the exemptions to a "change of ownership" for purposes of reassessment by the County Assessor currently listed under Revenue and Taxation code section 62 et. seq.). The covenant establishing the transfer fee shall be subject to review and reasonable approval by the TDLT and Dennis Crabb, Truckee Town attorney, and shall be recorded as soon as reasonably possible but in any event prior to any real estate sales transaction within the subdivision. The covenant shall include language: (1) for reasonable written notice of sales transactions to the TDLT, (2) for right of enforcement in the TDLT, including but not limited to, specific performance, damages, lien rights, reasonable interest and late charges, and reasonable prevailing party attorney fees, and (3) that it run with the land in perpetuity. As used in this paragraph, the term "consideration" means the gross consideration paid for the interest conveyed, including the sum of actual cash paid, the fair market value of services performed or real and personal property delivered or conveyed in exchange for the transfer, and the amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price, or remaining unpaid on the property at the time of the transfer. The parties intend the foregoing description to

be a fair and accurate summary of the terms and conditions to be included in the transfer fee covenant.

2. Not more than 70 days after entry of judgment in accordance with this stipulated settlement, Truckee Land shall:

a. Pay $500,000 to the TDLT; and

b. Pay $150,000 to Shute, Mihaly and Weinberger LLP.

3. The transfer fee established by paragraph 1 and the payment required by paragraph 2(a) shall be used by the TDLT, at its sole discretion, for the acquisition of interests in land for preservation as open space in the greater Truckee area.

4. In accordance with the Town's approval of the Old Greenwood project on June 20 and June 28, 2002, pursuant to Ordinance number 2002-05 and Resolution numbers 2002-29 and 2002-30: (a) not more than 19% of the site shall be developed; (b) not less than 81% of the site shall remain as undeveloped open space (as approved); and (c) Truckee Land shall comply with Condition of Approval no. 57 (Ordinance No. 2002-06, Old Greenwood Planned Development – Development Agreement, Exhibit C), which action will ultimately result in conveyance of the conservation easement(s) to the TDLT.

5. Except as otherwise provided in this stipulated agreement, each party shall bear its own attorneys' fees and costs. Notwithstanding the foregoing, this paragraph shall not apply to any claim for attorneys' fees, costs, or expenses arising from proceedings related to enforcement of this stipulated settlement.

6. MAPF agrees that all of its claims in this action are dismissed with prejudice. Thus, the parties intend that this stipulated settlement will resolve, with finality, the claims and allegations set forth in the Petition. MAPF shall not challenge or oppose subsequent approvals or permits granted for the Old Greenwood project by the Town or by other agencies with jurisdiction over the Old Greenwood project, provided (a) those approvals or permits are consistent with this stipulated settlement, and (b) the

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density and intensity of uses does not exceed the density and intensity of uses approved by the Town in June 2002 as described above.

7. The dismissals and other releases set forth in this stipulation are expressly limited to the claims set forth in this action and to other potential claims regarding the Old Greenwood project as described in paragraph 6 and do not apply to any claims arising out of, or in connection with, the approval of other projects. Neither this stipulated settlement nor any action taken to carry out this settlement (a) is or may be construed or used as an admission or concession by or against any party to this settlement of any fault, wrongdoing, or liability; or (b) shall have any precedential or preclusive effect in any future litigation, or may be offered or received in evidence in any action or proceeding for any purpose, except with respect to the Old Greenwood project as described herein or as necessary to enforce the provisions of this settlement.

8. This stipulated settlement shall run with the land, and shall apply to Truckee Land's successors and assigns.

9. This stipulated settlement is subject to, and contingent upon, the Court's entry of judgment in accordance with its terms. If the Court does not enter judgment in accordance with the terms of this stipulated settlement, then this stipulated settlement shall have no force or effect.

10. The parties request that the Court retain jurisdiction to enforce the settlement until performance in full of its terms. The parties agree that, in seeking Court enforcement of the settlement, the moving party may request specific performance among other remedies.

Dated: March 17, 2003

SHUTE, MIHALY & WEINBERGER, LLP

By: Rachel B. Hooper

Attorneys for Petitioner
MOUNTAIN AREA PRESERVATION FOUNDATION

Dated: March 17, 2003

ROLLSTON, HENDERSON, RASMUSSEN & CRABB

By: Dennis Crabb
Dennis Crabb

Attorneys for Respondents TOWN OF TRUCKEE and TOWN COUNCIL OF THE TOWN OF TRUCKEE

Dated: _____, 2003

REMY, THOMAS & MOOSE, LLP

By: _____
Whitman F. Manley

Attorneys for Real Party in Interest TRUCKEE LAND, LLC

* * *

IT IS HEREBY ORDERED that judgment be entered in accordance with the terms of the stipulated settlement. The Court retains jurisdiction over the parties at their request in order to enforce the settlement until performance in full of its terms.

Dated: _____

SO ORDERED.

_____
Hon. Carl F. Bryan II
Nevada County Superior Court Judge

30105128.004

Mountain Area Preservation Foundation v. Town of Truckee, et al.
Nevada County Superior Court Case No. T02/0318C

PROOF OF SERVICE

I am a citizen of the United States, employed in the City and County of Sacramento. My business address is 455 Capitol Mall, Suite 210, Sacramento, California 95814. I am over the age of 18 years and not a party to the above-entitled action.

I am familiar with Remy, Thomas and Moose, LLP's practice whereby the mail is sealed, given the appropriate postage and placed in a designated mail collection. Each day's mail is collected and deposited in a U.S. mailbox after the close of each day's business.

On March 17, 2003, I served the following:

LETTER TO HONORABLE CARL F. BRYAN, II; STIPULATION AND [PROPOSED] ORDER FOR ENTRY OF JUDGMENT PURSUANT TO TERMS OF SETTLEMENT

X On the parties in this action by causing a true copy thereof to be placed in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing mail addressed as follows; or

___ On the parties in this action by causing a true copy thereof to be delivered via Federal Express to the following person(s) or their representative at the address(es) listed below; or

X On the parties in this action by causing a true copy thereof to be delivered by facsimile machine number (916) 443-9017 to the following person(s) or their representative at the address(es) and facsimile number(s) listed below; or

___ On the parties in this action by causing a true copy thereof to be hand-delivered to the following person(s) or representative at the address(es) listed below:

Rachel B. Hooper Brian J. Johnson Shute, Mihaly & Weinberger LLP 396 Hayes Street San Francisco, CA 94102 Facsimile: (415) 552-5816	Attorneys for Petitioner Mountain Area Preservation Foundation
Dennis Crabb Rollston, Henderson, Rasmussen & Crabb 591 Tahoe Keys Blvd. #D8 S. Lake Tahoe, CA 96150 Facsimile: (530) 544-5053	Attorneys for Respondent Town of Truckee, Town Council of the Town of Truckee

I declare under penalty of perjury that the foregoing is true and correct and this Proof of Service was executed this17th day of March, 2003, at Sacramento, California.

TERESA QUINN

Teresa W. Quinn

EXHIBIT C

FIDELITY NATIONAL TITLE

RECORDING REQUEST BY:

WHEN RECORDED MAIL TO:

COX, CASTLE & NICHOLSON
19800 MacArthur Blvd., Suite 600
Irvine, CA 92602
Attn: D. Scott Turner, Esq.

Nevada, County Recorder
Jewett-Burdick
DOC- 2003-0059056-00
Acct 6-Fidelity National Title Co
Tuesday, NOV 04, 2003 13:38:00
REC $19.00|CCF $2.00|SBS $14.00
MIC $1.00|AUT $15.00|
Ttl Pd $51.00 Nbr-0000270569
KLB/KB/1-15

(Space Above for Recorder's Use)

COMMUNITY BENEFIT FEE AGREEMENT

(Old Greenwood)

This Community Benefit Fee Agreement ("**Agreement**") is made and entered into as of this 29 day of OCT, 2003, by and between the Old Greenwood Community Foundation, a California nonprofit public benefit corporation ("**OGCF**"), and Truckee Land, LLC, a Delaware limited liability company (together with any Affiliate thereof, the "**Truckee Land**"). OGCF and Truckee Land may be referred to herein collectively as the "**Parties**", or each, individually, as a "**Party**". Capitalized terms within the Recitals are defined in Section 1 unless otherwise defined therein.

RECITALS

A. Truckee Land owns that certain real property located in the Town of Truckee, Nevada County, California, commonly known as the Old Greenwood planned development ("**Old Greenwood**"), as described more fully at Exhibit "A" attached hereto. Truckee Land will transfer such property to Old Greenwood, LLC, a Delaware limited liability company (together with any Affiliate thereof, "**Master Developer**"), so that Master Developer may provide for and orchestrate the development of Old Greenwood. If and when fully developed, Old Greenwood is planned to include a golf course and different types of residential housing all in accordance with that certain Development Agreement dated August 14, 2002, as approved by the Town of Truckee.

B. OGCF has been organized to provide services to the residents of Old Greenwood which encourage and support the preservation of the value of real property within the community including, but not limited to, (i) engaging in community projects for the benefit and welfare of the residents of Old Greenwood; (ii) commissioning marketing and advertising programs which positively portray the Old Greenwood community; (iii) donating funds to other nonprofit organizations which benefit the residents of Old Greenwood; (iv) sponsoring/hosting civic and recreational programs and fairs within the community; and (v) otherwise engaging in activities which enhance the experience of living in Old Greenwood.

C. OGCF expects to receive the funds it needs to operate from the Community Benefit Fees ("**Benefit Fees**") set forth herein.

D. Truckee Land believes the services and activities OGCF will provide will benefit all of the Lots and Condominiums in the Old Greenwood community and enhance their enjoyment and value. Truckee Land and OGCF have agreed that the funds OGCF requires to operate will be provided by committing contributions of Benefit Fees to OGCF in connection with transfers of Lots or Condominiums in Old Greenwood.

AGREEMENT

NOW THEREFORE, for mutual consideration, the receipt and sufficiency of which is hereby acknowledge by the Parties, and the covenants, conditions, restrictions and other promises set forth in this Agreement, the Parties hereby agree as follows:

1. **Definitions.** As used herein, the following terms shall have the following meanings:

1.1 **Affiliate.** Any entity described by Corporations Code section 150.

1.2 **Agreement.** This Community Benefit Fee Agreement.

1.3 **Beneficiary.** A beneficiary under a Mortgage and the assignees of such beneficiary.

1.4 **Community Benefit Fee.** Also referred to herein as the "Benefit Fee", is the fee to be paid to OGCF in connection with each Transfer. The Benefit Fee shall be equal to one percent (1%) of the Purchase Price in each transaction resulting in a Transfer. Notwithstanding the foregoing, the Benefit Fee shall total $500 for any transfer of real property (regardless of the size, number or actual value of the Lots or parcels transferred) from Truckee Land to Master Developer, or from Truckee Land or Master Developer to any Merchant Builder.

1.5 **Condominium.** An estate in real property as defined in California Civil Code Sections 783 and 1351(l), including any condominium which is a volume of real property that is not located entirely within a building (a "site" condominium).

1.6 **Covered Property.** The residential portion of the Old Greenwood community as defined at Exhibit "B" attached hereto.

1.7 **Dispute.** Any dispute between or among any of Truckee Land, OGCF and Master Developer, or between any Owner and Truckee Land, OGCF and/or Master Developer, concerning the amount, obligation to pay or other issue concerning the Benefit Fees under this Agreement or concerning any other dispute arising under this Agreement.

1.8 **Lot.** Any lot or parcel of land shown on any Recorded subdivision map or Recorded parcel map of any portion of the Covered Property, or any timeshare estate or timeshare use, as defined at Business and Professions Code section 11003.5, derived therefrom, and any and all improvements thereon.

1.9 **Master Developer.** Old Greenwood, LLC, a Delaware limited liability company, or any Affiliate thereof.

1.10 **Merchant Builder.** Any person or entity, or any Affiliate thereof, who owns or acquires any portion of the Covered Property for the purpose of developing five (5) or more Lots or Condominiums (10 or more timeshare estates or timeshare uses) and reselling such Lots or Condominiums to the general public.

1.11 **Mortgage.** Any Recorded mortgage or deed of trust or other conveyance of one or more Lots, Condominiums or other portions of the Covered Property to secure performance of an obligations, which will be reconveyed upon completion of such performance. A "First Mortgage" is any Mortgage with lien priority over any other Mortgage.

1.12 **Official Records.** The official records of the Nevada County, California, Recorder.

1.13 **OGCF.** Old Greenwood Community Foundation, a California nonprofit public benefit corporation.

1.14 **Old Greenwood.** Shall have the meaning ascribed thereto in Recital A, set forth above.

1.15 **Owner.** The Person or Persons, including Truckee Land, Master Developer and the Merchant Builders, holding record title to any Lot or Condominium. The term "Owner" includes a seller under an executory contract of sale but excludes Beneficiaries.

1.16 **Person.** A natural individual or any entity with the legal right to hold title to real property.

1.17 **Purchase Price.** The total purchase price or other consideration given by the transferee to the transferor in a transaction resulting in a Transfer, including, but not limited to, the sum of actual cash paid, the fair market value of services performed or real and personal property delivered or conveyed in exchange for the Transfer, and the amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price, or remaining unpaid on the property at the time of the Transfer, but excluding any third-party cost or charge incurred by the transferor or the transferee in connection with the transaction.

1.18 **Recorded.** The recordation, filing or entry of a document in the Official Records.

1.19 **Transfer.** The sale or exchange of a Lot or Condominium by an Owner (other than Master Developer or a Merchant Builder) to a transferee (other than an Affiliate of a Merchant Builder). None of the following transactions shall constitute a "Transfer" under this Agreement:

(1) The transfer of an interest in a Lot or Condominium to secure the performance of an obligation, such as a Mortgage or a lien, which will be reconveyed upon the completion of such performance.

(2) A transfer resulting from a foreclosure (by judicial foreclosure or trustee's sale) by the Beneficiary of a First Mortgage, or by an association (as defined in Civil Code section 1351(a)), or by an association described in a Public Report issued by the California Department of Real Estate for the Covered Property or any part thereof, or a transfer in lieu thereof.

(3) A transfer of a Lot or Condominium by a transferor or the transferor's spouse into a revocable intervivos trust which is an exempt transfer under California Revenue and Taxation Code Section 62(d).

(4) Any interspousal transfer (as defined in California Revenue and Taxation Code 63) or transfer between parents and any of their children (as defined in California Revenue and Taxation Code Section 63.1).

(5) A change in ownership where the transferee is not locally assessed by the Office of the County Tax Assessor.

(6) Any transfer of real property to any public agency, entity or district, or any utility service provider.

(7) Any transfer of real property to an association (defined in Section 1351(a) of the California Civil Code) as common area (defined in Section 1351(b) of the California Civil Code).

(8) The rental or lease of a Lot or Condominium.

(9) An exchange pursuant to an exchange program as defined in California Business and Professions Code section 11003.5(d).

1.20 Truckee Land. Truckee Land, LLC, a Delaware limited liability company.

2. Acknowledgment of Benefit. OGCF represents that it will use the Benefit Fees for the purposes described in Paragraph "B" of the Recitals. Decisions regarding all aspects of the method and manner in which such purposes shall be achieved shall be made by OGCF in its sole discretion. Truckee Land believes, nonetheless, that the services and activities to be provided by OGCF will enhance the value of and benefit each Lot and Condominium in the Covered Property. Each Owner who acquires a Lot or Condominium in the Covered Property by such acquisition agrees to and acknowledges the statements made in this Section.

3. Community Benefit Fee.

3.1 When Due and Paid. A Benefit Fee in the amount determined as provided in Section 1.4 shall be paid to OGCF each time a Lot or Condominium is Transferred (subject to the exchange transfer limit specified in Section 3.5). Such payment shall be made on or before the closing or effective date of the Transfer.

3.2 **Late Charges.** The Benefit Fee shall be considered late if not paid within five (5) business days after the closing or effective date of the Transfer. A late fee of one-half of one percent (0.5%) of the Benefit Fee shall apply thereafter for each day such payment is late, up to a maximum of ten percent (10%) of the Benefit Fee.

3.3 **Covenant to Pay and Creation of Lien.** Each Owner, by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay the Benefit Fee to OGCF, if applicable. Such fee, together with interest thereon, late charges, attorneys' fees, court costs, and other costs of collection thereof, as hereinafter provided, shall be a lien and charge upon the Lot or Condominium the Transfer of which gives rise to the Benefit Fee.

3.4 **Mandatory Notice.** Every Owner must notify OGCF within twenty (20) days of the execution of a contract to Transfer a Lot. Such notice shall include the name of the transferor and transferee; an identification of the Lot or Condominium being Transferred; the proposed Purchase Price; the proposed closing or effective date; the name, address and phone number of the escrow holder for the Transfer; and the name of the escrow officer. If any of the information set forth above is not available when the notice is originally sent to OGCF, the Owner shall notify OGCF as soon as such information becomes available. In addition, each Owner shall accurately update OGCF if any of such information provided shall change on or prior to the closing or effective date of the Transfer.

3.5 **Exchange Transfer.** If a particular transaction involves more than one Transfer solely because the Lot or Condominium is held for an interim period (not to exceed 24 hours) by an accommodation party as a part of a tax-deferred exchange under the Internal Revenue Code, and provided there is no increase in consideration given, then for the purposes of this Agreement, only one Transfer shall be deemed to have occurred and only one Benefit Fee must be paid in connection therewith, and the accommodation party shall not have any liability for payment of such Benefit Fee. Similarly, if a particular transaction involves more than one Transfer solely because the Lot or Condominium is held/owned for an interim period (not to exceed 72 hours) by Master Developer as a part of a Lot resale, then for the purposes of this Agreement, only one Transfer shall be deemed to have occurred and only one Benefit Fee must be paid in connection therewith, and Master Developer shall not have any liability for payment of such Benefit Fee.

3.6 **Escrow Demand.** OGCF is authorized to place a demand for payment of the Benefit Fee in the escrow (if any) for each Transfer. The demand shall state (a) either the amount of the Benefit Fee that is due or the formula for calculating the amount of the Benefit Fee that is due, and (b) that the Benefit Fee is due on or before close of the escrow for the Transfer. The transferor and transferee shall execute any and all documents reasonably requested by escrow holder to effectuate such payment on or before the close of escrow.

3.7 **Benefit Fee Payor.** The obligation to pay the Benefit Fee in each Transfer is a joint and several obligation of the transferor and the transferee in each transaction and not an obligation of any other Owner of a Lot or Condominium subject to this Agreement. The transferor and transferee in each transaction may, as a matter between themselves, allocate

the obligation to pay in any manner they so choose. If the transferor and transferee fail to pay the Benefit Fee, OGCF may take all actions authorized at law or equity, or otherwise set forth within this Agreement, to collect the Benefit Fee from the transferor and/or transferee.

4. **Binding Effect.** Truckee Land and OGCF hereby declare that the Covered Property will be held, leased, transferred, encumbered, used, occupied and improved subject to the reservations, rights, covenants, conditions and equitable servitudes contained in this Agreement, all of which are for the purpose of enhancing the attractiveness and desirability of the Covered Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Covered Property. The reservations, rights, covenants, conditions and equitable servitudes set forth in this Agreement will (1) run with and burden the Covered Property in perpetuity and will be binding upon all Persons having or acquiring any interest in the Covered Property or any part thereof, their heirs, successors and assigns; (2) inure to the benefit of every portion of the Covered Property and any interest therein; (3) inure to the benefit of and be binding upon Truckee Land, OGCF, and Master Developer, and their respective successors-in-interest, each Owner and each Owner's successors-in-interest; and (4) may be enforced by Truckee Land, OGCF, Master Developer and each Owner. The Parties hereby acknowledge and agree that the obligation to pay a Benefit Fee upon the Transfer of any of the Covered Property is not a personal covenant or obligation of Truckee Land or Master Developer, and that except as specifically set forth herein at Section 1.4, neither Truckee Land nor Master Developer shall be obligated to pay any Benefit Fee regarding any portion of the Covered Property.

5. **Mortgages.**

5.1 Rights of Beneficiaries. Nothing in this Agreement nor any amendment to or breach of this Agreement defeats or renders invalid the rights of the Beneficiary under any Recorded Mortgage encumbering any Lot or Condominium made in good faith and for value, provided that after the foreclosure or a transfer in lieu of foreclosure of any such Mortgage, such Lot or Condominium will remain subject to this Agreement.

5.2 Subordination to First Mortgages. Subject to Section 5.1, the rights and obligations of the Parties hereunder concerning any Lot or Condominium shall be subject and subordinate to the lien of any Recorded First Mortgage encumbering that Lot or Condominium.

5.3 Effect of Foreclosure. No foreclosure of a Mortgage on a Lot or Condominium or a transfer in lieu of foreclosure shall impair or otherwise affect OGCF's right to pursue payment of any Benefit Fee due in connection with the Transfer of that Lot or Condominium from the transferor or a transferee obligated to pay it. No foreclosure or transfer in lieu thereof shall relieve such Lot or Condominium or the purchaser thereof from liability for any Benefit Fee(s) thereafter becoming due or from the lien therefor.

5.4 Estoppel Certificate. Within twenty (20) days of the receipt of a written request of any Owner of a Lot or Condominium for which no Benefit Fee is due and owing and as to which Lot or Condominium OGCF holds no lien, OGCF shall deliver to such

Owner an executed estoppel certificate certifying that no Benefit Fee is due and owing for such Lot or Condominium and that OGCF holds no lien against such Lot or Condominium.

6. **Enforcement.**

6.1 **Remedies.** OGCF shall be entitled to any and all rights and remedies available at law or equity in order to collect the Benefit Fees owed it, including but not limited to, specific performance and rights of lien.

6.2 **Small Claims Court.** Any Dispute which is within the jurisdiction of a small claims court shall be resolved by a small claims court proceeding. Either Party may submit the Dispute to such court.

6.3 **Attorneys' Fees.** The prevailing party in any Dispute shall be entitled to recover its attorneys' fees and court costs from the other party.

6.4 **Enforcement by Lien.** There is hereby created a claim of lien, with power of sale, on each and every Lot and Condominium to secure prompt and faithful performance of each Owner's obligations under this Agreement for the payment to OGCF of the Benefit Fees, together with interest thereon at the maximum legal rate per annum from the date of delinquency, and all late charges and costs of collection which may be paid or incurred by the OGCF in connection therewith, including reasonable attorneys' fees. At any time after the delinquency, OGCF may elect to file and record in the Office of the Nevada County Recorder a notice default and claim of lien against the Lot or Condominium of the defaulting Owner. Such notice of default and claim of lien shall be executed and acknowledged by any officer of OGCF and shall contain substantially the following information:

a. The name of the defaulting Owner, along with a legal description of the Lot or Condominium;

b. The total amount of the delinquency, interest thereon, late charges, collection costs and reasonable attorneys' fees;

c. A statement that the notice of default and claim of lien is made by OGCF pursuant to this Agreement; and

d. A statement that a lien is claimed and will be foreclosed against the Lot or Condominium in an amount equal to the amount stated.

Upon such recordation of a duly executed original or copy of such notice of delinquent assessment and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment as the laws of the State of California may from time to time be changed or amended. The trustee for all purposes related thereto (including, but not limited to, the taking of all actions which would ordinarily be required of a trustee under a foreclosure of a deed of trust) shall be a neutral thir party with prior experience as a trustee as selected by OGCF. OGCF shall have the power to bid

at any foreclosure sale, trustee's sale or judgment sale, and to purchase, acquire, lease, hold, mortgage and convey any Lot or Condominium acquired at such sale subject to the provisions of this Agreement. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law.

The proceeds of any foreclosure, trustee's or judgment sale provided for in this Agreement shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, title costs and costs of the sale, and all other expenses of the proceedings and sale, and the balance of the proceeds, after satisfaction of all charges, monetary penalties and unpaid Benefit Fees hereunder or any liens, and subject to the rights of any Mortgagee, shall be paid to the defaulting Owner. The purchaser at any such sale shall obtain title to the Lot or Condominium free from the sums or performance claimed (except as stated in this subsection) but otherwise subject to the provisions of this Agreement; and no such sale or transfer shall relieve such Lot or Condominium or the purchaser thereof from liability for any Benefit Fees, other payments or performance thereafter becoming due or from the lien therefor as provided for in this subsection. All sums due and owing hereunder but still unpaid shall remain the obligation of and shall be payable by the person foreclosed upon.

Upon the timely curing of any default for which a notice of default or claim of lien was filed by OGCF, the officers of OGCF are hereby authorized to record an appropriate release of such lien in the Office of the County Recorder.

7. Miscellaneous.

7.1 Amendment. OGCF has the right to unilaterally amend this Agreement for the following reasons: (i) correct typographical errors, (ii) conform this Agreement to law, lender guidelines or California Department of Real Estate requirements, (iii) reduce the Benefit Fee, or (iv) terminate this Agreement. Truckee Land has the right to unilaterally amend this Agreement to conform this Agreement to law, lender guidelines or California Department of Real Estate requirements. OGCF and Truckee Land may, by their mutual written consent, amend this Agreement in order to expand the real property referred to by the definition of Covered Property, set forth in Section 1, above. In addition, OGCF and at least fifty-one percent (51%) of the Owners of Lots or Condominiums in the Covered Property may amend this Agreement as it applies to all of the Covered Property.

7.2 Authority. Each individual signatory hereto represents and warrants that he or she is duly authorized to sign this Agreement and is personally bound, or if signing on behalf of another, is authorized to do so and that the other is bound.

7.3 Assignment. OGCF may, by written assignment, assign its rights and delegate its duties under this Agreement to (a) any entity that is exempt from federal taxation pursuant to Internal Revenue Code Section 501(c)(3) or 510(c)(4) that assumes all of OGCF's obligations.

7.4 Disclaimers. Nothing herein (a) creates any right or remedy for the benefit of any Person not a party hereto, or (b) creates a fiduciary relationship, an agency, or partnership.

7.5 **Construction.** Whenever the context of this Agreement requires, the singular shall include the plural and the masculine shall include the feminine and/or the neuter. Except for the definitions in Section 1, where the heading in each subsection is the word being defined, article and section headings are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

7.6 **Notices.** All notices required or allowed shall be in writing and shall be sent to the addresses shown beside the signatures of the Parties, below. A Party may change its address for notice by giving notice to the other Party. Notice may be delivered by personal delivery, facsimile transmission during normal business hours of the recipient, a reputable overnight delivery service, or U.S. Mail sent certified with return receipt requested. Notices are effective on the earlier of the date received, the date of the delivery receipt, or the third day after postmarked, as applicable. Each Owner who transfers a Lot or Condominium shall send the name and mailing address of the transferee to OGCF.

7.7 **Time.** Time is of the essence of all provisions hereof where time is a factor.

7.8 **Waiver.** No right or remedy will be waived unless the waiver is in writing and signed by the Party claimed to have made the waiver. One waiver will not be interpreted as a continuing waiver.

7.9 **Incorporation of Recitals.** The Recitals set forth above are incorporated herein by this reference.

7.10 **Severability.** Invalidation of any portion or provision of this Agreement by judgment or court order shall in no way affect any other portions or provisions, which shall remain in full force and effect.

7.11 **Judicial Reference.** Any Dispute which is beyond the jurisdiction of a small claims court shall be submitted to general judicial reference pursuant to California Code of Civil Procedure Sections 638(a) and 641 through 645 or any successor statues thereto. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. The dispute resolution procedure in this Section 7.11 is implemented in accordance with the intent and philosophy of the Federal Arbitration Act (9 U.S.C.§§ 1-16) which is designed to encourage use of alternative methods of dispute resolution that avoid costly and potentially lengthy traditional court proceedings. The dispute resolution procedure in this Section is to be interpreted and enforced as if it were a proceeding authorized by the Federal Arbitration Act. Parties interpreting this Section shall follow the federal and state court rulings which provide that the Federal Arbitration Act (1) is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding California's substantive or procedural policies to the contrary, (2) requires that federal and state courts rigorously enforce agreements to arbitrate, and (3) requires that the scope of Arbitrable issues be resolved in favor of arbitration. Specifically, this Section is to be interpreted in accordance with *Allied-Bruce Terminix Companies v. Dobson*, 115 S.Ct. 834 (1995). References in this Section to California Code sections are not to be interpreted as a waiver of rights created under federal law.

The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The Parties shall use the procedures adopted by Judicial Arbitration and Mediation Services/Endispute ("JAMS") for judicial reference (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the Parties), provided that the following rules and procedures shall apply in all cases unless the Parties agree otherwise:

(1) Venue shall be in Nevada County, California, unless the parties agree to another venue;

(2) The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters;

(3) Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity provided the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;

(4) The referee may require one or more pre-hearing conferences;

(5) The Parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;

(6) A stenographic record of the trial shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;

(7) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable; and

(8) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

The statement of decision of the referee upon all of the issues considered by the referee is binding upon the parties, and upon filing of the statement of decision with the Clerk of the Court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the Court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties.

BY INITIALING BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE FOREGOING AND ACCEPT THAT THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL.

BF
Truckee Land's Initials

BF
OGCF's Initials

Signature Page Follows.

IN WITNESS WHEREOF, the Parties have executed this Community Benefit Fee Agreement effective as of the date first set forth above.

Address:

"OGCF"

OLD GREENWOOD COMMUNITY FOUNDATION,
a California nonprofit public benefit corporation

By: _____

Name: BILL FIVEASH

Title: TREASURER

Address:

"TRUCKEE LAND"

TRUCKEE LAND LLC,
a Delaware limited liability company

By: East West Resort Development V. L.P., L.L.L.P.,
a Delaware limited liability limited partnership
Its: Manager

By: HF Holding Corporation,
a Colorado corporation
Its: General Partner

By: _____
Bill Fiveash
Its: Vice President

EXHIBIT D

COPY

RECORDING REQUEST BY:
FIDELITY NATIONAL TITLE
WHEN RECORDED MAIL TO:

COX, CASTLE & NICHOLSON
19800 MacArthur Blvd., Suite 600
Irvine, CA 92602
Attn: D. Scott Turner, Esq.

Nevada, County Recorder
Jewett-Burdick
DOC- 2003--0067692--00
Acct 6-Fidelity National Title Co
Tuesday, DEC 30, 2003 15:16:00
REC $19.00|CCF $1.00|SBS $14.00
MIC $1.00|AUT $15.00|
Ttl Pd $50.00 Nbr-0000281189
ALB/AB/1-15

(Space Above for Recorder's Use)

COMMUNITY BENEFIT FEE AGREEMENT

(Gray's Crossing)

This Community Benefit Fee Agreement ("**Agreement**") is made and entered into as of this 22 day of December, 2003, by and between the Tahoe Mountain Resorts Foundation ("**TMRF**"), and Truckee Land, LLC, a Delaware limited liability company (together with any Affiliate thereof, the "**Truckee Land**"). TMRF and Truckee Land may be referred to herein collectively as the "**Parties**", or each, individually, as a "**Party**". Capitalized terms within the Recitals are defined in Section 1 unless otherwise defined therein.

RECITALS

A. Truckee Land owns that certain real property located in the Town of Truckee, Nevada County, California, commonly known as the Gray's Crossing planned development ("**Gray's Crossing**"), as described more fully at Exhibit "A" attached hereto (the "**Covered Property**"). Truckee Land will transfer such property to Gray's Crossing, LLC, a Delaware limited liability company (together with any Affiliate thereof, "**Master Developer**"), so that Master Developer may provide for and orchestrate the development of Gray's Crossing.

B. TMRF has been organized to provide educational opportunities with respect to such community activities as recreational programs, performing arts programs, local libraries, civic and cultural programs, historical preservation, and support of other initiatives to promote health and welfare of citizens of the communities and development of Nevada and Nevada Counties in and around the Town of Truckee and the Martis Valley and surrounding communities, as well as support and protect open space, recreational, scenic and historic lands in the Truckee/Donner region.

C. TMRF expects to receive a portion of the funds it needs to operate from the Community Benefit Fees ("**Benefit Fees**") set forth herein among other sources.

D. Truckee Land believes the services and activities TMRF will provide will benefit all of the Residential Lots and Condominiums in the Gray's Crossing community and enhance their enjoyment and value. Truckee Land and TMRF have agreed that a portion of the funds TMRF requires to operate will be provided by committing contributions of Benefit Fees to TMRF in connection with transfers of Residential Lots or Condominiums in Gray's Crossing.

AGREEMENT

NOW THEREFORE, for mutual consideration, the receipt and sufficiency of which is hereby acknowledge by the Parties, and the covenants, conditions, restrictions and other promises set forth in this Agreement, the Parties hereby agree as follows:

1. **Definitions**. As used herein, the following terms shall have the following meanings:

1.1 Affiliate. Any entity described by Corporations Code section 150.

1.2 Agreement. This Community Benefit Fee Agreement.

1.3 Beneficiary. A beneficiary under a Mortgage and the assignees of such beneficiary.

1.4 Community Benefit Fee. Also referred to herein as the "Benefit Fee", is the fee to be paid to TMRF in connection with each Transfer. The Benefit Fee shall be equal to three quarters of one percent (0.75%) of the Purchase Price in each transaction resulting in a Transfer unless such percentage shall be changed by the Board of Directors of TMRF, but in no event shall the Board make the Benefit Fee more than three quarters of one percent (0.75%). Notwithstanding the foregoing, the Benefit Fee shall total $375 for any transfer of real property (regardless of the size, number or actual value of the Residential Lots or parcels transferred) from Truckee Land to Master Developer or any Affiliate of Truckee Land.

1.5 Condominium. An estate in real property as defined in California Civil Code Sections 783 and 1351(l), including any condominium which is a volume of real property that is not located entirely within a building (a "site" condominium).

1.6 Covered Property. The residential portion of the Northstar community as defined at Exhibit "One" attached hereto.

1.7 Dispute. Any dispute between or among any of Truckee Land, TMRF and Master Developer, or between any Owner and Truckee Land, TMRF and/or Master Developer, concerning the amount, obligation to pay or other issue concerning the Benefit Fees under this Agreement or concerning any other dispute arising under this Agreement.

1.8 Gray's Crossing. Shall have the meaning ascribed thereto in Recital A, set forth above.

1.9 Lot. Any lot or parcel of land shown on any Recorded subdivision map or Recorded parcel map of any portion of the Covered Property, or any timeshare estate or timeshare use, as defined at Business and Professions Code section 11003.5, derived therefrom, and any and all improvements thereon.

1.10 Master Developer. Gray's Crossing, LLC, a Delaware limited liability company, or any Affiliate thereof.

1.11 **Merchant Builder.** Any person or entity, or Affiliate thereof, who owns or acquires any portion of the Covered Property for the purpose of developing five (5) or more Residential Lots or Condominiums (10 or more timeshare estates or timeshare uses) and reselling such Residential Lots or Condominiums (or timeshare estates or uses) to the general public.

1.12 **Mortgage.** Any Recorded mortgage or deed of trust or other conveyance of one or more Residential Lots, Condominiums or other portions of the Covered Property to secure performance of an obligations, which will be reconveyed upon completion of such performance. A "First Mortgage" is any Mortgage with lien priority over any other Mortgage.

1.13 **Official Records.** The official records of the Nevada County, California, Recorder.

1.14 **Owner.** The Person or Persons, including Truckee Land, Master Developer and the Merchant Builders, holding record title to any Residential Lot or Condominium. The term "Owner" includes a seller under an executory contract of sale but excludes Beneficiaries.

1.15 **Person.** A natural individual or any entity with the legal right to hold title to real property.

1.16 **Purchase Price.** The total purchase price or other consideration given by the transferee to the transferor in a transaction resulting in a Transfer, including, but not limited to, the sum of actual cash paid, the fair market value of services performed or real and personal property delivered or conveyed in exchange for the Transfer, and the amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price, or remaining unpaid on the property at the time of the Transfer, but excluding any third-party cost or charge incurred by the transferor or the transferee in connection with the transaction.

1.17 **Recorded.** The recordation, filing or entry of a document in the Official Records.

1.18 **Residential Lot or Condominium.** Residential Lot or Condominium shall mean any Lot or Condominium upon which a residential structure is or shall be constructed and which is not subject to any restriction imposed by any governmental entity or agency, statute, regulation, or condition of entitlement prohibiting the payment of a Community Benefit Fee. Residential Lots or Condominiums shall not include, by way of example and not limitation, lots upon which are constructed deed restricted affordable housing or deed restricted employee housing, golf course property or commercial property (office, retail, medical, etc.). Residential Lot or Condominium shall include, by way of example and not limitation, lots upon which are constructed single family homes, residential condominiums, and any lot upon which is built a residential structure in which is offered a timeshare estate or timeshare use.

1.19 **TMRF.** Tahoe Mountain Resorts Foundation, a California nonprofit public benefit corporation.

1.20 Transfer. The sale or exchange of a Residential Lot or Condominium by an Owner to a transferee. None of the following transactions shall constitute a "Transfer" under this Agreement:

(1) The transfer of an interest in a Residential Lot or Condominium to secure the performance of an obligation, such as a Mortgage or a lien, which will be reconveyed upon the completion of such performance.

(2) A transfer resulting from a foreclosure (by judicial foreclosure or trustee's sale) by the Beneficiary of a First Mortgage, or by an association (as defined in Civil Code section 1351(a)), or by an association described in a Public Report issued by the California Department of Real Estate for the Covered Property or any part thereof, or a transfer in lieu thereof.

(3) A transfer of a Residential Lot or Condominium by a transferor or the transferor's spouse into a revocable intervivos trust which is an exempt transfer under California Revenue and Taxation Code Section 62(d).

(4) Any interspousal transfer (as defined in California Revenue and Taxation Code 63) or transfer between parents and any of their children (as defined in California Revenue and Taxation Code Section 63.1).

(5) A change in ownership where the transferee is not locally assessed by the Office of the County Tax Assessor.

(6) Any transfer of real property to any public agency, entity or district, or any utility service provider.

(7) Any transfer of real property to an association (defined in Section 1351(a) of the California Civil Code) as common area (defined in Section 1351(b) of the California Civil Code).

(8) The rental or lease of a Residential Lot or Condominium.

(9) An exchange pursuant to an exchange program as defined in California Business and Professions Code section 11003.5(d).

(10) Any transfer of real property from Master Developer to a Merchant Builder.

(11) Any transfer of real property from Master Developer to any Affiliate of Master Developer.

(12) Any transfer of real property from a Merchant Builder to any Affiliate of such Merchant Builder.

1.21 Truckee Land. Truckee Land, LLC, a Delaware limited liability company.

2. **Acknowledgment of Benefit.** TMRF represents that it will use the Benefit Fees for the purposes described in Paragraph "B" of the Recitals. Decisions regarding all aspects of the method and manner in which such purposes shall be achieved shall be made by TMRF in its sole discretion. Truckee Land believes, nonetheless, that the services and activities to be provided by TMRF will enhance the value of and benefit each Residential Lot and Condominium in the Covered Property. Each Owner who acquires a Residential Lot or Condominium in the Covered Property by such acquisition agrees to and acknowledges the statements made in this Section.

3. **Community Benefit Fee.**

3.1 **When Due and Paid.** A Benefit Fee in the amount determined as provided in Section 1.4 shall be paid to TMRF each time a Residential Lot or Condominium is Transferred (subject to the exchange transfer limit specified in Section 3.5). Such payment shall be made on or before the closing or effective date of the Transfer.

3.2 **Late Charges.** The Benefit Fee shall be considered late if not paid within five (5) business days after the closing or effective date of the Transfer. A late fee of one-half of one percent (0.5%) of the Benefit Fee shall apply thereafter for each day such payment is late, up to a maximum of ten percent (10%) of the Benefit Fee.

3.3 **Covenant to Pay and Creation of Lien.** Each Owner, by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay the Benefit Fee to TMRF, if applicable. Such fee, together with interest thereon, late charges, attorneys' fees, court costs, and other costs of collection thereof, as hereinafter provided, shall be a lien and charge upon the Residential Lot or Condominium the Transfer of which gives rise to the Benefit Fee.

3.4 **Mandatory Notice.** Every Owner must notify TMRF within twenty (20) days of the execution of a contract to Transfer a Residential Lot. Such notice shall include the name of the transferor and transferee; an identification of the Residential Lot or Condominium being Transferred; the proposed Purchase Price; the proposed closing or effective date; the name, address and phone number of the escrow holder for the Transfer; and the name of the escrow officer. If any of the information set forth above is not available when the notice is originally sent to TMRF, the Owner shall notify TMRF as soon as such information becomes available. In addition, each Owner shall accurately update TMRF if any of such information provided shall change on or prior to the closing or effective date of the Transfer.

3.5 **Exchange Transfer.** If a particular transaction involves more than one Transfer solely because the Residential Lot or Condominium is held for an interim period (not to exceed 24 hours) by an accommodation party as a part of a tax-deferred exchange under the Internal Revenue Code, and provided there is no increase in consideration given, then for the purposes of this Agreement, only one Transfer shall be deemed to have occurred and only one Benefit Fee must be paid in connection therewith, and the accommodation party shall not have any liability for payment of such Benefit Fee. Similarly, if a particular transaction involves more than one Transfer solely because the Residential Lot or Condominium is held/owned for an

interim period (not to exceed 72 hours) by Master Developer as a part of a Residential Lot resale, then for the purposes of this Agreement, only one Transfer shall be deemed to have occurred and only one Benefit Fee must be paid in connection therewith, and Master Developer shall not have any liability for payment of such Benefit Fee.

3.6 **Escrow Demand**. TMRF is authorized to place a demand for payment of the Benefit Fee in the escrow (if any) for each Transfer. The demand shall state (a) either the amount of the Benefit Fee that is due or the formula for calculating the amount of the Benefit Fee that is due, and (b) that the Benefit Fee is due on or before close of the escrow for the Transfer. The transferor and transferee shall execute any and all documents reasonably requested by escrow holder to effectuate such payment on or before the close of escrow. In addition, the Master Developer shall place in escrow with any agreement by which it Transfers a lot for which a Benefit Fee must be paid, escrow instructions which specifically state, among other things, that the Escrow Holder shall pay the Benefit Fee to TMRF at the closing out of the proceeds of the sale or as may otherwise be provided by law.

3.7 **Benefit Fee Payor**. The obligation to pay the Benefit Fee in each Transfer is a joint and several obligation of the transferor and the transferee in each transaction and not an obligation of any other Owner of a Residential Lot or Condominium subject to this Agreement. The transferor and transferee in each transaction may, as a matter between themselves, allocate the obligation to pay in any manner they so choose. If the transferor and transferee fail to pay the Benefit Fee, TMRF may take all actions authorized at law or equity, or otherwise set forth within this Agreement, to collect the Benefit Fee from the transferor and/or transferee.

4. **Binding Effect**. Truckee Land and TMRF hereby declare that the Covered Property will be held, leased, transferred, encumbered, used, occupied and improved subject to the reservations, rights, covenants, conditions and equitable servitudes contained in this Agreement, all of which are for the purpose of enhancing the attractiveness and desirability of the Covered Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Covered Property. The reservations, rights, covenants, conditions and equitable servitudes set forth in this Agreement will (1) run with and burden the Covered Property in perpetuity and will be binding upon all Persons having or acquiring any interest in the Covered Property or any part thereof, their heirs, successors and assigns; (2) inure to the benefit of every portion of the Covered Property and any interest therein; (3) inure to the benefit of and be binding upon Truckee Land, TMRF, and Master Developer, and their respective successors-in-interest, each Owner and each Owner's successors-in-interest; and (4) may be enforced by Truckee Land, TMRF, Master Developer and each Owner. The Parties hereby acknowledge and agree that the obligation to pay a Benefit Fee upon the Transfer of any of the Covered Property is not a personal covenant or obligation of Truckee Land or Master Developer, and that except as specifically set forth herein at Section 1.4, neither Truckee Land nor Master Developer shall be obligated to pay any Benefit Fee regarding any portion of the Covered Property.

5. **Mortgages.**

5.1 Rights of Beneficiaries. Nothing in this Agreement nor any amendment to or breach of this Agreement defeats or renders invalid the rights of the Beneficiary under any Recorded Mortgage encumbering any Residential Lot or Condominium made in good faith and for value, provided that after the foreclosure or a transfer in lieu of foreclosure of any such Mortgage, such Residential Lot or Condominium will remain subject to this Agreement.

5.2 Subordination to First Mortgages. Subject to Section 5.1 , the rights and obligations of the Parties hereunder concerning any Residential Lot or Condominium shall be subject and subordinate to the lien of any Recorded First Mortgage encumbering that Residential Lot or Condominium.

5.3 Effect of Foreclosure. No foreclosure of a Mortgage on a Residential Lot or Condominium or a transfer in lieu of foreclosure shall impair or otherwise affect TMRF's right to pursue payment of any Benefit Fee due in connection with the Transfer of that Residential Lot or Condominium from the transferor or a transferee obligated to pay it. No foreclosure or transfer in lieu thereof shall relieve such Residential Lot or Condominium or the purchaser thereof from liability for any Benefit Fee(s) thereafter becoming due or from the lien therefor.

5.4 Estoppel Certificate. Within twenty (20) days of the receipt of a written request of any Owner of a Lot or Condominium for which no Benefit Fee is due and owing and as to which Lot or Condominium TMRF holds no lien, TMRF shall deliver to such Owner an executed estoppel certificate certifying that no Benefit Fee is due and owing for such Lot or Condominium and that TMRF holds no lien against such Lot or Condominium.

6. **Enforcement.**

6.1 Remedies. TMRF shall be entitled to any and all rights and remedies available at law or equity in order to collect the Benefit Fees owed it, including but not limited to, specific performance and rights of lien.

6.2 Small Claims Court. Any Dispute which is within the jurisdiction of a small claims court shall be resolved by a small claims court proceeding. Either Party may submit the Dispute to such court.

6.3 Attorneys' Fees. The prevailing party in any Dispute shall be entitled to recover its attorneys' fees and court costs from the other party.

6.4 Enforcement by Lien. There is hereby created a claim of lien, with power of sale, on each and every Residential Lot and Condominium to secure prompt and faithful performance of each Owner's obligations under this Agreement for the payment to TMRF of the Benefit Fees, together with interest thereon at the maximum legal rate per annum from the date of delinquency, and all late charges and costs of collection which may be paid or incurred by the TMRF in connection therewith, including reasonable attorneys' fees. At any time after the delinquency, TMRF may elect to file and record in the Office of the Nevada

County Recorder a notice default and claim of lien against the Residential Lot or Condominium of the defaulting Owner. Such notice of default and claim of lien shall be executed and acknowledged by any officer of TMRF and shall contain substantially the following information:

a. The name of the defaulting Owner, along with a legal description of the Residential Lot or Condominium;

b. The total amount of the delinquency, interest thereon, late charges, collection costs and reasonable attorneys' fees;

c. A statement that the notice of default and claim of lien is made by TMRF pursuant to this Agreement; and

d. A statement that a lien is claimed and will be foreclosed against the Residential Lot or Condominium in an amount equal to the amount stated.

Upon such recordation of a duly executed original or copy of such notice of delinquent assessment and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment as the laws of the State of California may from time to time be changed or amended. The trustee for all purposes related thereto (including, but not limited to, the taking of all actions which would ordinarily be required of a trustee under a foreclosure of a deed of trust) shall be a neutral third party with prior trustee experience as selected by TMRF. TMRF shall have the power to bid at any foreclosure sale, trustee's sale or judgment sale, and to purchase, acquire, lease, hold, mortgage and convey any Residential Lot or Condominium acquired at such sale subject to the provisions of this Agreement. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law.

The proceeds of any foreclosure, trustee's or judgment sale provided for in this Agreement shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, title costs and costs of the sale, and all other expenses of the proceedings and sale, and the balance of the proceeds, after satisfaction of all charges, monetary penalties and unpaid Benefit Fees hereunder or any liens, and subject to the rights of any Mortgagee, shall be paid to the defaulting Owner. The purchaser at any such sale shall obtain title to the Residential Lot or Condominium free from the sums or performance claimed (except as stated in this subsection) but otherwise subject to the provisions of this Agreement; and no such sale or transfer shall relieve such Residential Lot or Condominium or the purchaser thereof from liability for any Benefit Fees, other payments or performance thereafter becoming due or from the lien therefor as provided for in this subsection. All sums due and owing hereunder but still unpaid shall remain the obligation of and shall be payable by the person foreclosed upon.

Upon the timely curing of any default for which a notice of default or claim of lien was filed by TMRF, the officers of TMRF are hereby authorized to record an appropriate release of such lien in the Office of the County Recorder.

7. **Miscellaneous.**

7.1 **Amendment.** TMRF has the right to unilaterally amend this Agreement for the following reasons: (i) correct typographical errors, (ii) conform this Agreement to law, lender guidelines or California Department of Real Estate requirements, (iii) reduce the Benefit Fee, or (iv) terminate this Agreement. Truckee Land has the right to unilaterally amend this Agreement to conform this Agreement to law, lender guidelines or California Department of Real Estate requirements. TMRF and Truckee Land may, by their mutual written consent, amend this Agreement in order to expand the real property referred to by the definition of Covered Property, set forth in Section 1, above. In addition, TMRF and at least fifty-one percent (51%) of the Owners of Residential Lots or Condominiums in the Covered Property may amend this Agreement as it applies to all of the Covered Property.

7.2 **Authority.** Each individual signatory hereto represents and warrants that he or she is duly authorized to sign this Agreement and is personally bound, or if signing on behalf of another, is authorized to do so and that the other is bound.

7.3 **Assignment.** TMRF may, by written assignment, assign all, or any portion of, its rights and delegate all, or any portion of, its duties and obligations under this Agreement to any entity that is exempt from federal taxation pursuant to Internal Revenue Code Section 501(c)(3) or 510(c)(4) that assumes such duties and obligations of TMRF.

7.4 **Disclaimers.** Nothing herein (a) creates any right or remedy for the benefit of any Person not a party hereto, or (b) creates a fiduciary relationship, an agency, or partnership.

7.5 **Construction.** Whenever the context of this Agreement requires, the singular shall include the plural and the masculine shall include the feminine and/or the neuter. Except for the definitions in Section 1, where the heading in each subsection is the word being defined, article and section headings are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

7.6 **Notices.** All notices required or allowed shall be in writing and shall be sent to the addresses shown beside the signatures of the Parties, below. A Party may change its address for notice by giving notice to the other Party. Notice may be delivered by personal delivery, facsimile transmission during normal business hours of the recipient, a reputable overnight delivery service, or U.S. Mail sent certified with return receipt requested. Notices are effective on the earlier of the date received, the date of the delivery receipt, or the third day after postmarked, as applicable. Each Owner who transfers a Residential Lot or Condominium shall send the name and mailing address of the transferee to TMRF.

7.7 **Time.** Time is of the essence of all provisions hereof where time is a factor.

7.8 **Waiver.** No right or remedy will be waived unless the waiver is in writing and signed by the Party claimed to have made the waiver. One waiver will not be interpreted as a continuing waiver.

7.9 **Incorporation of Recitals.** The Recitals set forth above are incorporated herein by this reference.

7.10 **Severability.** Invalidation of any portion or provision of this Agreement by judgment or court order shall in no way affect any other portions or provisions, which shall remain in full force and effect.

7.11 **Judicial Reference.** Any Dispute which is beyond the jurisdiction of a small claims court shall be submitted to general judicial reference pursuant to California Code of Civil Procedure Sections 638(a) and 641 through 645 or any successor statues thereto. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. The dispute resolution procedure in this Section 7.11 is implemented in accordance with the intent and philosophy of the Federal Arbitration Act (9 U.S.C.§§ 1-16) which is designed to encourage use of alternative methods of dispute resolution that avoid costly and potentially lengthy traditional court proceedings. The dispute resolution procedure in this Section is to be interpreted and enforced as if it were a proceeding authorized by the Federal Arbitration Act. Parties interpreting this Section shall follow the federal and state court rulings which provide that the Federal Arbitration Act (1) is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding California's substantive or procedural policies to the contrary, (2) requires that federal and state courts rigorously enforce agreements to arbitrate, and (3) requires that the scope of Arbitrable issues be resolved in favor of arbitration. Specifically, this Section is to be interpreted in accordance with *Allied-Bruce Terminix Companies v. Dobson*, 115 S.Ct. 834 (1995). References in this Section to California Code sections are not to be interpreted as a waiver of rights created under federal law.

The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The Parties shall use the procedures adopted by Judicial Arbitration and Mediation Services/Endispute ("JAMS") for judicial reference (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the Parties), provided that the following rules and procedures shall apply in all cases unless the Parties agree otherwise:

(1) Venue shall be in Nevada County, California, unless the parties agree to another venue;

(2) The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters;

(3) Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity provided the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;

(4) The referee may require one or more pre-hearing conferences;

(5) The Parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;

(6) A stenographic record of the trial shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;

(7) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable; and

(8) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

The statement of decision of the referee upon all of the issues considered by the referee is binding upon the parties, and upon filing of the statement of decision with the Clerk of the Court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the Court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties.

BY INITIALING BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE FOREGOING AND ACCEPT THAT THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL.

Truckee Land's Initials

TMRF's Initials

Signature Page Follows.

IN WITNESS WHEREOF, the Parties have executed this Community Benefit Fee Agreement effective as of the date first set forth above.

Address:

"TMRF"

TAHOE MOUNTAIN RESORTS FOUNDATION,
a California nonprofit public benefit corporation

By: _____

Name: Aaron Revere

Title: President

Address:

"TRUCKEE LAND"

TRUCKEE LAND LLC,
a Delaware limited liability company

By: East West Resort Development V, L.P., L.L.L.P.,
as a member and manager

By: HF Holding Corp., as general partner

By: _____

Name: Mark J Wasley

Title: Vice President

Date: 12/29/03

STATE OF CALIFORNIA)
) ss:
COUNTY OF Nevada)

On December 29th, 2003 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Aaron Revere, personally known to me (or 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.

WITNESS my hand and official seal.

LYDIA CARTER
Commission # 1350484
Notary Public - California
Placer County
My Comm. Expires Apr 9, 2006

Lydia Carter
Notary Public

STATE OF CALIFORNIA)
) ss:
COUNTY OF Nevada)

On December 29th, 2003 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Mark Wasley, personally known to me (or 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.

WITNESS my hand and official seal.

LYDIA CARTER
Commission # 1350484
Notary Public - California
Placer County
My Comm. Expires Apr 9, 2006

Lydia Carter
Notary Public

EXHIBIT "A"
to the
Community Benefit Fee Agreement

Description of Covered Property

See attached.

Exhibit "A"

The land herein referred to is situated in the County of Nevada, State of California, and is described as follows:

Lots 1, 2, 4 through 12, 21 and 22 as shown on the Official Map of Boca Sierra Estates, Final Map No. 88-11, filed in the Office of the County Recorder, County of Nevada, State of California, on April 23, 1991, in Book 7 of Subdivisions, at Page 113.

EXCEPTING THEREFROM all that portion of land as described in the Final Order of Condemnation Recorded May 2, 2000, as Instrument No. 2000-0012243, of Official Records for State Freeway purposes.

ALSO EXCEPTING THEREFROM all that portion of Lot 22 as said lot is shown and so designated on the Official Map of Boca Sierra Estates, Final Map No. 88-11, filed in the Office of the County Recorder, County of Nevada, State of California, on April 23, 1991, in Book 7 of Subdivisions, at Page 113, Nevada County Records lying West and Southwest of the land as described as described in the Final Order of Condemnation Recorded May 2, 2000, as Instrument No. 2000-0012243, of Official Records.

EXHIBIT B

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF NEVADA

MOUNTAIN AREA PRESERVATION FOUNDATION,

Petitioner/Plaintiff,

v.

TOWN OF TRUCKEE, TOWN COUNCIL OF THE TOWN OF TRUCKEE, and DOES 1 through 10, inclusive,

Respondents/Defendants.

TRUCKEE LAND LLC, and DOES 11 through 20, inclusive,

Real Parties in Interest.

Case No. T02/0318C

STIPULATION AND [PROPOSED] ORDER FOR ENTRY OF JUDGMENT PURSUANT TO TERMS OF SETTLEMENT

[Code Civ. Proc., § 664.6]

Assigned for all purposes:
Honorable Carl F. Bryan II
Department: 5

Filing date of action: July 26, 2002
Trial date: January 31, 2003

Pursuant to Code of Civil Procedure section 664.6, Petitioner/Plaintiff Mountain Area Preservation Foundation ("MAPF"), Respondents/Defendants Town of Truckee and Town Council of the Town of Truckee (collectively, "Town"), and Real Party in Interest Truckee Land LLC ("Truckee Land") stipulate and agree to settle the complaint and petition for writ of mandate filed in this action (the "Petition") on the following terms:

1. Truckee Land shall record a transfer fee covenant meeting the requirements of this paragraph in the Official Records of the County of Nevada. The transfer fee covenant shall be by and between the Truckee Donner Land Trust (TDLT) and each owner of a residential lot or of an undivided fractional interest in the Old Greenwood development. The transfer fee covenant shall provide that each owner of a residential lot or an undivided fractional interest within the Old Greenwood master planned community, other than the Old

Greenwood Master Association with respect to common area, shall pay to the TDLT a transfer fee equal to one-fourth of 1% of the consideration paid upon the conveyance of each such lot or fractional undivided interest. The covenant shall state that it is a covenant and/or equitable servitude that runs with the land. The covenant shall provide that the following transfers shall be exempt from, and shall not be subject to, the transfer fee: bulk or wholesale conveyances of lots or subdivision interests from Truckee Land or other Truckee Land related entity to another entity, or any intermediate, subsequent and successive bulk or wholesale conveyances to an entity who intends to sell to members of the public on a retail basis; conveyances for utilities; conveyances to the Old Greenwood Master Association with respect to common areas; and conveyances by the owner of a subdivision interest as security for a loan, or into an inter vivos or similar trust for estate planning purposes, or to a spouse or other closely related family members for estate planning purposes, or any other conveyance ordinarily exempted from transfer fee covenants (similar to the exemptions to a "change of ownership" for purposes of reassessment by the County Assessor currently listed under Revenue and Taxation code section 62 et. seq.). The covenant establishing the transfer fee shall be subject to review and reasonable approval by the TDLT and Dennis Crabb, Truckee Town attorney, and shall be recorded as soon as reasonably possible but in any event prior to any real estate sales transaction within the subdivision. The covenant shall include language: (1) for reasonable written notice of sales transactions to the TDLT, (2) for right of enforcement in the TDLT, including but not limited to, specific performance, damages, lien rights, reasonable interest and late charges, and reasonable prevailing party attorney fees, and (3) that it run with the land in perpetuity. As used in this paragraph, the term "consideration" means the gross consideration paid for the interest conveyed, including the sum of actual cash paid, the fair market value of services performed or real and personal property delivered or conveyed in exchange for the transfer, and the amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price, or remaining unpaid on the property at the time of the transfer. The parties intend the foregoing description to

be a fair and accurate summary of the terms and conditions to be included in the transfer fee covenant.

2. Not more than 70 days after entry of judgment in accordance with this stipulated settlement, Truckee Land shall:

a. Pay $500,000 to the TDLT; and

b. Pay $150,000 to Shute, Mihaly and Weinberger LLP.

3. The transfer fee established by paragraph 1 and the payment required by paragraph 2(a) shall be used by the TDLT, at its sole discretion, for the acquisition of interests in land for preservation as open space in the greater Truckee area.

4. In accordance with the Town's approval of the Old Greenwood project on June 20 and June 28, 2002, pursuant to Ordinance number 2002-05 and Resolution numbers 2002-29 and 2002-30: (a) not more than 19% of the site shall be developed; (b) not less than 81% of the site shall remain as undeveloped open space (as approved); and (c) Truckee Land shall comply with Condition of Approval no. 57 (Ordinance No. 2002-06, Old Greenwood Planned Development – Development Agreement, Exhibit C), which action will ultimately result in conveyance of the conservation easement(s) to the TDLT.

5. Except as otherwise provided in this stipulated agreement, each party shall bear its own attorneys' fees and costs. Notwithstanding the foregoing, this paragraph shall not apply to any claim for attorneys' fees, costs, or expenses arising from proceedings related to enforcement of this stipulated settlement.

6. MAPF agrees that all of its claims in this action are dismissed with prejudice. Thus, the parties intend that this stipulated settlement will resolve, with finality, the claims and allegations set forth in the Petition. MAPF shall not challenge or oppose subsequent approvals or permits granted for the Old Greenwood project by the Town or by other agencies with jurisdiction over the Old Greenwood project, provided (a) those approvals or permits are consistent with this stipulated settlement, and (b) the

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density and intensity of uses does not exceed the density and intensity of uses approved by the Town in June 2002 as described above.

7. The dismissals and other releases set forth in this stipulation are expressly limited to the claims set forth in this action and to other potential claims regarding the Old Greenwood project as described in paragraph 6 and do not apply to any claims arising out of, or in connection with, the approval of other projects. Neither this stipulated settlement nor any action taken to carry out this settlement (a) is or may be construed or used as an admission or concession by or against any party to this settlement of any fault, wrongdoing, or liability; or (b) shall have any precedential or preclusive effect in any future litigation, or may be offered or received in evidence in any action or proceeding for any purpose, except with respect to the Old Greenwood project as described herein or as necessary to enforce the provisions of this settlement.

8. This stipulated settlement shall run with the land, and shall apply to Truckee Land's successors and assigns.

9. This stipulated settlement is subject to, and contingent upon, the Court's entry of judgment in accordance with its terms. If the Court does not enter judgment in accordance with the terms of this stipulated settlement, then this stipulated settlement shall have no force or effect.

10. The parties request that the Court retain jurisdiction to enforce the settlement until performance in full of its terms. The parties agree that, in seeking Court enforcement of the settlement, the moving party may request specific performance among other remedies.

Dated: March 17, 2003

SHUTE, MIHALY & WEINBERGER, LLP

By: Rachel B. Hooper

Attorneys for Petitioner
MOUNTAIN AREA PRESERVATION FOUNDATION

Dated: March 17, 2003

ROLLSTON, HENDERSON, RASMUSSEN & CRABB

By: Dennis Crabb
Dennis Crabb

Attorneys for Respondents TOWN OF TRUCKEE and TOWN COUNCIL OF THE TOWN OF TRUCKEE

Dated: _____, 2003

REMY, THOMAS & MOOSE, LLP

By: _____
Whitman F. Manley

Attorneys for Real Party in Interest TRUCKEE LAND, LLC

* * *

IT IS HEREBY ORDERED that judgment be entered in accordance with the terms of the stipulated settlement. The Court retains jurisdiction over the parties at their request in order to enforce the settlement until performance in full of its terms.

Dated: _____

SO ORDERED.

_____
Hon. Carl F. Bryan II
Nevada County Superior Court Judge

30105128.004

Mountain Area Preservation Foundation v. Town of Truckee, et al.
Nevada County Superior Court Case No. T02/0318C

PROOF OF SERVICE

I am a citizen of the United States, employed in the City and County of Sacramento. My business address is 455 Capitol Mall, Suite 210, Sacramento, California 95814. I am over the age of 18 years and not a party to the above-entitled action.

I am familiar with Remy, Thomas and Moose, LLP's practice whereby the mail is sealed, given the appropriate postage and placed in a designated mail collection. Each day's mail is collected and deposited in a U.S. mailbox after the close of each day's business.

On March 17, 2003, I served the following:

LETTER TO HONORABLE CARL F. BRYAN, II; STIPULATION AND [PROPOSED] ORDER FOR ENTRY OF JUDGMENT PURSUANT TO TERMS OF SETTLEMENT

X On the parties in this action by causing a true copy thereof to be placed in a sealed envelope with postage thereon fully prepaid in the designated area for outgoing mail addressed as follows; or

___ On the parties in this action by causing a true copy thereof to be delivered via Federal Express to the following person(s) or their representative at the address(es) listed below; or

X On the parties in this action by causing a true copy thereof to be delivered by facsimile machine number (916) 443-9017 to the following person(s) or their representative at the address(es) and facsimile number(s) listed below; or

___ On the parties in this action by causing a true copy thereof to be hand-delivered to the following person(s) or representative at the address(es) listed below:

Rachel B. Hooper Brian J. Johnson Shute, Mihaly & Weinberger LLP 396 Hayes Street San Francisco, CA 94102 Facsimile: (415) 552-5816	Attorneys for Petitioner Mountain Area Preservation Foundation
Dennis Crabb Rollston, Henderson, Rasmussen & Crabb 591 Tahoe Keys Blvd. #D8 S. Lake Tahoe, CA 96150 Facsimile: (530) 544-5053	Attorneys for Respondent Town of Truckee, Town Council of the Town of Truckee

I declare under penalty of perjury that the foregoing is true and correct and this Proof of Service was executed this17th day of March, 2003, at Sacramento, California.

TERESA QUINN

Teresa W. Quinn

EXHIBIT C

FIDELITY NATIONAL TITLE

RECORDING REQUEST BY:

WHEN RECORDED MAIL TO:

COX, CASTLE & NICHOLSON
19800 MacArthur Blvd., Suite 600
Irvine, CA 92602
Attn: D. Scott Turner, Esq.

Nevada, County Recorder
Jewett-Burdick
DOC- 2003-0059056-00
Acct 6-Fidelity National Title Co
Tuesday, NOV 04, 2003 13:38:00
REC $19.00|CCF $2.00|SBS $14.00
MIC $1.00|AUT $15.00|
Ttl Pd $51.00 Nbr-0000270569
KLB/KB/1-15

(Space Above for Recorder's Use)

COMMUNITY BENEFIT FEE AGREEMENT

(Old Greenwood)

This Community Benefit Fee Agreement ("**Agreement**") is made and entered into as of this 29 day of OCT, 2003, by and between the Old Greenwood Community Foundation, a California nonprofit public benefit corporation ("**OGCF**"), and Truckee Land, LLC, a Delaware limited liability company (together with any Affiliate thereof, the "**Truckee Land**"). OGCF and Truckee Land may be referred to herein collectively as the "**Parties**", or each, individually, as a "**Party**". Capitalized terms within the Recitals are defined in Section 1 unless otherwise defined therein.

RECITALS

A. Truckee Land owns that certain real property located in the Town of Truckee, Nevada County, California, commonly known as the Old Greenwood planned development ("**Old Greenwood**"), as described more fully at Exhibit "A" attached hereto. Truckee Land will transfer such property to Old Greenwood, LLC, a Delaware limited liability company (together with any Affiliate thereof, "**Master Developer**"), so that Master Developer may provide for and orchestrate the development of Old Greenwood. If and when fully developed, Old Greenwood is planned to include a golf course and different types of residential housing all in accordance with that certain Development Agreement dated August 14, 2002, as approved by the Town of Truckee.

B. OGCF has been organized to provide services to the residents of Old Greenwood which encourage and support the preservation of the value of real property within the community including, but not limited to, (i) engaging in community projects for the benefit and welfare of the residents of Old Greenwood; (ii) commissioning marketing and advertising programs which positively portray the Old Greenwood community; (iii) donating funds to other nonprofit organizations which benefit the residents of Old Greenwood; (iv) sponsoring/hosting civic and recreational programs and fairs within the community; and (v) otherwise engaging in activities which enhance the experience of living in Old Greenwood.

C. OGCF expects to receive the funds it needs to operate from the Community Benefit Fees ("**Benefit Fees**") set forth herein.

D. Truckee Land believes the services and activities OGCF will provide will benefit all of the Lots and Condominiums in the Old Greenwood community and enhance their enjoyment and value. Truckee Land and OGCF have agreed that the funds OGCF requires to operate will be provided by committing contributions of Benefit Fees to OGCF in connection with transfers of Lots or Condominiums in Old Greenwood.

AGREEMENT

NOW THEREFORE, for mutual consideration, the receipt and sufficiency of which is hereby acknowledge by the Parties, and the covenants, conditions, restrictions and other promises set forth in this Agreement, the Parties hereby agree as follows:

1. **Definitions.** As used herein, the following terms shall have the following meanings:

1.1 **Affiliate.** Any entity described by Corporations Code section 150.

1.2 **Agreement.** This Community Benefit Fee Agreement.

1.3 **Beneficiary.** A beneficiary under a Mortgage and the assignees of such beneficiary.

1.4 **Community Benefit Fee.** Also referred to herein as the "Benefit Fee", is the fee to be paid to OGCF in connection with each Transfer. The Benefit Fee shall be equal to one percent (1%) of the Purchase Price in each transaction resulting in a Transfer. Notwithstanding the foregoing, the Benefit Fee shall total $500 for any transfer of real property (regardless of the size, number or actual value of the Lots or parcels transferred) from Truckee Land to Master Developer, or from Truckee Land or Master Developer to any Merchant Builder.

1.5 **Condominium.** An estate in real property as defined in California Civil Code Sections 783 and 1351(l), including any condominium which is a volume of real property that is not located entirely within a building (a "site" condominium).

1.6 **Covered Property.** The residential portion of the Old Greenwood community as defined at Exhibit "B" attached hereto.

1.7 **Dispute.** Any dispute between or among any of Truckee Land, OGCF and Master Developer, or between any Owner and Truckee Land, OGCF and/or Master Developer, concerning the amount, obligation to pay or other issue concerning the Benefit Fees under this Agreement or concerning any other dispute arising under this Agreement.

1.8 **Lot.** Any lot or parcel of land shown on any Recorded subdivision map or Recorded parcel map of any portion of the Covered Property, or any timeshare estate or timeshare use, as defined at Business and Professions Code section 11003.5, derived therefrom, and any and all improvements thereon.

1.9 **Master Developer.** Old Greenwood, LLC, a Delaware limited liability company, or any Affiliate thereof.

1.10 **Merchant Builder.** Any person or entity, or any Affiliate thereof, who owns or acquires any portion of the Covered Property for the purpose of developing five (5) or more Lots or Condominiums (10 or more timeshare estates or timeshare uses) and reselling such Lots or Condominiums to the general public.

1.11 **Mortgage.** Any Recorded mortgage or deed of trust or other conveyance of one or more Lots, Condominiums or other portions of the Covered Property to secure performance of an obligations, which will be reconveyed upon completion of such performance. A "First Mortgage" is any Mortgage with lien priority over any other Mortgage.

1.12 **Official Records.** The official records of the Nevada County, California, Recorder.

1.13 **OGCF.** Old Greenwood Community Foundation, a California nonprofit public benefit corporation.

1.14 **Old Greenwood.** Shall have the meaning ascribed thereto in Recital A, set forth above.

1.15 **Owner.** The Person or Persons, including Truckee Land, Master Developer and the Merchant Builders, holding record title to any Lot or Condominium. The term "Owner" includes a seller under an executory contract of sale but excludes Beneficiaries.

1.16 **Person.** A natural individual or any entity with the legal right to hold title to real property.

1.17 **Purchase Price.** The total purchase price or other consideration given by the transferee to the transferor in a transaction resulting in a Transfer, including, but not limited to, the sum of actual cash paid, the fair market value of services performed or real and personal property delivered or conveyed in exchange for the Transfer, and the amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price, or remaining unpaid on the property at the time of the Transfer, but excluding any third-party cost or charge incurred by the transferor or the transferee in connection with the transaction.

1.18 **Recorded.** The recordation, filing or entry of a document in the Official Records.

1.19 **Transfer.** The sale or exchange of a Lot or Condominium by an Owner (other than Master Developer or a Merchant Builder) to a transferee (other than an Affiliate of a Merchant Builder). None of the following transactions shall constitute a "Transfer" under this Agreement:

(1) The transfer of an interest in a Lot or Condominium to secure the performance of an obligation, such as a Mortgage or a lien, which will be reconveyed upon the completion of such performance.

(2) A transfer resulting from a foreclosure (by judicial foreclosure or trustee's sale) by the Beneficiary of a First Mortgage, or by an association (as defined in Civil Code section 1351(a)), or by an association described in a Public Report issued by the California Department of Real Estate for the Covered Property or any part thereof, or a transfer in lieu thereof.

(3) A transfer of a Lot or Condominium by a transferor or the transferor's spouse into a revocable intervivos trust which is an exempt transfer under California Revenue and Taxation Code Section 62(d).

(4) Any interspousal transfer (as defined in California Revenue and Taxation Code 63) or transfer between parents and any of their children (as defined in California Revenue and Taxation Code Section 63.1).

(5) A change in ownership where the transferee is not locally assessed by the Office of the County Tax Assessor.

(6) Any transfer of real property to any public agency, entity or district, or any utility service provider.

(7) Any transfer of real property to an association (defined in Section 1351(a) of the California Civil Code) as common area (defined in Section 1351(b) of the California Civil Code).

(8) The rental or lease of a Lot or Condominium.

(9) An exchange pursuant to an exchange program as defined in California Business and Professions Code section 11003.5(d).

1.20 Truckee Land. Truckee Land, LLC, a Delaware limited liability company.

2. Acknowledgment of Benefit. OGCF represents that it will use the Benefit Fees for the purposes described in Paragraph "B" of the Recitals. Decisions regarding all aspects of the method and manner in which such purposes shall be achieved shall be made by OGCF in its sole discretion. Truckee Land believes, nonetheless, that the services and activities to be provided by OGCF will enhance the value of and benefit each Lot and Condominium in the Covered Property. Each Owner who acquires a Lot or Condominium in the Covered Property by such acquisition agrees to and acknowledges the statements made in this Section.

3. Community Benefit Fee.

3.1 When Due and Paid. A Benefit Fee in the amount determined as provided in Section 1.4 shall be paid to OGCF each time a Lot or Condominium is Transferred (subject to the exchange transfer limit specified in Section 3.5). Such payment shall be made on or before the closing or effective date of the Transfer.

3.2 **Late Charges.** The Benefit Fee shall be considered late if not paid within five (5) business days after the closing or effective date of the Transfer. A late fee of one-half of one percent (0.5%) of the Benefit Fee shall apply thereafter for each day such payment is late, up to a maximum of ten percent (10%) of the Benefit Fee.

3.3 **Covenant to Pay and Creation of Lien.** Each Owner, by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay the Benefit Fee to OGCF, if applicable. Such fee, together with interest thereon, late charges, attorneys' fees, court costs, and other costs of collection thereof, as hereinafter provided, shall be a lien and charge upon the Lot or Condominium the Transfer of which gives rise to the Benefit Fee.

3.4 **Mandatory Notice.** Every Owner must notify OGCF within twenty (20) days of the execution of a contract to Transfer a Lot. Such notice shall include the name of the transferor and transferee; an identification of the Lot or Condominium being Transferred; the proposed Purchase Price; the proposed closing or effective date; the name, address and phone number of the escrow holder for the Transfer; and the name of the escrow officer. If any of the information set forth above is not available when the notice is originally sent to OGCF, the Owner shall notify OGCF as soon as such information becomes available. In addition, each Owner shall accurately update OGCF if any of such information provided shall change on or prior to the closing or effective date of the Transfer.

3.5 **Exchange Transfer.** If a particular transaction involves more than one Transfer solely because the Lot or Condominium is held for an interim period (not to exceed 24 hours) by an accommodation party as a part of a tax-deferred exchange under the Internal Revenue Code, and provided there is no increase in consideration given, then for the purposes of this Agreement, only one Transfer shall be deemed to have occurred and only one Benefit Fee must be paid in connection therewith, and the accommodation party shall not have any liability for payment of such Benefit Fee. Similarly, if a particular transaction involves more than one Transfer solely because the Lot or Condominium is held/owned for an interim period (not to exceed 72 hours) by Master Developer as a part of a Lot resale, then for the purposes of this Agreement, only one Transfer shall be deemed to have occurred and only one Benefit Fee must be paid in connection therewith, and Master Developer shall not have any liability for payment of such Benefit Fee.

3.6 **Escrow Demand.** OGCF is authorized to place a demand for payment of the Benefit Fee in the escrow (if any) for each Transfer. The demand shall state (a) either the amount of the Benefit Fee that is due or the formula for calculating the amount of the Benefit Fee that is due, and (b) that the Benefit Fee is due on or before close of the escrow for the Transfer. The transferor and transferee shall execute any and all documents reasonably requested by escrow holder to effectuate such payment on or before the close of escrow.

3.7 **Benefit Fee Payor.** The obligation to pay the Benefit Fee in each Transfer is a joint and several obligation of the transferor and the transferee in each transaction and not an obligation of any other Owner of a Lot or Condominium subject to this Agreement. The transferor and transferee in each transaction may, as a matter between themselves, allocate

the obligation to pay in any manner they so choose. If the transferor and transferee fail to pay the Benefit Fee, OGCF may take all actions authorized at law or equity, or otherwise set forth within this Agreement, to collect the Benefit Fee from the transferor and/or transferee.

4. **Binding Effect.** Truckee Land and OGCF hereby declare that the Covered Property will be held, leased, transferred, encumbered, used, occupied and improved subject to the reservations, rights, covenants, conditions and equitable servitudes contained in this Agreement, all of which are for the purpose of enhancing the attractiveness and desirability of the Covered Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Covered Property. The reservations, rights, covenants, conditions and equitable servitudes set forth in this Agreement will (1) run with and burden the Covered Property in perpetuity and will be binding upon all Persons having or acquiring any interest in the Covered Property or any part thereof, their heirs, successors and assigns; (2) inure to the benefit of every portion of the Covered Property and any interest therein; (3) inure to the benefit of and be binding upon Truckee Land, OGCF, and Master Developer, and their respective successors-in-interest, each Owner and each Owner's successors-in-interest; and (4) may be enforced by Truckee Land, OGCF, Master Developer and each Owner. The Parties hereby acknowledge and agree that the obligation to pay a Benefit Fee upon the Transfer of any of the Covered Property is not a personal covenant or obligation of Truckee Land or Master Developer, and that except as specifically set forth herein at Section 1.4, neither Truckee Land nor Master Developer shall be obligated to pay any Benefit Fee regarding any portion of the Covered Property.

5. **Mortgages.**

5.1 Rights of Beneficiaries. Nothing in this Agreement nor any amendment to or breach of this Agreement defeats or renders invalid the rights of the Beneficiary under any Recorded Mortgage encumbering any Lot or Condominium made in good faith and for value, provided that after the foreclosure or a transfer in lieu of foreclosure of any such Mortgage, such Lot or Condominium will remain subject to this Agreement.

5.2 Subordination to First Mortgages. Subject to Section 5.1, the rights and obligations of the Parties hereunder concerning any Lot or Condominium shall be subject and subordinate to the lien of any Recorded First Mortgage encumbering that Lot or Condominium.

5.3 Effect of Foreclosure. No foreclosure of a Mortgage on a Lot or Condominium or a transfer in lieu of foreclosure shall impair or otherwise affect OGCF's right to pursue payment of any Benefit Fee due in connection with the Transfer of that Lot or Condominium from the transferor or a transferee obligated to pay it. No foreclosure or transfer in lieu thereof shall relieve such Lot or Condominium or the purchaser thereof from liability for any Benefit Fee(s) thereafter becoming due or from the lien therefor.

5.4 Estoppel Certificate. Within twenty (20) days of the receipt of a written request of any Owner of a Lot or Condominium for which no Benefit Fee is due and owing and as to which Lot or Condominium OGCF holds no lien, OGCF shall deliver to such

Owner an executed estoppel certificate certifying that no Benefit Fee is due and owing for such Lot or Condominium and that OGCF holds no lien against such Lot or Condominium.

6. **Enforcement.**

6.1 **Remedies.** OGCF shall be entitled to any and all rights and remedies available at law or equity in order to collect the Benefit Fees owed it, including but not limited to, specific performance and rights of lien.

6.2 **Small Claims Court.** Any Dispute which is within the jurisdiction of a small claims court shall be resolved by a small claims court proceeding. Either Party may submit the Dispute to such court.

6.3 **Attorneys' Fees.** The prevailing party in any Dispute shall be entitled to recover its attorneys' fees and court costs from the other party.

6.4 **Enforcement by Lien.** There is hereby created a claim of lien, with power of sale, on each and every Lot and Condominium to secure prompt and faithful performance of each Owner's obligations under this Agreement for the payment to OGCF of the Benefit Fees, together with interest thereon at the maximum legal rate per annum from the date of delinquency, and all late charges and costs of collection which may be paid or incurred by the OGCF in connection therewith, including reasonable attorneys' fees. At any time after the delinquency, OGCF may elect to file and record in the Office of the Nevada County Recorder a notice default and claim of lien against the Lot or Condominium of the defaulting Owner. Such notice of default and claim of lien shall be executed and acknowledged by any officer of OGCF and shall contain substantially the following information:

a. The name of the defaulting Owner, along with a legal description of the Lot or Condominium;

b. The total amount of the delinquency, interest thereon, late charges, collection costs and reasonable attorneys' fees;

c. A statement that the notice of default and claim of lien is made by OGCF pursuant to this Agreement; and

d. A statement that a lien is claimed and will be foreclosed against the Lot or Condominium in an amount equal to the amount stated.

Upon such recordation of a duly executed original or copy of such notice of delinquent assessment and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment as the laws of the State of California may from time to time be changed or amended. The trustee for all purposes related thereto (including, but not limited to, the taking of all actions which would ordinarily be required of a trustee under a foreclosure of a deed of trust) shall be a neutral thir party with prior experience as a trustee as selected by OGCF. OGCF shall have the power to bid

at any foreclosure sale, trustee's sale or judgment sale, and to purchase, acquire, lease, hold, mortgage and convey any Lot or Condominium acquired at such sale subject to the provisions of this Agreement. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law.

The proceeds of any foreclosure, trustee's or judgment sale provided for in this Agreement shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, title costs and costs of the sale, and all other expenses of the proceedings and sale, and the balance of the proceeds, after satisfaction of all charges, monetary penalties and unpaid Benefit Fees hereunder or any liens, and subject to the rights of any Mortgagee, shall be paid to the defaulting Owner. The purchaser at any such sale shall obtain title to the Lot or Condominium free from the sums or performance claimed (except as stated in this subsection) but otherwise subject to the provisions of this Agreement; and no such sale or transfer shall relieve such Lot or Condominium or the purchaser thereof from liability for any Benefit Fees, other payments or performance thereafter becoming due or from the lien therefor as provided for in this subsection. All sums due and owing hereunder but still unpaid shall remain the obligation of and shall be payable by the person foreclosed upon.

Upon the timely curing of any default for which a notice of default or claim of lien was filed by OGCF, the officers of OGCF are hereby authorized to record an appropriate release of such lien in the Office of the County Recorder.

7. Miscellaneous.

7.1 Amendment. OGCF has the right to unilaterally amend this Agreement for the following reasons: (i) correct typographical errors, (ii) conform this Agreement to law, lender guidelines or California Department of Real Estate requirements, (iii) reduce the Benefit Fee, or (iv) terminate this Agreement. Truckee Land has the right to unilaterally amend this Agreement to conform this Agreement to law, lender guidelines or California Department of Real Estate requirements. OGCF and Truckee Land may, by their mutual written consent, amend this Agreement in order to expand the real property referred to by the definition of Covered Property, set forth in Section 1, above. In addition, OGCF and at least fifty-one percent (51%) of the Owners of Lots or Condominiums in the Covered Property may amend this Agreement as it applies to all of the Covered Property.

7.2 Authority. Each individual signatory hereto represents and warrants that he or she is duly authorized to sign this Agreement and is personally bound, or if signing on behalf of another, is authorized to do so and that the other is bound.

7.3 Assignment. OGCF may, by written assignment, assign its rights and delegate its duties under this Agreement to (a) any entity that is exempt from federal taxation pursuant to Internal Revenue Code Section 501(c)(3) or 510(c)(4) that assumes all of OGCF's obligations.

7.4 Disclaimers. Nothing herein (a) creates any right or remedy for the benefit of any Person not a party hereto, or (b) creates a fiduciary relationship, an agency, or partnership.

7.5 **Construction.** Whenever the context of this Agreement requires, the singular shall include the plural and the masculine shall include the feminine and/or the neuter. Except for the definitions in Section 1, where the heading in each subsection is the word being defined, article and section headings are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

7.6 **Notices.** All notices required or allowed shall be in writing and shall be sent to the addresses shown beside the signatures of the Parties, below. A Party may change its address for notice by giving notice to the other Party. Notice may be delivered by personal delivery, facsimile transmission during normal business hours of the recipient, a reputable overnight delivery service, or U.S. Mail sent certified with return receipt requested. Notices are effective on the earlier of the date received, the date of the delivery receipt, or the third day after postmarked, as applicable. Each Owner who transfers a Lot or Condominium shall send the name and mailing address of the transferee to OGCF.

7.7 **Time.** Time is of the essence of all provisions hereof where time is a factor.

7.8 **Waiver.** No right or remedy will be waived unless the waiver is in writing and signed by the Party claimed to have made the waiver. One waiver will not be interpreted as a continuing waiver.

7.9 **Incorporation of Recitals.** The Recitals set forth above are incorporated herein by this reference.

7.10 **Severability.** Invalidation of any portion or provision of this Agreement by judgment or court order shall in no way affect any other portions or provisions, which shall remain in full force and effect.

7.11 **Judicial Reference.** Any Dispute which is beyond the jurisdiction of a small claims court shall be submitted to general judicial reference pursuant to California Code of Civil Procedure Sections 638(a) and 641 through 645 or any successor statues thereto. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. The dispute resolution procedure in this Section 7.11 is implemented in accordance with the intent and philosophy of the Federal Arbitration Act (9 U.S.C.§§ 1-16) which is designed to encourage use of alternative methods of dispute resolution that avoid costly and potentially lengthy traditional court proceedings. The dispute resolution procedure in this Section is to be interpreted and enforced as if it were a proceeding authorized by the Federal Arbitration Act. Parties interpreting this Section shall follow the federal and state court rulings which provide that the Federal Arbitration Act (1) is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding California's substantive or procedural policies to the contrary, (2) requires that federal and state courts rigorously enforce agreements to arbitrate, and (3) requires that the scope of Arbitrable issues be resolved in favor of arbitration. Specifically, this Section is to be interpreted in accordance with *Allied-Bruce Terminix Companies v. Dobson*, 115 S.Ct. 834 (1995). References in this Section to California Code sections are not to be interpreted as a waiver of rights created under federal law.

The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The Parties shall use the procedures adopted by Judicial Arbitration and Mediation Services/Endispute ("JAMS") for judicial reference (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the Parties), provided that the following rules and procedures shall apply in all cases unless the Parties agree otherwise:

(1) Venue shall be in Nevada County, California, unless the parties agree to another venue;

(2) The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters;

(3) Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity provided the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;

(4) The referee may require one or more pre-hearing conferences;

(5) The Parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;

(6) A stenographic record of the trial shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;

(7) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable; and

(8) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

The statement of decision of the referee upon all of the issues considered by the referee is binding upon the parties, and upon filing of the statement of decision with the Clerk of the Court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the Court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties.

BY INITIALING BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE FOREGOING AND ACCEPT THAT THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL.

BF
Truckee Land's Initials

BF
OGCF's Initials

Signature Page Follows.

IN WITNESS WHEREOF, the Parties have executed this Community Benefit Fee Agreement effective as of the date first set forth above.

Address:

"OGCF"

OLD GREENWOOD COMMUNITY FOUNDATION,
a California nonprofit public benefit corporation

By: _____

Name: BILL FIVEASH

Title: TREASURER

Address:

"TRUCKEE LAND"

TRUCKEE LAND LLC,
a Delaware limited liability company

By: East West Resort Development V. L.P., L.L.L.P.,
a Delaware limited liability limited partnership
Its: Manager

By: HF Holding Corporation,
a Colorado corporation
Its: General Partner

By: _____
Bill Fiveash
Its: Vice President

EXHIBIT D

COPY

RECORDING REQUEST BY:
FIDELITY NATIONAL TITLE
WHEN RECORDED MAIL TO:

COX, CASTLE & NICHOLSON
19800 MacArthur Blvd., Suite 600
Irvine, CA 92602
Attn: D. Scott Turner, Esq.

Nevada, County Recorder
Jewett-Burdick
DOC- 2003--0067692--00
Acct 6-Fidelity National Title Co
Tuesday, DEC 30, 2003 15:16:00
REC $19.00|CCF $1.00|SBS $14.00
MIC $1.00|AUT $15.00|
Ttl Pd $50.00 Nbr-0000281189
ALB/AB/1-15

(Space Above for Recorder's Use)

COMMUNITY BENEFIT FEE AGREEMENT

(Gray's Crossing)

This Community Benefit Fee Agreement ("**Agreement**") is made and entered into as of this 22 day of December, 2003, by and between the Tahoe Mountain Resorts Foundation ("**TMRF**"), and Truckee Land, LLC, a Delaware limited liability company (together with any Affiliate thereof, the "**Truckee Land**"). TMRF and Truckee Land may be referred to herein collectively as the "**Parties**", or each, individually, as a "**Party**". Capitalized terms within the Recitals are defined in Section 1 unless otherwise defined therein.

RECITALS

A. Truckee Land owns that certain real property located in the Town of Truckee, Nevada County, California, commonly known as the Gray's Crossing planned development ("**Gray's Crossing**"), as described more fully at Exhibit "A" attached hereto (the "**Covered Property**"). Truckee Land will transfer such property to Gray's Crossing, LLC, a Delaware limited liability company (together with any Affiliate thereof, "**Master Developer**"), so that Master Developer may provide for and orchestrate the development of Gray's Crossing.

B. TMRF has been organized to provide educational opportunities with respect to such community activities as recreational programs, performing arts programs, local libraries, civic and cultural programs, historical preservation, and support of other initiatives to promote health and welfare of citizens of the communities and development of Nevada and Nevada Counties in and around the Town of Truckee and the Martis Valley and surrounding communities, as well as support and protect open space, recreational, scenic and historic lands in the Truckee/Donner region.

C. TMRF expects to receive a portion of the funds it needs to operate from the Community Benefit Fees ("**Benefit Fees**") set forth herein among other sources.

D. Truckee Land believes the services and activities TMRF will provide will benefit all of the Residential Lots and Condominiums in the Gray's Crossing community and enhance their enjoyment and value. Truckee Land and TMRF have agreed that a portion of the funds TMRF requires to operate will be provided by committing contributions of Benefit Fees to TMRF in connection with transfers of Residential Lots or Condominiums in Gray's Crossing.

AGREEMENT

NOW THEREFORE, for mutual consideration, the receipt and sufficiency of which is hereby acknowledge by the Parties, and the covenants, conditions, restrictions and other promises set forth in this Agreement, the Parties hereby agree as follows:

1. **Definitions**. As used herein, the following terms shall have the following meanings:

1.1 Affiliate. Any entity described by Corporations Code section 150.

1.2 Agreement. This Community Benefit Fee Agreement.

1.3 Beneficiary. A beneficiary under a Mortgage and the assignees of such beneficiary.

1.4 Community Benefit Fee. Also referred to herein as the "Benefit Fee", is the fee to be paid to TMRF in connection with each Transfer. The Benefit Fee shall be equal to three quarters of one percent (0.75%) of the Purchase Price in each transaction resulting in a Transfer unless such percentage shall be changed by the Board of Directors of TMRF, but in no event shall the Board make the Benefit Fee more than three quarters of one percent (0.75%). Notwithstanding the foregoing, the Benefit Fee shall total $375 for any transfer of real property (regardless of the size, number or actual value of the Residential Lots or parcels transferred) from Truckee Land to Master Developer or any Affiliate of Truckee Land.

1.5 Condominium. An estate in real property as defined in California Civil Code Sections 783 and 1351(l), including any condominium which is a volume of real property that is not located entirely within a building (a "site" condominium).

1.6 Covered Property. The residential portion of the Northstar community as defined at Exhibit "One" attached hereto.

1.7 Dispute. Any dispute between or among any of Truckee Land, TMRF and Master Developer, or between any Owner and Truckee Land, TMRF and/or Master Developer, concerning the amount, obligation to pay or other issue concerning the Benefit Fees under this Agreement or concerning any other dispute arising under this Agreement.

1.8 Gray's Crossing. Shall have the meaning ascribed thereto in Recital A, set forth above.

1.9 Lot. Any lot or parcel of land shown on any Recorded subdivision map or Recorded parcel map of any portion of the Covered Property, or any timeshare estate or timeshare use, as defined at Business and Professions Code section 11003.5, derived therefrom, and any and all improvements thereon.

1.10 Master Developer. Gray's Crossing, LLC, a Delaware limited liability company, or any Affiliate thereof.

1.11 **Merchant Builder.** Any person or entity, or Affiliate thereof, who owns or acquires any portion of the Covered Property for the purpose of developing five (5) or more Residential Lots or Condominiums (10 or more timeshare estates or timeshare uses) and reselling such Residential Lots or Condominiums (or timeshare estates or uses) to the general public.

1.12 **Mortgage.** Any Recorded mortgage or deed of trust or other conveyance of one or more Residential Lots, Condominiums or other portions of the Covered Property to secure performance of an obligations, which will be reconveyed upon completion of such performance. A "First Mortgage" is any Mortgage with lien priority over any other Mortgage.

1.13 **Official Records.** The official records of the Nevada County, California, Recorder.

1.14 **Owner.** The Person or Persons, including Truckee Land, Master Developer and the Merchant Builders, holding record title to any Residential Lot or Condominium. The term "Owner" includes a seller under an executory contract of sale but excludes Beneficiaries.

1.15 **Person.** A natural individual or any entity with the legal right to hold title to real property.

1.16 **Purchase Price.** The total purchase price or other consideration given by the transferee to the transferor in a transaction resulting in a Transfer, including, but not limited to, the sum of actual cash paid, the fair market value of services performed or real and personal property delivered or conveyed in exchange for the Transfer, and the amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price, or remaining unpaid on the property at the time of the Transfer, but excluding any third-party cost or charge incurred by the transferor or the transferee in connection with the transaction.

1.17 **Recorded.** The recordation, filing or entry of a document in the Official Records.

1.18 **Residential Lot or Condominium.** Residential Lot or Condominium shall mean any Lot or Condominium upon which a residential structure is or shall be constructed and which is not subject to any restriction imposed by any governmental entity or agency, statute, regulation, or condition of entitlement prohibiting the payment of a Community Benefit Fee. Residential Lots or Condominiums shall not include, by way of example and not limitation, lots upon which are constructed deed restricted affordable housing or deed restricted employee housing, golf course property or commercial property (office, retail, medical, etc.). Residential Lot or Condominium shall include, by way of example and not limitation, lots upon which are constructed single family homes, residential condominiums, and any lot upon which is built a residential structure in which is offered a timeshare estate or timeshare use.

1.19 **TMRF.** Tahoe Mountain Resorts Foundation, a California nonprofit public benefit corporation.

1.20 Transfer. The sale or exchange of a Residential Lot or Condominium by an Owner to a transferee. None of the following transactions shall constitute a "Transfer" under this Agreement:

(1) The transfer of an interest in a Residential Lot or Condominium to secure the performance of an obligation, such as a Mortgage or a lien, which will be reconveyed upon the completion of such performance.

(2) A transfer resulting from a foreclosure (by judicial foreclosure or trustee's sale) by the Beneficiary of a First Mortgage, or by an association (as defined in Civil Code section 1351(a)), or by an association described in a Public Report issued by the California Department of Real Estate for the Covered Property or any part thereof, or a transfer in lieu thereof.

(3) A transfer of a Residential Lot or Condominium by a transferor or the transferor's spouse into a revocable intervivos trust which is an exempt transfer under California Revenue and Taxation Code Section 62(d).

(4) Any interspousal transfer (as defined in California Revenue and Taxation Code 63) or transfer between parents and any of their children (as defined in California Revenue and Taxation Code Section 63.1).

(5) A change in ownership where the transferee is not locally assessed by the Office of the County Tax Assessor.

(6) Any transfer of real property to any public agency, entity or district, or any utility service provider.

(7) Any transfer of real property to an association (defined in Section 1351(a) of the California Civil Code) as common area (defined in Section 1351(b) of the California Civil Code).

(8) The rental or lease of a Residential Lot or Condominium.

(9) An exchange pursuant to an exchange program as defined in California Business and Professions Code section 11003.5(d).

(10) Any transfer of real property from Master Developer to a Merchant Builder.

(11) Any transfer of real property from Master Developer to any Affiliate of Master Developer.

(12) Any transfer of real property from a Merchant Builder to any Affiliate of such Merchant Builder.

1.21 Truckee Land. Truckee Land, LLC, a Delaware limited liability company.

2. **Acknowledgment of Benefit.** TMRF represents that it will use the Benefit Fees for the purposes described in Paragraph "B" of the Recitals. Decisions regarding all aspects of the method and manner in which such purposes shall be achieved shall be made by TMRF in its sole discretion. Truckee Land believes, nonetheless, that the services and activities to be provided by TMRF will enhance the value of and benefit each Residential Lot and Condominium in the Covered Property. Each Owner who acquires a Residential Lot or Condominium in the Covered Property by such acquisition agrees to and acknowledges the statements made in this Section.

3. **Community Benefit Fee.**

3.1 **When Due and Paid.** A Benefit Fee in the amount determined as provided in Section 1.4 shall be paid to TMRF each time a Residential Lot or Condominium is Transferred (subject to the exchange transfer limit specified in Section 3.5). Such payment shall be made on or before the closing or effective date of the Transfer.

3.2 **Late Charges.** The Benefit Fee shall be considered late if not paid within five (5) business days after the closing or effective date of the Transfer. A late fee of one-half of one percent (0.5%) of the Benefit Fee shall apply thereafter for each day such payment is late, up to a maximum of ten percent (10%) of the Benefit Fee.

3.3 **Covenant to Pay and Creation of Lien.** Each Owner, by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay the Benefit Fee to TMRF, if applicable. Such fee, together with interest thereon, late charges, attorneys' fees, court costs, and other costs of collection thereof, as hereinafter provided, shall be a lien and charge upon the Residential Lot or Condominium the Transfer of which gives rise to the Benefit Fee.

3.4 **Mandatory Notice.** Every Owner must notify TMRF within twenty (20) days of the execution of a contract to Transfer a Residential Lot. Such notice shall include the name of the transferor and transferee; an identification of the Residential Lot or Condominium being Transferred; the proposed Purchase Price; the proposed closing or effective date; the name, address and phone number of the escrow holder for the Transfer; and the name of the escrow officer. If any of the information set forth above is not available when the notice is originally sent to TMRF, the Owner shall notify TMRF as soon as such information becomes available. In addition, each Owner shall accurately update TMRF if any of such information provided shall change on or prior to the closing or effective date of the Transfer.

3.5 **Exchange Transfer.** If a particular transaction involves more than one Transfer solely because the Residential Lot or Condominium is held for an interim period (not to exceed 24 hours) by an accommodation party as a part of a tax-deferred exchange under the Internal Revenue Code, and provided there is no increase in consideration given, then for the purposes of this Agreement, only one Transfer shall be deemed to have occurred and only one Benefit Fee must be paid in connection therewith, and the accommodation party shall not have any liability for payment of such Benefit Fee. Similarly, if a particular transaction involves more than one Transfer solely because the Residential Lot or Condominium is held/owned for an

interim period (not to exceed 72 hours) by Master Developer as a part of a Residential Lot resale, then for the purposes of this Agreement, only one Transfer shall be deemed to have occurred and only one Benefit Fee must be paid in connection therewith, and Master Developer shall not have any liability for payment of such Benefit Fee.

3.6 **Escrow Demand**. TMRF is authorized to place a demand for payment of the Benefit Fee in the escrow (if any) for each Transfer. The demand shall state (a) either the amount of the Benefit Fee that is due or the formula for calculating the amount of the Benefit Fee that is due, and (b) that the Benefit Fee is due on or before close of the escrow for the Transfer. The transferor and transferee shall execute any and all documents reasonably requested by escrow holder to effectuate such payment on or before the close of escrow. In addition, the Master Developer shall place in escrow with any agreement by which it Transfers a lot for which a Benefit Fee must be paid, escrow instructions which specifically state, among other things, that the Escrow Holder shall pay the Benefit Fee to TMRF at the closing out of the proceeds of the sale or as may otherwise be provided by law.

3.7 **Benefit Fee Payor**. The obligation to pay the Benefit Fee in each Transfer is a joint and several obligation of the transferor and the transferee in each transaction and not an obligation of any other Owner of a Residential Lot or Condominium subject to this Agreement. The transferor and transferee in each transaction may, as a matter between themselves, allocate the obligation to pay in any manner they so choose. If the transferor and transferee fail to pay the Benefit Fee, TMRF may take all actions authorized at law or equity, or otherwise set forth within this Agreement, to collect the Benefit Fee from the transferor and/or transferee.

4. **Binding Effect**. Truckee Land and TMRF hereby declare that the Covered Property will be held, leased, transferred, encumbered, used, occupied and improved subject to the reservations, rights, covenants, conditions and equitable servitudes contained in this Agreement, all of which are for the purpose of enhancing the attractiveness and desirability of the Covered Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Covered Property. The reservations, rights, covenants, conditions and equitable servitudes set forth in this Agreement will (1) run with and burden the Covered Property in perpetuity and will be binding upon all Persons having or acquiring any interest in the Covered Property or any part thereof, their heirs, successors and assigns; (2) inure to the benefit of every portion of the Covered Property and any interest therein; (3) inure to the benefit of and be binding upon Truckee Land, TMRF, and Master Developer, and their respective successors-in-interest, each Owner and each Owner's successors-in-interest; and (4) may be enforced by Truckee Land, TMRF, Master Developer and each Owner. The Parties hereby acknowledge and agree that the obligation to pay a Benefit Fee upon the Transfer of any of the Covered Property is not a personal covenant or obligation of Truckee Land or Master Developer, and that except as specifically set forth herein at Section 1.4, neither Truckee Land nor Master Developer shall be obligated to pay any Benefit Fee regarding any portion of the Covered Property.

5. **Mortgages.**

5.1 Rights of Beneficiaries. Nothing in this Agreement nor any amendment to or breach of this Agreement defeats or renders invalid the rights of the Beneficiary under any Recorded Mortgage encumbering any Residential Lot or Condominium made in good faith and for value, provided that after the foreclosure or a transfer in lieu of foreclosure of any such Mortgage, such Residential Lot or Condominium will remain subject to this Agreement.

5.2 Subordination to First Mortgages. Subject to Section 5.1 , the rights and obligations of the Parties hereunder concerning any Residential Lot or Condominium shall be subject and subordinate to the lien of any Recorded First Mortgage encumbering that Residential Lot or Condominium.

5.3 Effect of Foreclosure. No foreclosure of a Mortgage on a Residential Lot or Condominium or a transfer in lieu of foreclosure shall impair or otherwise affect TMRF's right to pursue payment of any Benefit Fee due in connection with the Transfer of that Residential Lot or Condominium from the transferor or a transferee obligated to pay it. No foreclosure or transfer in lieu thereof shall relieve such Residential Lot or Condominium or the purchaser thereof from liability for any Benefit Fee(s) thereafter becoming due or from the lien therefor.

5.4 Estoppel Certificate. Within twenty (20) days of the receipt of a written request of any Owner of a Lot or Condominium for which no Benefit Fee is due and owing and as to which Lot or Condominium TMRF holds no lien, TMRF shall deliver to such Owner an executed estoppel certificate certifying that no Benefit Fee is due and owing for such Lot or Condominium and that TMRF holds no lien against such Lot or Condominium.

6. **Enforcement.**

6.1 Remedies. TMRF shall be entitled to any and all rights and remedies available at law or equity in order to collect the Benefit Fees owed it, including but not limited to, specific performance and rights of lien.

6.2 Small Claims Court. Any Dispute which is within the jurisdiction of a small claims court shall be resolved by a small claims court proceeding. Either Party may submit the Dispute to such court.

6.3 Attorneys' Fees. The prevailing party in any Dispute shall be entitled to recover its attorneys' fees and court costs from the other party.

6.4 Enforcement by Lien. There is hereby created a claim of lien, with power of sale, on each and every Residential Lot and Condominium to secure prompt and faithful performance of each Owner's obligations under this Agreement for the payment to TMRF of the Benefit Fees, together with interest thereon at the maximum legal rate per annum from the date of delinquency, and all late charges and costs of collection which may be paid or incurred by the TMRF in connection therewith, including reasonable attorneys' fees. At any time after the delinquency, TMRF may elect to file and record in the Office of the Nevada

County Recorder a notice default and claim of lien against the Residential Lot or Condominium of the defaulting Owner. Such notice of default and claim of lien shall be executed and acknowledged by any officer of TMRF and shall contain substantially the following information:

a. The name of the defaulting Owner, along with a legal description of the Residential Lot or Condominium;

b. The total amount of the delinquency, interest thereon, late charges, collection costs and reasonable attorneys' fees;

c. A statement that the notice of default and claim of lien is made by TMRF pursuant to this Agreement; and

d. A statement that a lien is claimed and will be foreclosed against the Residential Lot or Condominium in an amount equal to the amount stated.

Upon such recordation of a duly executed original or copy of such notice of delinquent assessment and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment as the laws of the State of California may from time to time be changed or amended. The trustee for all purposes related thereto (including, but not limited to, the taking of all actions which would ordinarily be required of a trustee under a foreclosure of a deed of trust) shall be a neutral third party with prior trustee experience as selected by TMRF. TMRF shall have the power to bid at any foreclosure sale, trustee's sale or judgment sale, and to purchase, acquire, lease, hold, mortgage and convey any Residential Lot or Condominium acquired at such sale subject to the provisions of this Agreement. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law.

The proceeds of any foreclosure, trustee's or judgment sale provided for in this Agreement shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, title costs and costs of the sale, and all other expenses of the proceedings and sale, and the balance of the proceeds, after satisfaction of all charges, monetary penalties and unpaid Benefit Fees hereunder or any liens, and subject to the rights of any Mortgagee, shall be paid to the defaulting Owner. The purchaser at any such sale shall obtain title to the Residential Lot or Condominium free from the sums or performance claimed (except as stated in this subsection) but otherwise subject to the provisions of this Agreement; and no such sale or transfer shall relieve such Residential Lot or Condominium or the purchaser thereof from liability for any Benefit Fees, other payments or performance thereafter becoming due or from the lien therefor as provided for in this subsection. All sums due and owing hereunder but still unpaid shall remain the obligation of and shall be payable by the person foreclosed upon.

Upon the timely curing of any default for which a notice of default or claim of lien was filed by TMRF, the officers of TMRF are hereby authorized to record an appropriate release of such lien in the Office of the County Recorder.

7. **Miscellaneous.**

7.1 **Amendment.** TMRF has the right to unilaterally amend this Agreement for the following reasons: (i) correct typographical errors, (ii) conform this Agreement to law, lender guidelines or California Department of Real Estate requirements, (iii) reduce the Benefit Fee, or (iv) terminate this Agreement. Truckee Land has the right to unilaterally amend this Agreement to conform this Agreement to law, lender guidelines or California Department of Real Estate requirements. TMRF and Truckee Land may, by their mutual written consent, amend this Agreement in order to expand the real property referred to by the definition of Covered Property, set forth in Section 1, above. In addition, TMRF and at least fifty-one percent (51%) of the Owners of Residential Lots or Condominiums in the Covered Property may amend this Agreement as it applies to all of the Covered Property.

7.2 **Authority.** Each individual signatory hereto represents and warrants that he or she is duly authorized to sign this Agreement and is personally bound, or if signing on behalf of another, is authorized to do so and that the other is bound.

7.3 **Assignment.** TMRF may, by written assignment, assign all, or any portion of, its rights and delegate all, or any portion of, its duties and obligations under this Agreement to any entity that is exempt from federal taxation pursuant to Internal Revenue Code Section 501(c)(3) or 510(c)(4) that assumes such duties and obligations of TMRF.

7.4 **Disclaimers.** Nothing herein (a) creates any right or remedy for the benefit of any Person not a party hereto, or (b) creates a fiduciary relationship, an agency, or partnership.

7.5 **Construction.** Whenever the context of this Agreement requires, the singular shall include the plural and the masculine shall include the feminine and/or the neuter. Except for the definitions in Section 1, where the heading in each subsection is the word being defined, article and section headings are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

7.6 **Notices.** All notices required or allowed shall be in writing and shall be sent to the addresses shown beside the signatures of the Parties, below. A Party may change its address for notice by giving notice to the other Party. Notice may be delivered by personal delivery, facsimile transmission during normal business hours of the recipient, a reputable overnight delivery service, or U.S. Mail sent certified with return receipt requested. Notices are effective on the earlier of the date received, the date of the delivery receipt, or the third day after postmarked, as applicable. Each Owner who transfers a Residential Lot or Condominium shall send the name and mailing address of the transferee to TMRF.

7.7 **Time.** Time is of the essence of all provisions hereof where time is a factor.

7.8 **Waiver.** No right or remedy will be waived unless the waiver is in writing and signed by the Party claimed to have made the waiver. One waiver will not be interpreted as a continuing waiver.

7.9 **Incorporation of Recitals.** The Recitals set forth above are incorporated herein by this reference.

7.10 **Severability.** Invalidation of any portion or provision of this Agreement by judgment or court order shall in no way affect any other portions or provisions, which shall remain in full force and effect.

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Truckee Land's Initials

TMRF's Initials

Signature Page Follows.

IN WITNESS WHEREOF, the Parties have executed this Community Benefit Fee Agreement effective as of the date first set forth above.

Address:

"TMRF"

TAHOE MOUNTAIN RESORTS FOUNDATION,
a California nonprofit public benefit corporation

By: _____

Name: Aaron Revere

Title: President

Address:

"TRUCKEE LAND"

TRUCKEE LAND LLC,
a Delaware limited liability company

By: East West Resort Development V, L.P., L.L.L.P.,
as a member and manager

By: HF Holding Corp., as general partner

By: _____

Name: Mark J Wasley

Title: Vice President

Date: 12/29/03

STATE OF CALIFORNIA)
) ss:
COUNTY OF Nevada)

On December 29th, 2003 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Aaron Revere, personally known to me (or 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.

WITNESS my hand and official seal.

LYDIA CARTER
Commission # 1350484
Notary Public - California
Placer County
My Comm. Expires Apr 9, 2006

Lydia Carter
Notary Public

STATE OF CALIFORNIA)
) ss:
COUNTY OF Nevada)

On December 29th, 2003 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Mark Wasley, personally known to me (or 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.

WITNESS my hand and official seal.

LYDIA CARTER
Commission # 1350484
Notary Public - California
Placer County
My Comm. Expires Apr 9, 2006

Lydia Carter
Notary Public

EXHIBIT "A"
to the
Community Benefit Fee Agreement

Description of Covered Property

See attached.

Exhibit "A"

The land herein referred to is situated in the County of Nevada, State of California, and is described as follows:

Lots 1, 2, 4 through 12, 21 and 22 as shown on the Official Map of Boca Sierra Estates, Final Map No. 88-11, filed in the Office of the County Recorder, County of Nevada, State of California, on April 23, 1991, in Book 7 of Subdivisions, at Page 113.

EXCEPTING THEREFROM all that portion of land as described in the Final Order of Condemnation Recorded May 2, 2000, as Instrument No. 2000-0012243, of Official Records for State Freeway purposes.

ALSO EXCEPTING THEREFROM all that portion of Lot 22 as said lot is shown and so designated on the Official Map of Boca Sierra Estates, Final Map No. 88-11, filed in the Office of the County Recorder, County of Nevada, State of California, on April 23, 1991, in Book 7 of Subdivisions, at Page 113, Nevada County Records lying West and Southwest of the land as described as described in the Final Order of Condemnation Recorded May 2, 2000, as Instrument No. 2000-0012243, of Official Records.

intended for publication in the media without prior consultation with the other Parties and the County, the Parties acknowledging that public statements during the period when the important milestone events to be undertaken pursuant to this Agreement are sensitive and must be closely monitored. Notwithstanding the foregoing, nothing in this Paragraph 11(b) shall apply to the Sierra Club.

(c) Section Headings. The Section titles and headings in this Agreement are intended solely for convenience of reference.

(d) Amendment. This Agreement may be amended solely by a writing signed by DMB/H and SW/M, except that any amendments that would affect the affirmative obligations of any Petitioner other than SW/M shall not be effective as against such Petitioner unless it has been signed by such Petitioner.

(e) Retention of Discretion. Notwithstanding anything else herein to the contrary, Petitioners acknowledge that DMB/H retains substantial discretion regarding whether and how to develop those portions of the Hopkins Ranch Project that it retains and the Siller Ranch Project, subject to all of the limitations and restrictions contained in this Agreement.

Nothing herein shall be deemed to have altered in any way the County's discretion to act on and consider future applications for land use entitlements or modification of existing entitlements within its jurisdiction. The Parties hereto recognize, agree and acknowledge that the County and the BOS retain discretion, consistent with applicable law, to act on and consider any and all such land use entitlements contemplated by this Agreement including, without limitation, the Consistent Approvals as defined herein.

(f) Governing Law and Venue. This Agreement shall be governed by and construed according to the laws of the State of California with venue for any action to enforce

the provisions hereof, obtain a declaration of rights hereunder or recover damages for breach in the Superior Court of Placer County.

(g) No Third Parties Benefited. No third party is intended to be a beneficiary of any provision of this Agreement, except that the County is intended to be a third party beneficiary of the provisions of Section 6(c) and the provisions of this Agreement providing for the County's Concurrence with certain actions. No person or entity other than the Parties or their assigns, and the County to the extent it is a third party beneficiary, shall have the right to enforce the provisions hereof.

(h) County Concurrence. Whenever in this Agreement, a proposed action is subject to Concurrence of the County, the provisions of this Section 11(h) shall apply. Either DMB/H or SW/M shall give written notice of any such action to the County Executive Officer and the County Counsel. The County may within ninety (90) days following such notice disapprove such proposed action by notice to DMB/H and SW/M if the County, in the exercise of its reasonable judgment, objects to the proposed action. If the County does not give written notice of disapproval within such ninety (90) days, the County shall be deemed to have given its Concurrence to the action as proposed.

(i) Successors and Assigns. Except as otherwise specifically set forth herein, this Agreement shall be binding on and inure to the benefit of the heirs, successors, assignees and transferees of the Parties.

(j) Entire Agreement. This Agreement, the attachments to this Agreement and any written documents entered into concurrently with this Agreement contain all of the representations and the entire understanding and agreement among the Parties with respect to the

subject matter hereof and supersede all prior and contemporaneous agreements and understandings of the Parties in connection therewith.

(k) Severability. The invalidity of any portion of this Agreement shall not invalidate the remainder. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or unenforceable by a court of competent jurisdiction, the Parties shall amend this Agreement and/or take other action necessary to achieve the intent of this Agreement in a manner consistent with the ruling of the court.

(l) Construction. Each Party and its counsel have participated in the drafting of this Agreement and it should not be construed for or against any Party by reason of alleged authorship, in whole or in part.

(m) Specific Enforcement and Equitable Relief. Nothing herein contained should be construed to prevent any Party from seeking enforcement of any provision hereof by specific performance, injunction or other equitable relief where appropriate.

(n) Attorneys' Fees. In any action to seek a declaration of rights hereunder, to enforce this Agreement or recover damages or other relief by reason of an alleged breach hereof, the prevailing party in any such action shall be entitled to recover its reasonable attorneys' fees and costs.

(o) Notices. All notices required under this Agreement shall be in writing, and may be given either personally or by registered or certified mail (return receipt requested) or facsimile, with hard copy mailed as provided above on the same day. Notice to SW/M shall be deemed notice to all Petitioners other than Sierra Club. Such notices shall be given to the Parties at their addresses set forth below, with any Party having the right to change its address for receipt of notices by written notice given to other Parties as provided herein:

SIERRA WATCH:

David Welch
Sierra Watch
111 Sandringham Road
Piedmont, CA 94611-3614
Phone: (510) 530-5145
Fax: (510) 530-5145

with a copy to:

Richard Taylor & Rachel Hooper (which copy shall not constitute notice)
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
Phone: (415) 552-7272
Fax: (415) 552-5816

MOUNTAIN AREA PRESERVATION FOUNDATION:

Stefanie Olivieri
Mountain Area Preservation Foundation
P.O. Box 565
Truckee, CA 96160
Phone: (530) 587-3161
Fax: (530) 587-8842

SIERRA CLUB:

David Kean
Tahoe Area Sierra Club
P.O. Box 1111
Truckee, CA 96160
Fax: (415) 977-5793

with a copy to:

Sierra Club Coordinating Attorney (which copy shall not constitute notice)
Sierra Club
85 Second Street
San Francisco, CA 94105-3441
Fax: (415) 977-5793

DMB/HIGHLANDS GROUP, LLC:

Eneas A. Kane, Esq.
Executive Vice President
DMB Associates Inc.
7600 E. Doubletree Ranch Road, Suite 300
Scottsdale, AZ 85258

Ron Parr
DMB Highlands Group, LLC
10185 Truckee Tahoe
Airport Rd., Suite 410
Truckee, CA 96161
Phone: (530) 550-2990
Fax: (530) 550-2985

with a copy to:

Howard N. Ellman, Esq. (which copy shall not constitute notice)
Ellman Burke Hoffman & Johnson, PC
601 California Street, Suite 1900
San Francisco, CA 94108
Phone: (415) 777-2727
Fax: (415) 495-7587

(p) Execution In Counterparts. This Agreement may be executed in counterparts. The counterparts shall together comprise a single agreement.

(q) Time. Time is of the essence of each and every provision hereof.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement as of the day and year first above written.

DMB/HIGHLANDS GROUP, LLC

DMB/Highlands Group, LLC,
an Arizona limited liability company

By: Highlands Investment Group XV, Ltd.,
a Colorado limited partnership, Member

By: Martis Creek Corporation,
a California corporation, General Partner

By: _____
Name: James R. Hartley
Title: Chairman

By: _____
Name: Nicholas J. Hackstaff
Title: President

By: DMB Communities LLC, an Arizona
limited liability company, Member

By: DMB Associates, Inc.,
an Arizona corporation, Manager

By: _____
Name: Ernest A. Kane
Title: Executive Vice President

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

SIERRA WATCH

By: David Welch
Its: President

MOUNTAIN AREA PRESERVATION FOUNDATION

_____

By: John Eaton
Its: President

PLANNING AND CONSERVATION LEAGUE

_____

By: Gary Patton
Its: Executive Director

SIERRA CLUB

_____

By:
Its:

LEAGUE TO SAVE LAKE TAHOE

_____

By: Rochelle Nason
Its: Executive Director

SIERRA WATCH

_____

By: David Welch
Its: President

MOUNTAIN AREA PRESERVATION FOUNDATION

_____

By: John Eaton
Its: President

PLANNING AND CONSERVATION LEAGUE

_____

By: Gary Patton
Its: Executive Director

SIERRA CLUB

_____

By:
Its:

LEAGUE TO SAVE LAKE TAHOE

_____

By: Rochelle Nason
Its: Executive Director

SIERRA WATCH

_____

By: David Welch
Its: President

MOUNTAIN AREA PRESERVATION FOUNDATION

_____

By: John Eaton
Its: President

PLANNING AND CONSERVATION LEAGUE

_____

By: Gary Patton
Its: Executive Director

SIERRA CLUB

_____

By:
Its:

LEAGUE TO SAVE LAKE TAHOE

_____

By: Rochelle Nason
Its: Executive Director

SIERRA WATCH

By: David Welch
Its: President

MOUNTAIN AREA PRESERVATION FOUNDATION

By: John Eaton
Its: President

PLANNING AND CONSERVATION LEAGUE

By: Gary Dalton
Its: Executive Director

SIERRA CLUB

David M. Kean

By: David M. Kean
Its: Tahoe Group member

LEAGUE TO SAVE LAKE TAHOE

By: Rochelle Nason
Its: Executive Director

SIERRA WATCH

_____

By: David Welch
Its: President

MOUNTAIN AREA PRESERVATION FOUNDATION

_____

By: John Eaton
Its: President

PLANNING AND CONSERVATION LEAGUE

_____

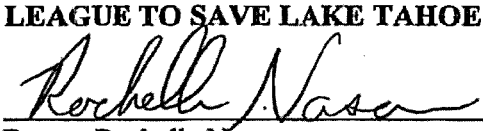
By: Gary Dalton
Its: Executive Director

SIERRA CLUB

_____

By:
Its:

LEAGUE TO SAVE LAKE TAHOE



By: Rochelle Nason
Its: Executive Director

EXHIBIT LIST

A	Judgment
B	Application and Judgment Modification Order
C	Dismissal of MVCP Litigation Appeal
D	Form of Hopkins Conservation Parcel Grant Deed
E	Hopkins Plot Plan
F	Form of MV Workforce Housing Parcel Grant Deed
G	Form of Siller Conservation Easement
H	Required Provisions
I	Siller Ranch Development Plan
J	Form of Conveyance Fee Covenant
K	Supplemental Groundwater Monitoring Program
L	Sierra Club Letter
M	Cure Letter

Exhibit J

Form of Conveyance Fee Covenant

DECLARATION IMPOSING CONVEYANCE FEE COVENANT AND LIEN

THIS DECLARATION (this "Declaration") is made as of this __ day of _____, 2006, by DMB/HIGHLANDS GROUP, LLC, an Arizona limited liability company ("Declarant"), based on the following facts and intentions:

A. Declarant is the owner of all that certain real property located in the County of Placer, State of California, more particularly described in Exhibit A attached hereto and incorporated herein by reference thereto and known as the "Siller Ranch." Declarant obtained from the County of Placer (the "County") various entitlements for development of the Siller Ranch, including a vesting tentative subdivision map.

B. This Declaration is being entered into in connection with the development of Siller Ranch in order to impose a uniform system for assessing and collecting funds for the purposes more fully described herein, and to assure that Conveyance Fees (as hereinafter defined) will be held in trust for the specific purposes described herein.

NOW THEREFORE, Declarant hereby declares the existence of a covenant to pay Conveyance Fees, and imposes upon the Residential Lots (as hereinafter defined) created and existing from time to time at Siller Ranch, a lien to secure payment of Conveyance Fees, in accordance with the following terms and conditions:

1. Definitions. As used herein, the following terms have the following meanings:

1.1 Affiliate means any corporation or other entity that, directly or indirectly, controls or is controlled by Declarant, or that is under common control with Declarant. For purposes of this definition, the term "controlling," "controlled by" or "under common control with" shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract or otherwise.

1.2 Bulk Sale means a bona fide arms' length sale of five (5) or more unimproved Residential Lots to a purchaser who certifies to the Trustee in writing that such purchaser is acquiring such Residential Lots for the purpose of developing residential housing thereon and then reselling such Residential Lots to the general public. A Bulk Sale does not include a sale to a purchaser that intends to develop and retain such Residential Lots for lease or rental.

1.3 Conveyance Fees has the meaning given in Section 2 below.

1.4 Declarant means DMB/Highlands Group, LLC, an Arizona limited liability company.

1.5 Foreclosure Trustee has the meaning given in Section 9.4 below.

1.6 Mortgagee has the meaning given in Section 8.1 below.

1.7 Owner means the Person or Persons holding record title to any Residential Lot.

1.8 Purchase Price means the gross consideration given by the transferee to the transferor in connection with a Retail Residential Sale, including, but not limited to, the sum of actual cash paid, the fair market value of services performed or real and personal property delivered or conveyed in exchange for the transferred Residential Lot (or interest therein), and the amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price, or remaining unpaid on the property at the time of the transfer thereof, but excluding any Conveyance Fees payable hereunder. The Purchase Price of a Residential Lot does not include any amount paid to acquire a membership or similar interest in any club, association or other organization offering its members access to recreational facilities associated with the Siller Ranch, including, but not limited to, any golf course, fitness facility or the like, provided that membership in any such organization is optional and not required of residents at Siller Ranch. If, in connection with a Retail Residential Sale, such a membership is transferred by the transferor to the transferee, and the contract does not separately specify the amount paid for such membership, the Trustee shall have the right to reasonably determine the portion of the total price fairly allocable to the price of such membership and the portion fairly allocable to the Purchase Price. Any dispute over such allocation shall be resolved pursuant to Section 14.

1.9 Qualified Recipient means a non-profit corporation qualified under Internal Revenue Code Section 501(c)(3) that is neither an Association, as defined in Civil Code Section 1351(a), nor a "community service organization or similar entity" as defined in Civil Code Section 1368(c), unless the collection of Conveyance Fees by such entity would not constitute a violation of Civil Code Section 1368(c) or other applicable law.

1.10 Residential Lot means any lot or parcel of land, whether improved or unimproved, intended for residential use, as shown on a duly filed final subdivision map or parcel map of Siller Ranch or any portion thereof, or any timeshare estate or timeshare use (as defined in California Business and Professions Code Section 11003.5) derived therefrom, and any and all improvements thereon.

1.11 Retail Residential Sale means each sale or other transfer of a Residential Lot (including the sale or transfer of a fractional interest therein), other than:

(a) any sale or transfer that does not result in a "change in ownership" as defined in California Revenue and Taxation Code Section 60 et seq. (as such provisions may be amended from time to time), including, but not limited to:

(1) any sale or transfer to create or terminate a security interest;

(2) any transfer resulting from a foreclosure (whether judicial or non-judicial) of a lien or security interest, including a foreclosure by an association (as defined in Civil Code Section 1351(a)), or any conveyance in lieu of such foreclosure;

(3) any interspousal transfer (as defined in California Revenue and Taxation Code Section 63);

(4) any transfer between a parent and child or grandparent and grandchild (within the meaning of California Revenue and Taxation Code Section 63.1);

(5) any rental or lease of a Residential Lot for a term (including option and/or renewal terms) of not more than thirty-five (35) years.

(b) The reservation by Declarant of easements, access rights or licenses, water rights or other similar rights benefitting or encumbering any of the Residential Lots or any common areas, or any subsequent transfer of any such easements or rights;

(c) Any transfer of real property to any public agency, entity or district, or any utility service provider;

(d) Any transfer to an association (defined in Section 1351(a) of the California Civil Code) as common area (defined in Section 1351(b) of the California Civil Code).

(e) An exchange pursuant to an exchange program as defined in California Business and Professions Code Section 11003.5(d).

(f) Any transfer of Residential Lots by Declarant to one or more Affiliates of Declarant.

(g) any sale or transfer of a Residential Lot on which Workforce Housing has been constructed, and

(h) any Bulk Sale.

1.12 Trust, Trust Agreement and Trustee have the meanings given in Section 7 below.

1.13 Workforce Housing means any dwelling unit that is subject to an enforceable restriction limiting the sale or rental of such dwelling and/or the lot on which such dwelling is constructed to persons having current income not exceeding 180% of the median income for the relevant area, as determined by the Trustee.

2. Conveyance Fees. There shall be due and payable upon each Retail Residential Sale of a Residential Lot, in perpetuity except as otherwise provided below, the following fees (collectively, "Conveyance Fees"):

2.1 Workforce Housing Fee. A fee equal to one-quarter of one percent (0.25%) of the Purchase Price of each "Retail Residential Sale" (the "Workforce Housing Fee"). The proceeds of the Workforce Housing Fee shall be held by the Trustee in a separate account and disbursed exclusively to one or more Qualified Recipients to pay costs of planning, design, construction, development, repair, maintenance, and/or reconstruction of Workforce Housing, transit (including transit operational expenses), passive recreation and management and

enhancement of open space on portions of the Hopkins Ranch not owned by Declarant, and related community purposes elsewhere within eastern Placer County, or elsewhere in the region, in consultation with the County of Placer.

2.2 Conservation Open Space Fee. A fee equal to one-half of one percent (0.50%) of the Purchase Price of each Residential Retail Sale (the "Conservation Open Space Fee"). The proceeds of the Conservation Open Space Fee shall be held by the Trustee in a separate account and disbursed exclusively to one or more Qualified Recipients to pay costs of acquiring, maintaining and restoring open space within eastern Placer County, or elsewhere in the region, in consultation with the County of Placer.

2.3 Habitat/Forest Restoration and Management Fee. A fee equal to one-quarter of one percent (0.25%) of the Purchase Price of each Retail Residential Sale of a Residential Lot occurring during the period beginning with the first Retail Residential Sale of that Residential Lot and continuing for a period of twenty-five (25) years thereafter (the "Habitat/Forest Restoration and Management Fee"). The proceeds of the Habitat/Forest Restoration and Management Fee shall be held by the Trustee in a separate account and disbursed exclusively to one or more Qualified Recipients to pay for the cost of habitat management and restoration, including, but without limitation, restoration planning on sites within eastern Placer County, or elsewhere in the region, in consultation with the County of Placer.

3. Transferor Liable. Each Owner of an interest in a Residential Lot, by acceptance of a deed or other conveyance of such interest, and whether or not the deed or conveyance so states, hereby covenants and agrees to pay the Conveyance Fees in connection with each Retail Residential Sale by which such Owner acquires or transfers such Residential Lot. All Conveyance Fees, together with interest thereon if not paid when due, attorneys' fees and costs of collection, as hereinafter provided, shall be a lien and charge upon the Residential Lot the transfer of which gives rise to the Conveyance Fees. The obligation for payment of the Conveyance Fees shall be a joint and several obligation of the transferor and transferee in each Retail Residential Sale, and such transferor and transferee may, as between themselves, allocate the obligation to pay such fees in any manner they choose.

4. Disputes. In any case where a transferor or transferee contends that no Conveyance Fees are due in connection with a given transfer because the same does not constitute a "change of ownership," the transferor shall submit a declaration under penalty of perjury to the Trustee, setting forth all of the facts pertaining to the transfer that are claimed to qualify such transfer for such exemption. In the case of a voluntary conveyance, the transferor shall submit such declaration at least ten (10) days prior to recording the deed or other instrument of conveyance, to permit the Trustee a reasonable opportunity to evaluate the materials submitted. If the Trustee disputes such claim, it may initiate an action to collect the Conveyance Fees pursuant to Section 9.1, or either party may initiate an action for declaratory relief (subject in either case, to the provisions of Section 14 hereof) in which the issue of liability can be determined.

5. Time of Payment. With respect to any voluntary conveyance of a Residential Lot that constitutes a Retail Residential Sale, Conveyance Fees shall be due and payable upon recordation (or other delivery) of the instrument of conveyance that constitutes the "change of ownership" for purposes of California real property tax law. With respect to any involuntary

conveyance or conveyance by operation of law that constitutes a Retail Residential Sale, Conveyance Fees shall be due and payable upon demand by the Trustee, or upon recordation of an instrument vesting title in the transferee(s), whichever occurs first, and the transferee(s) shall notify the Trustee of the occurrence of such transfer within a reasonable time after such transfer occurs, or after obtaining actual knowledge thereof. To the extent reasonably possible, Conveyance Fees shall be paid directly out of escrow established for delivery of the instrument of conveyance that triggers the fee obligation. Each Owner hereby authorizes Trustee to make demand upon any escrow company or other person acting as a closing agent for the sale of Residential Lots owned by such Owner for any Conveyance Fees due with respect to any Retail Residential Sale of such Residential Lots. In addition, upon the written request of an Owner or an authorized agent of an Owner, which request specifies the Purchase Price of a Residential Lot and such other details regarding a contemplated transfer as Trustee may reasonably request, the Trustee shall determine and notify the party making such request of the amount of Conveyance Fees due (or that no Conveyance Fees are due) with respect to a specific contemplated transfer. Any Conveyance Fees not received by the Trustee within five (5) business days following recordation of the instrument of conveyance shall be subject to a late fee equal to one-half of one percent (0.5%) of the amount of Conveyance Fees otherwise payable for each day thereafter until such Conveyance Fees have been paid, up to a maximum of ten percent (10.0%) of the amount of the Conveyance Fees otherwise payable. In addition, any Conveyance Fees not paid within twenty-five (25) business days following recordation of the instrument of conveyance shall thereafter bear interest at the rate of ten percent (10%) per annum until paid. No late fees or interest shall be payable in connection with any involuntary conveyance or conveyance by operation of law that constitutes a Retail Residential Sale until such time as an instrument vesting title of record in the transferee has been recorded, and the time periods specified above have passed.

6. Binding Effect. Declarant hereby declares that the Siller Ranch will be held, leased, transferred, encumbered, used, occupied and improved subject to the rights, reservations, restrictions, covenants, conditions and equitable servitudes contained in this Declaration, all of which are for the purpose of enhancing the attractiveness and desirability of the Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property and real property located within the vicinity thereof. The rights, reservations, restrictions, covenants, conditions and equitable servitudes set forth in this Declaration will (1) run with and burden the Property in perpetuity (except as otherwise provided herein) and will be binding upon all Persons having or acquiring any interest in the Property or any part thereof, their heirs, successors and assigns; (2) inure to the benefit of every portion of the Siller Ranch and any interest therein; and (3) inure to the benefit of and be binding upon Declarant, its successors-in-interest, each Owner and each Owner's successors-in-interest.

7. Recipient of Conveyance Fees. Conveyance Fees collected and paid pursuant hereto shall be paid to _____ ("Trustee"), as trustee of the Siller Ranch Conveyance Fee Receiving Trust (the "Trust") to be held in trust for distribution to one or more Qualified Recipients for the purposes specified in Section 2 above; or to one or more other persons or entities designated by Declarant, with the approval of the Trustee, to take over responsibility for administering and distributing such funds to Qualified Recipients, provided that any such entity is not an Association, as defined in California Civil Code Section 1351(a) or a "community service organization or similar entity" within the meaning of California Civil Code Section 1368(c). The Trust shall be held and administered by Trustee under Trust Agreement dated _____,

2006, (the "Trust Agreement") and shall hold the funds received as provided in the Trust Agreement for the purposes and on the terms provided for therein. No portion of the Conveyance Fees collected hereunder shall be used to finance political action or advocacy, or to pay costs of litigation (other than as may be required to collect Conveyance Fees, or to defend claims against the Trustee or challenging enforceability of this Declaration, the obligations imposed hereby or any lien created or established hereunder). It is specifically acknowledged and agreed that Declarant shall be entitled to receive reimbursement from the first Conservation Open Space Fees collected by or payable to the Trustee, of amounts paid or the fair market value of certain property contributed to County or to any Open Space Preservation Program operated by County for the purpose of funding the acquisition and management of open space within the Martis Valley environs of Placer County; provided, however, that the amount reimbursed to Declarant in any one calendar year shall not exceed one-third of the Conservation Open Space Fees paid in such year, with unreimbursed amounts carried forward and reimbursed in subsequent years (subject to the foregoing limitations) out of Conservation Open Space Fees paid in such subsequent years.

8. Mortgagee Protection.

8.1 Rights of Mortgagees. Nothing in this Declaration, and no default by an Owner in payment of Conveyance Fees, shall defeat or renders invalid the rights of the holder of any mortgage or the beneficiary under any deed of trust (collectively "Mortgagee") appearing of record as an encumbrance upon any Residential Lot, if made in good faith and for value, provided that notwithstanding any foreclosure or conveyance in lieu of foreclosure, such Residential Lot will remain subject to this Declaration.

8.2 Subordination. Subject to the provisions of Section 8.1, this Declaration and the lien created hereby shall be subject and subordinate to the lien of any mortgage or deed of trust that constitutes a lien on the subject lot and that is first in priority as against any other mortgages or deeds of trust; *provided, however,* that:

(a) as between the lien created hereby for Conveyance Fees and the interest of the holder of any mortgage or deed of trust, the lien for Conveyance Fees shall have priority as of the date the Trustee, or its authorized agent, files for record in the office of the Recorder for the County in which the Residential Lot is located, either (1) a notice of default hereunder in the manner specified by Civil Code Section 2924, or (2) a notice of pending action in connection with an action in Superior Court to foreclose the lien hereof.

(b) the covenant and lien securing payment of any unpaid Conveyance Fees shall reattach to the interest of any purchaser at any such foreclosure sale and continue thereafter on title to the property until such Conveyance Fees, although transfers to the mortgagee or beneficiary under the deed of trust who bids in at the foreclosure sale or receives a deed in lieu of foreclosure shall be exempt from the obligation for payment of Conveyance Fees ;

(c) Conveyance Fees shall be payable with respect to any subsequent Residential Retail Sale by a mortgagee or beneficiary under a deed of trust who receives title to a Residential Lot by foreclosure or conveyance in lieu thereof;

(d) no foreclosure or conveyance in lieu thereof shall impair the right of the Trustee, Declarant or any other Owner having the right, to pursue payment of any unpaid Conveyance Fees from the person or persons obligated to pay them; or

(e) upon any sale to a third party as a result of a foreclosure by a mortgagee or the beneficiary under a deed of trust, the full obligation for payment of Conveyance Fees shall be payable from the proceeds of the foreclosure sale subject to the prior right of the Mortgagee to receive the full amount owed to it including principal, interest, costs of collection and any other amounts that it is entitled to receive in the foreclosure process.

8.3 Estoppel Certificates. Within twenty (20) days of receipt of a written request of any Owner of a Residential Lot for which no Conveyance Fees are then due and owing, Trustee shall deliver to such Owner an executed estoppel certificate certifying that no Conveyance Fees are due and owing for such Residential Lot and that Trustee holds no present lien securing payment of unpaid Conveyance Fees against such Lot.

9. Remedies.

9.1 Generally. The Trustee shall be entitled to any and all rights and remedies available at law or equity in order to collect unpaid Conveyance Fees and other amounts payable hereunder, including, but not limited to, specific performance.

9.2 Small Claims Court. Any dispute which is within the jurisdiction of a small claims court shall be resolved by a small claims court proceeding. Any party may submit the dispute to such court.

9.3 Attorneys' Fees. The prevailing party in any dispute shall be entitled to recover its attorneys' fees and court costs from the other party.

9.4 Enforcement by Lien. There is hereby created a lien, with power of sale, on each and every Residential Lot, or any fractional interest therein that is the subject of a Residential Retail Sale, to secure prompt and faithful performance of each Owner's obligations under this Declaration for the payment of Conveyance Fees, together with interest thereon and costs of collection which may be paid or incurred by the Trustee in connection therewith, including reasonable attorneys' fees. At any time after the delinquency, the Trustee may elect to file and record in the Office of the Placer County Recorder a notice of default and election to foreclose such lien against the Residential Lot of the defaulting Owner. Such notice of default and election to foreclose lien shall be executed and acknowledged by any officer of Trustee and shall contain substantially the following information:

(a) The name of the defaulting Owner

(b) a legal description of the Residential Lot;

(c) The total amount of the delinquency, interest thereon, late charges, collection costs and reasonable attorneys' fees;

(d) A statement that the notice of default and claim of lien is made pursuant to this Declaration; and

(e) A statement that a lien is claimed against the Residential Lot in the amount stated, and that the Trustee has elected to foreclose such lien.

Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment as the laws of the State of California may from time to time be changed or amended. The trustee for all purposes related thereto (including, but not limited to, the taking of all actions which would ordinarily be required of a trustee of a deed of trust in connection with the foreclosure of such deed of trust) (the "Foreclosure Trustee") shall be First American Title Company or a duly appointed successor. Trustee, or any successor Trustee, may from time to time, by instrument in writing, substitute a successor or successors to any Foreclosure Trustee named herein or hereafter acting in such capacity, which instrument, executed by the Trustee and duly acknowledged and recorded in the office of the recorder of the county or counties where said Property is situated, shall be conclusive proof of proper substitution of such successor Foreclosure Trustee or Foreclosure Trustees, who shall, without conveyance from any predecessor, succeed to all its title, estate, rights, power and duties. Said instrument must contain the name of the Declarant, the original Trustee and Foreclosure Trustee hereunder, the book and page where this Declaration is recorded and the name and address of the new Foreclosure Trustee. The Trustee shall have the power to bid in at any foreclosure sale, trustee's sale or judgment sale, and to purchase, acquire, lease, hold, mortgage and convey any Residential Lot acquired at such sale subject to the provisions of this Declaration. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law.

The proceeds of any foreclosure, trustee's or judgment sale provided for in this Declaration shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, title costs and costs of the sale, and all other expenses of the proceedings and sale, and the balance of the proceeds, after satisfaction of all charges, monetary penalties and unpaid Conveyance Fees hereunder or any liens, and subject to the rights of any Mortgagee, shall be paid to the defaulting Owner. The purchaser at any such sale shall obtain title to the Residential Lot free from the sums or performance claimed (except as stated in this subsection) but otherwise subject to the provisions of this Declaration; and no such sale or transfer shall relieve such Residential Lot or the purchaser thereof from liability for any Conveyance Fees, other payments or performance thereafter becoming due or from the lien therefor as provided for in this subsection. All sums due and owing hereunder but still unpaid shall remain the obligation of and shall be payable by the defaulting Owner.

Upon the timely curing of any default for which a notice of default or claim of lien was filed by Trustee, the officers of Trustee are hereby authorized to record an appropriate release of such lien in the Office of the County Recorder.

10. Amendment.

10.1 Subject to Section 11.2, this Declaration may be amended by Declarant as may be necessary or desirable to effectuate the development of Siller Ranch.

10.2 This Declaration may not be terminated, or amended to reduce the amount of any of the Conveyance Fees, without the consent of the Trustee. Notwithstanding the foregoing, this Declaration may be amended by Declarant to implement (or terminated in connection with the implementation of) an alternative structure for the collection of Conveyance Fees, or the adoption of an alternative system of selecting Qualified Recipients, or to impose an equivalent system of fees in the form of a special tax, assessment or other levy pursuant to an agreement with the County of Placer; *provided, however*, that in no event shall any such superseding structure, covenant, lien or other arrangement impose upon Declarant, the lots established at Siller Ranch or the Retail Residential Sales of lots at Siller Ranch any greater liability or obligation than the liabilities and obligations provided for herein.

11. Serial Imposition And Recordation. Counterparts of this Declaration shall be duly executed, acknowledged and recorded in conjunction with the filing of each final subdivision map that creates one or more Residential Lots at Siller Ranch. The Declarations filed with respect to and in connection with each such final map shall be construed as a single document, Declarant intending that the system of Conveyance Fees provided for herein shall be a unitary system applicable to the Siller Ranch as a whole for the purposes provided for herein and in the Trust Agreement.

12. Notices. All notices required or allowed shall be in writing and shall be sent to the addresses shown beside the signatures of the Parties, below. A Party may change its address for notice by giving notice to the other Party. Notice may be delivered by personal delivery, facsimile transmission during normal business hours of the recipient, a reputable overnight delivery service, or U.S. Mail sent certified with return receipt requested. Notices are effective on the earlier of the date received, the date of the delivery receipt, or the third day after postmarked, as applicable. Each Owner who transfers a Lot shall give notice to Trustee of the name and mailing address of the transferee Any notice of default hereunder that is given to an owner of a Residential Lot shall be given at the address for receipt of notices as specified in California Civil Code Section 2924, with copies provided as specified in California Civil Code Section 2924b and as otherwise provided by law.

13. Miscellaneous.

13.1 Governing Law. The provisions hereof shall be construed and enforced in accordance with the law of the State of California.

13.2 Binding Effect. The terms, covenants and conditions herein contained shall run with the land subject hereto, each and every part thereof and interest therein and shall be binding upon and inure to the benefit of the successors in interest of Declarant and the owners of any part or interest in the lands subject hereto.

13.3 Attorneys Fees. In any action or proceeding to seek a declaration of rights hereunder, to enforce the terms hereof or to recover damages or other relief for alleged breach, then the prevailing party in any such action shall be entitled to recover its reasonable attorneys fees and

costs, including experts' fees, costs incurred in connection with (a) post-judgment motions, (b) appeals, (c) contempt proceedings, (d) garnishments and levies, (e) debtor and third-party examinations, (f) discovery, and (g) bankruptcy litigation. Any judgment or order entered in such action or proceeding shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing, perfecting and executing such judgment. A party shall be deemed to have prevailed in any such action or proceeding (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment.

13.4 Time. Time is of the essence of each and every provision hereof.

13.5 Disclaimers. Nothing herein (a) creates any right or remedy for the benefit of any Person not a party hereto, or (b) creates a fiduciary relationship, an agency, or partnership.

13.6 Construction. Whenever the context of this Declaration requires, the singular shall include the plural and the masculine shall include the feminine and/or the neuter. Descriptive section headings are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

13.7 Waiver. Any waiver with respect to any provision of this Declaration shall not be effective unless in writing and signed by the party against whom it is asserted. The waiver of any provision of this Declaration by a party shall not be construed as a waiver of a subsequent breach or failure of the same term or condition or as a waiver of any other provision of this Declaration. No waiver will be interpreted as a continuing waiver.

13.8 Incorporation of Recitals. The Recitals set forth above are incorporated herein by this reference.

13.9 Severability. Invalidation of any portion or provision of this Declaration by judgment or court order shall in no way affect any other portions or provisions, which shall remain in full force and effect to the maximum extent permitted by law.

13.10 No Dedication. The provisions of this Declaration are for the exclusive benefit of Declarant and its successors and assigns, and, except for rights expressly conferred on the Trustee hereunder, shall not be deemed to confer any rights upon any other person. Without limiting the generality of the foregoing, this Agreement is not intended to create any rights in the public, the County or any Qualified Recipient.

14. Judicial Reference. Any action or proceeding brought by either party which is beyond the jurisdiction of a small claims court shall be submitted to general judicial reference pursuant to California Code of Civil Procedure Sections 638(a) and 641 through 645 or any successor statues thereto. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding.

14.1 The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The Parties shall use the procedures

adopted by Judicial Arbitration and Mediation Services/Endispute ("JAMS") for judicial reference (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the Parties), provided that the following rules and procedures shall apply in all cases unless the Parties agree otherwise:

14.2 Venue shall be in Placer County, California, unless the parties agree to another venue;

14.3 The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters;

14.4 Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;

14.5 The referee may require one or more pre-hearing conferences;

14.6 The Parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;

14.7 A stenographic record of the trial shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;

14.8 The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable; and

14.9 The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

The statement of decision of the referee upon all of the issues considered by the referee is binding upon the parties, and upon filing of the statement of decision with the Clerk of the Court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the Court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

DECLARANT

DMB/HIGHLANDS GROUP, LLC

DMB/Highlands Group, LLC,
an Arizona limited liability company

By: Highlands Investment Group XV, Ltd.,
a Colorado limited partnership, Member

By: Martis Creek Corporation,
a California corporation, General Partner

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

By: DMB Communities LLC, an Arizona
limited liability company, Member

By: DMB Associates, Inc.,
an Arizona corporation, Manager

By: _____
Name: _____
Title: _____

FIRST AMENDMENT TO SETTLEMENT AGREEMENT

THIS FIRST AMENDMENT TO SETTLEMENT AGREEMENT ("First Settlement Amendment") is made and entered into as of the ____ day of _____, 2007 ("Effective Date"), by and between SIERRA WATCH, MOUNTAIN AREA PRESERVATION FOUNDATION, PLANNING AND CONSERVATION LEAGUE, SIERRA CLUB and LEAGUE TO SAVE LAKE TAHOE (collectively, "Petitioners"), and DMB/HIGHLANDS GROUP, LLC, a limited liability company ("DMB/H").

RECITALS

A. DMB/H is currently developing certain property in Placer County, California (the "County"), known as "Siller Ranch" (and now also known as "Martis Camp") for residential and recreational uses in accordance with the terms and conditions of the Settlement Agreement dated March 23, 2006 by and between Petitioners and DMB/H (the "Settlement Agreement"). All capitalized terms not otherwise defined herein shall have the respective meanings ascribed to them in the Settlement Agreement.

B. As a condition of approval of the Siller Ranch Project, the County imposed certain obligations on DMB/H, including the requirement that DMB/H construct the DMB/H Workforce Housing.

C. Pursuant to the Settlement Agreement, the approximately 280-acre Hopkins Ranch was subdivided to create three (3) parcels, consistent with the Hopkins Plot Plan attached as Exhibit E to the Settlement Agreement: the DMB/H Retained Parcel; the MV Workforce Housing Parcel; and the Hopkins Conservation Parcel. In the Settlement Agreement, DMB/H (1) agreed to convey the MV Workforce Housing Parcel to the MV Workforce Housing Parcel Grantee; (2) agreed to convey the Hopkins Conservation Parcel to the Hopkins Conservation Parcel Grantee for open-space, habitat conservation and environmental recreational purposes; and (3) is to retain the DMB/H Retained Parcel for the development of the DMB/H Workforce Housing.

D. In order to preserve additional open space and wildlife habitat and to facilitate greater collaboration between DMB/H and the MV Workforce Housing Parcel Grantee on workforce housing infrastructure, transportation, parks and other recreational improvements, the parties intend to seek County approval of a revised subdivision of Hopkins Ranch that would locate the DMB/H Retained Parcel adjacent to the MV Workforce Housing Parcel, as depicted in the revised Hopkins Plot Plan attached to this First Settlement Amendment as Attachment 1 (the "Revised Hopkins Plot Plan"). Petitioners and DMB/H therefore desire to amend the Settlement Agreement and the forms of the Hopkins Conservation Parcel Grant Deed, as attached to this First Settlement Amendment as Attachment 2, and the MV Workforce Housing Parcel Grant Deed, as attached to this First Settlement Amendment as Attachment 3, to provide for the reconfiguration of the three Hopkins Ranch Parcels if the revised subdivision is timely approved by the County.

E. The form of the Siller Conservation Easement as provided in the Settlement Agreement would have allowed DMB/H to remove or cut trees, shrubs and other vegetation to provide for downhill skiing trails only with the prior written approval of SW/M. Petitioners and DMB/H desire to amend the Settlement Agreement and the form of the Siller Conservation Easement, as attached to this First Settlement Amendment as Attachment 4, to provide for downhill skiing trails in the Siller Conservation Area, in the general locations depicted on the map attached to this First Settlement Amendment as Attachment 5, subject to specified conditions.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Petitioners and DMB/H agree as follows:

1. Amendment of Settlement Agreement.

a. The definitions of the following terms are hereby amended as follows:

i. "Hopkins Conservation Parcel" means the parcel within Hopkins Ranch, as generally shown on the Hopkins Plot Plan, to be deeded in fee to the Conservation Grantee, the specific boundaries of which shall be determined as provided in Section 4(a).

ii. "Hopkins Conservation Parcel Restrictions" means the covenants and restrictions for the benefit of the Siller Ranch contained in the Grant Deed for the Hopkins Conservation Parcel, the form of which is attached hereto as Exhibit D; provided, however that if the Revised Hopkins Map is recorded prior to the Outside Date, then the Hopkins Conservation Parcel Restrictions shall mean the Revised Hopkins Conservation Parcel Grant Deed attached hereto as Exhibit D-1, including any modifications of such deed approved in writing by DMB/H and SW/M.

iii. "Hopkins Plot Plan" means the plot plan depicting the respective general location of certain land uses permitted on Hopkins Ranch attached hereto as Exhibit E; provided, however that if the Revised Hopkins Map is recorded prior to the Outside Date, then the Hopkins Plot Plan shall mean the Revised Hopkins Plot Plan attached hereto as Exhibit E-1, including any modifications of such plot plan approved by DMB/H and SW/M pursuant to Section 4(a).

iv. "MV Workforce Housing Parcel" means the parcel within Hopkins Ranch, as generally shown on the Hopkins Plot Plan, to be conveyed to the MV Workforce Housing Grantee, the specific boundaries of which shall be determined as provided in Section 4(a).

v. "MV Workforce Housing Restrictions" means the restrictions and development standards to control development on the MV

Workforce Housing Parcel contained in the Grant Deed for the MV Workforce Housing Parcel, the form of which is set forth in Exhibit F; provided, however that if the Revised Hopkins Map is recorded prior to the Outside Date, then the MV Workforce Housing Restrictions shall mean the Revised MV Workforce Housing Parcel Grant Deed attached hereto as Exhibit F-1, including any modifications of such deed approved in writing by DMB/H and SW/M.

vi. "Outside Date" means September 30, 2007, subject to extension by written agreement of SW/M and DMB/H.

vii. "Revised Hopkins Conservation Parcel Grant Deed" means a revised set of covenants and restrictions for the benefit of the Siller Ranch, the form of which is attached hereto as Exhibit D-1, including any modifications of such deed approved in writing by DMB/H and SW/M.

viii. "Revised Hopkins Map" means a revised subdivision map for Hopkins Ranch approved by the County as set forth in Section 4(a).

ix. "Revised Hopkins Plot Plan" means the revised plot plan depicting the respective general location of certain land uses permitted on Hopkins Ranch attached hereto as Exhibit E-1, including any modifications of such plot plan approved by DMB/H and SW/M pursuant to Section 4(a).

x. "Revised MV Workforce Housing Parcel Grant Deed" means a revised set of restrictions and development standards to control development on the MV Workforce Housing Parcel, the form of which is attached hereto as Exhibit F-1, including any modifications of such deed approved in writing by DMB/H and SW/M.

xi. "Revised Siller Conservation Easement" means the revised conservation easement(s) to be recorded over the Siller Conservation Area, the form(s) of which is attached hereto as Exhibit G-1.

b. Section 3(d) of the Settlement Agreement shall be replaced with the following:

> County Open Space Fees. As a condition to prior approvals granted by the County for Siller Ranch, the County imposed upon DMB/H a requirement to participate in an Open Space Preservation Program by making payments ("County Open Space Fees") for the purpose of acquiring and managing properties within the Martis Valley environs of Placer County (the

"Contribution Condition"). If the County has adopted a Pre-Payment Resolution (as defined below), DMB/H shall, within thirty (30) business days of the County's adoption of the Pre-Payment Resolution, prepay the County Open Space Fees in an amount of three million dollars ($3,000,000.00) less any County Open Space Fees DMB/H has then already paid (the "Pre-Payment") in order to facilitate the purchase of Waddle Ranch. "Pre-Payment Resolution" means either (i) a resolution duly adopted by the County Board of Supervisors authorizing DMB/H's Pre-Payment and providing that such payment shall be nonrefundable and shall fully satisfy the Contribution Condition or (ii) subject to the reasonable approval of DMB/H and SW/M, any alternative evidence that such Pre-Payment fully satisfies the Contribution Condition, which alternative evidence shall be considered adopted as of the date approved by DMB/H and SW/M. The Pre-Payment Resolution shall be deemed a Consistent Approval. In the event the County cannot or will not adopt a Pre-Payment Resolution, the Parties agree to cooperate in good faith to find alternative means to achieve the Parties' mutual goals described in the First Settlement Amendment.

c. The Settlement Agreement shall contain a new Section 3(e) as follows:

Reimbursement of County Open Space Fees. The Conveyance Fee Covenant authorizes the reimbursement of funds contributed by DMB/H to the County's Open Space Preservation Program from the Conservation Open Space Fees first paid under the Conveyance Fee Covenant. The parties agree that DMB/H shall be entitled to be reimbursed for all amounts paid or the fair market value of property (other than the Hopkins Conservation Parcel, the MV Workforce Housing Parcel and/or the Siller Conservation Area) contributed to the County's Open Space Preservation Program from the Conservation Open Space Fees first paid under the Conveyance Fee Covenant. The amount reimbursed to DMB/H in any one year shall not exceed one-third (1/3) of the Conservation Open Space Fees paid in such year, with unreimbursed amounts carried forward and reimbursed in subsequent periods (subject to the foregoing limitations) out of Conservation Open

Space Fees paid in future years; provided, however, that if (i) the County has adopted the Pre-Payment Resolution; (ii) DMB/H has actually made such Pre-Payment; and (iii) either (I) the County has irrevocably committed Ten Million Dollars ($10,000,000.00) for the acquisition of Waddle Ranch, or (II) Waddle Ranch has been acquired by the Trust for Public Lands, the Truckee Donner Land Trust, and/or another land trust, then DMB/H shall be entitled to be reimbursed for one hundred percent (100%) of the County Open Space Fees from the Conservation Open Space Fees first paid under the Conveyance Fee Covenant, including any Conservation Open Space Fees paid prior to the date of execution of the First Settlement Amendment. SW/M agrees that it shall cause the trust or other entity or entities administering the Conservation Open Space Fees to reimburse DMB/H for all amounts to which it is entitled in accordance with this Section 3(e). Notwithstanding anything to the contrary contained in Section 10 of the Settlement Agreement, the terms of this Section 3(e) shall remain in full force and effect for the full term of the Settlement Agreement and shall not merge into the Conveyance Fee Covenant.

d. Section 4(a) of the Settlement Agreement shall be replaced with the following:

Hopkins Ranch Parcels. The Parties shall cooperate to obtain final County approval of a Revised Hopkins Map consistent with the Revised Hopkins Plot Plan and to record such Revised Hopkins Map by the Outside Date. It is recognized that any Revised Hopkins Map is subject to approval of the County, and the Revised Hopkins Plot Plan may be refined and revised to meet any additional criteria required by the County or otherwise agreed to by the Parties so long as the revisions provide for at least three (3) separate parcels, all substantially consistent with the configuration of such areas as shown on the Revised Hopkins Plot Plan attached hereto as Exhibit E-1. As part of this process and prior to recordation of the Hopkins Conservation Parcel Restrictions and the MV Workforce Housing Restrictions, DMB/H shall use commercially reasonable efforts to better define the nature and location of the roads and utility facilities (as described in Section 3(a) of Exhibit D and Section

3(a) of Exhibit F) reasonably required or convenient to accommodate the development of the DMB/H Retained Parcel and/or Siller Ranch and to locate such facilities, to the extent reasonably practicable and consistent with County requirements, in alignment with Schaffer Mill Road and/or the entry road(s) to the DMB/H Retained Parcel and otherwise so as to avoid or lessen any disturbance of sensitive habitat. Petitioners acknowledge that it is anticipated that certain underground utility lines will not align with Schaffer Mill Road or the entry road(s). DMB/H agrees to consider in good faith modifications to the forms of the Hopkins Conservation Parcel Restrictions and the MV Workforce Housing Parcel Restrictions to better define and locate such roads and utility facilities subject to the agreement of SW/M; provided, however, in no event shall DMB/H be obligated to consider or agree to any such modification that would materially interfere with, or materially add to the cost of, the development of Hopkins Ranch or Siller Ranch in accordance with this Agreement.

e. Section 4(c) of the Settlement Agreement shall be replaced with the following:

Conveyance of MV Workforce Housing Parcel. DMB/H shall convey fee title to the MV Workforce Housing Parcel to the MV Workforce Housing Grantee, subject to the MV Workforce Housing Restrictions. The MV Workforce Housing Restrictions prescribe, among other things, the location, design, and other planning guidelines for the development of the MV Workforce Housing and expressly provide that DMB/H, and its successors as owner of Siller Ranch, shall have the right to monitor compliance with and shall have standing to enforce any term, condition, requirement, or prohibition contained in the MV Workforce Housing Restrictions. If the Revised Hopkins Map is recorded prior to the Outside Date, then the deed to the MV Workforce Housing Parcel in substantially the form set forth in Exhibit F-1 shall be executed, acknowledged, and delivered for recordation within thirty (30) days following the last to occur of (i) recordation of the Revised Hopkins Map; and (ii) designation by SW/M by notice to DMB/H of the MV Workforce Housing Grantee. If the Revised Hopkins Map is not recorded prior to the Outside

Date, then the deed to the MV Workforce Housing Parcel in substantially the form set forth in Exhibit F shall be executed, acknowledged, and delivered for recordation within thirty (30) days following the last to occur of (i) the Outside Date; and (ii) designation by SW/M by notice to DMB/H of the MV Workforce Housing Grantee. In either event, DMB/H shall convey the MV Workforce Housing Parcel, subject to the MV Workforce Housing Restrictions, in "as-is" condition, without covenant or warranty of any kind or character. After conveyance of the MV Workforce Housing Parcel to the MV Workforce Housing Grantee, DMB/H shall have no further obligation with respect to the MV Workforce Housing Parcel and/or development or construction of the MV Workforce Housing, except as specifically provided in Section 4(b)(4).

f. Section 4(d) of the Settlement Agreement shall be replaced with the following:

Conveyance of Hopkins Conservation Parcel. DMB/H shall convey fee title to the Hopkins Conservation Parcel to the Conservation Grantee, subject to the Hopkins Conservation Parcel Restrictions. If the Revised Hopkins Map is recorded prior to the Outside Date, then the deed to the Hopkins Conservation Parcel in substantially the form set forth in Exhibit D-1 shall be executed, acknowledged, and delivered for recordation within thirty (30) days following the last to occur of (i) recordation of the Revised Hopkins Map; and (ii) designation by SW/M by notice to DMB/H of the Conservation Grantee. If the Revised Hopkins Map is not recorded prior to the Outside Date, then the deed to the Hopkins Conservation Parcel in substantially the form set forth in Exhibit D shall be executed, acknowledged, and delivered for recordation within thirty (30) days following the last to occur of (i) the Outside Date; and (ii) designation by SW/M by notice to DMB/H of the Conservation Grantee. Prior to the conveyance of the Hopkins Conservation Parcel to the Conservation Grantee, DMB/H shall have the right to grant an easement for a road for the benefit of the Timilick Tahoe property to Martis Valley Associates, LLC (or its assignee) over a portion of the Hopkins Conservation Parcel depicted on the map attached hereto as Exhibit E-2. DMB/H

shall convey the Hopkins Conservation Parcel, subject to the Hopkins Conservation Parcel Restrictions, in "as-is" condition, without covenant or warranty of any kind or character. After conveyance of the Hopkins Conservation Parcel to the Conservation Grantee, DMB/H shall have no further obligation with respect to the Hopkins Conservation Parcel.

g. Section 5(a)(2) of the Settlement Agreement shall be replaced with the following:

A. Restrictions on Conservation Area. The Siller Conservation Area shall be restricted pursuant to one or more Siller Conservation Easements, in the form(s) attached hereto as Exhibit G and incorporated herein by this reference. DMB/H shall, with each final map (or promptly after SW/M has determined the identity of the Conservation Grantee if said identity is not known at the time the final map is recorded), convey a Siller Conservation Easement to the Conservation Grantee over the immediately adjacent portions of the Siller Conservation Area.

B. Boundaries of Conservation Area. The precise boundaries of the Siller Conservation Area to be encumbered by each Siller Conservation Easement will be determined by DMB/H, subject to the reasonable approval of SW/M, but, in all events, the boundary between the Siller Conservation Area and the Siller Developable Areas shall be fixed by a final subdivision map. The Parties acknowledge and agree that the exact boundaries of the Siller Conservation Area may need to be adjusted based on slight variations in the locations of the adjacent lots created in each final map. As part of this process and prior to recordation of each final map, DMB/H shall prepare, subject to the reasonable approval of SW/M, drawings delineating the boundaries between the "Buffer Zone" and the "Forest Zone" (as described in the Siller Conservation Easement). The Buffer Zone shall include (i) all areas within one hundred fifty (150) feet of any residential lot; (ii) all roads, trails, downhill skiing runs, utilities, wells, and fences, currently existing in the Siller Conservation Area or allowed, contemplated and/or required under any permit or approval for Siller Ranch granted by any local,

regional, state or federal governmental or quasi-governmental agency, and a reasonable area adjacent thereto; (iii) the ski lift and a reasonable area adjacent thereto; and (iv) any other areas within which the broader rights permitted to the Grantor (as defined therein) in the Buffer Zone under the Siller Conservation Easement are reasonably required or convenient to accommodate the development of Siller Ranch.

C. Downhill Skiing Provisions in Conservation Area. Among other reserved rights, the Siller Conservation Easement shall permit the development, construction, operation, and maintenance of the downhill skiing trails in the general locations depicted on Exhibit F of the Siller Conservation Easement. The downhill skiing trails shall be designed in consultation with Mike White (or an alternate consultant selected by SW/M in its reasonable discretion), so as to (i) avoid or minimize adverse biological effects, and (ii) provide for management practices to minimize and/or mitigate adverse impacts (e.g., use of native vegetation communities on slopes where grading or smoothing has taken place to minimize the risk of erosion) and to control potential sources of threats to natural resources, all to the extent reasonably feasible, consistent with the intent of this paragraph and the Management Plan to be attached to the Conservation Easement, and taking into account the steepness of the terrain and skier safety. In addition, the trail marked "1" on Exhibit F of the Siller Conservation Easement ("Trail 1"), which is the least steep of the permitted trails, shall be designed in consultation with Mike White (or an alternate consultant selected by SW/M in its reasonable discretion) to preserve and protect, to the extent reasonably feasible and consistent with the intent of this paragraph, the Conservation Values of the Siller Conservation Area (as defined in the Siller Conservation Easement). Any permit or entitlement obtained by DMB/H pertaining to the downhill skiing trails that is consistent with the Settlement Agreement, this First Settlement Amendment, and the Siller Conservation Easement shall be deemed a Consistent Approval. The Revised Siller Conservation Easement incorporating the amendment to the downhill skiing

provisions, attached hereto as Exhibit G-1, shall not become effective unless and until (i) the County adopts the Pre-Payment Resolution; and (ii) DMB/H actually makes such Pre-Payment.

D. Pre-Recordation Activities. DMB/H agrees that during the period between the Effective Date and the recordation of the grant deed conveying the Siller Conservation Easement(s) to the Conservation Grantee it shall not engage in any activity that would significantly impair the conservation values of the Siller Conservation Area; provided, however, that the foregoing shall not preclude DMB/H from any activity that would be permitted under the Siller Conservation Easement.

h. The Conveyance Fee Covenant, attached to the Settlement Agreement as Exhibit J, is amended and replaced with the form recorded for Unit 1 of Martis Camp on August 1, 2006, as Document No. 20060082385; provided, that in the Conveyance Fee Covenant with respect to all Final Maps recorded after the date of this First Settlement Amendment, Section 7.3 thereof shall be replaced with the following:

> Reimbursements to Declarant. It is specifically acknowledged and agreed that Declarant shall be authorized to receive reimbursement from the Conservation Open Space Fees collected by or payable to the Fund, of amounts paid or the fair market value of certain property contributed to County or to any Open Space Preservation Program operated by County for the purpose of funding the acquisition and management of open space within the Martis Valley environs of Placer County.

2. Management Plan. Prior to the recordation of the Siller Conservation Easement(s), DMB/H, at is sole cost and expense, shall develop a management plan ("Management Plan") for the Siller Conservation Area which Management Plan shall be subject to SW/M's reasonable approval. The Management Plan shall describe a long-term stewardship strategy for the Siller Conservation Area in order to provide guidance for DMB/H's implementation of its permitted activities in the Siller Conservation Area, such as forestry management activities, and shall be attached as an exhibit to the Siller Conservation Easement(s). The Petitioners acknowledge and agree that the Management Plan shall provide resource management guidance only and nothing therein shall be inconsistent with any of the rights of DMB/H under this First Settlement Amendment or the Settlement Agreement or any conditions or requirements imposed by the County or any other governmental or quasi-governmental agency, nor shall the

Management Plan impose on DMB/H any affirmative obligations which would materially increase the overall cost to DMB/H of ownership of the Siller Conservation Area.

3. Professional Fee Reimbursement. DMB/H shall reimburse SW/M for costs incurred in the review by Mike White (or an alternate consultant selected by SW/M, subject to the reasonable approval of DMB/H) of the Management Plan and the design of Trail 1 in a total amount not to exceed Fifty Thousand Dollars ($50,000.00). DMB/H shall also reimburse SW/M for (i) those costs incurred in the preparation and negotiation of the portion of the First Settlement Amendment related to the downhill skiing provisions; and (ii) consultant costs of up to ten thousand dollars ($10,000.00) related to SW/M's future discussions with Northstar Ski Resort.

4. DMB/H Environmental Grant. If the County has adopted a Pre-Payment Resolution, DMB/H shall make a grant in the amount of twenty-five thousand dollars ($25,000.00) per year for five (5) years to those community organization(s) designated by SW/M for habitat restoration, construction and maintenance of community trails, and other environmental protection projects in Martis Valley ("DMB/H Environmental Grant"). The first such payment shall be made upon the later to occur of (i) SW/M's designation of the recipient(s) of the DMB/H Environmental Grant or (ii) the date of the Pre-Payment. The four (4) subsequent payments shall be made on the respective anniversaries of the first payment. In no event shall the DMB/H Environmental Grant be permitted to be used to finance litigation or to finance political action or advocacy.

5. Conflict. In the event of any conflict between the provisions of the Settlement Agreement and this First Settlement Amendment, the provisions of this First Settlement Amendment shall govern.

6. Ratification. The Settlement Agreement as modified by this First Settlement Amendment is hereby ratified and confirmed in all respects. The Parties hereby acknowledge and agree that neither Party is aware of any claim against the other by reason of any term, provision, matter, fact, event or occurrence related to Hopkins Ranch, Siller Ranch, or related to or contained in the Settlement Agreement.

7. Execution of Amendment. The submission of this First Settlement Amendment to SW/M for examination or execution does not create an option or constitute an offer to SW/M to amend the Settlement Agreement on the terms and conditions contained herein, and this First Settlement Amendment shall not become effective as an amendment to the Settlement Agreement unless and until it has been executed and delivered by both DMB/H and SW/M. By executing and delivering this First Settlement Amendment, the person or persons signing on behalf of each Party represents and warrants that they have requisite authority to bind that Party.

8. Entire Agreement. The Settlement Agreement, as amended by this Amendment, contains the entire agreement of DMB/H and all Petitioners with respect to the subject matter hereof, and there are no oral agreements between DMB/H and any Petitioner affecting the Settlement Agreement as hereby amended. This Amendment supersedes and cancels any and all previous negotiations, representations, agreements and

understandings, if any, between DMB/H and Petitioners and their respective agents with respect to the subject matter thereof, and none shall be used to interpret or construe the Settlement Agreement as amended hereby.

IN WITNESS WHEREOF, the parties have executed this First Settlement Amendment as of the date first written above.

DMB/HIGHLANDS GROUP, LLC

DMB/Highlands Group, LLC,
an Arizona limited liability company

By: Highlands Investment Group XV, Ltd.,
a Colorado limited partnership, Member

By: Martis Creek Corporation,
a California corporation, General Partner

By: _____
Name: JAMES R. BARFOOT
Title: CHAIRMAN

By: _____
Name: NICK J. HACKSTAFF
Title: PRES

By: DMB Communities LLC, an Arizona
limited liability company, Member

By: DMB Associates, Inc.,
an Arizona corporation, Manager

By: _____
Name: Eneas A. Kane
Title: COO

[SIGNATURES CONTINUE ON NEXT PAGE]

SIERRA WATCH

By: Larry Orman
Its: President

MOUNTAIN AREA PRESERVATION FOUNDATION

By: John Eaton
Its: President

PLANNING AND CONSERVATION LEAGUE

By: Gary Patton
Its: Executive Director

SIERRA CLUB

By:
Its:

LEAGUE TO SAVE LAKE TAHOE

By: Rochelle Nason
Its: Executive Director

ATTACHMENT LIST

Attachment 1 (Exhibit E-1 to Settlement Agreement): Revised Hopkins Map

Attachment 2 (Exhibit D-1 to Settlement Agreement): Revised Form of Hopkins Conservation Parcel Grant Deed

SIERRA WATCH

_____

By: Larry Orman
Its: President

MOUNTAIN AREA PRESERVATION FOUNDATION

_____

By: John Eaton
Its: President

PLANNING AND CONSERVATION LEAGUE

_____

By: Gary Patton
Its: Executive Director

SIERRA CLUB

_____

By:
Its:

LEAGUE TO SAVE LAKE TAHOE

_____

By: Rochelle Nason
Its: Executive Director

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SIERRA WATCH

_____

By: Larry Orman
Its: President

MOUNTAIN AREA PRESERVATION FOUNDATION

_____

By: John Eaton
Its: President

PLANNING AND CONSERVATION LEAGUE

_____

By: Gary Patton
Its: Executive Director

SIERRA CLUB

_____

By:
Its:

LEAGUE TO SAVE LAKE TAHOE

_____

By: Rochelle Nason
Its: Executive Director

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Attachment 2 (Exhibit D-1 to Settlement Agreement): Revised Form of Hopkins Conservation Parcel Grant Deed

SIERRA WATCH

By: Larry Orman
Its: President

MOUNTAIN AREA PRESERVATION FOUNDATION

By: John Eaton
Its: President

PLANNING AND CONSERVATION LEAGUE

By: Gary Patton
Its: Executive Director

SIERRA CLUB

By: David McKee
Its: Tahoe Group member

LEAGUE TO SAVE LAKE TAHOE

By: Rochelle Nason
Its: Executive Director

ATTACHMENT LIST

Attachment 1 (Exhibit E-1 to Settlement Agreement): Revised Hopkins Map

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SIERRA WATCH

_____

By: Larry Orman
Its: President

MOUNTAIN AREA PRESERVATION FOUNDATION

_____

By: John Eaton
Its: President

PLANNING AND CONSERVATION LEAGUE

_____

By: Gary Patton
Its: Executive Director

SIERRA CLUB

_____

By:
Its:

LEAGUE TO SAVE LAKE TAHOE

_____

By: Rochelle Nason
Its: Executive Director

ATTACHMENT LIST

Attachment 1 (Exhibit E-1 to Settlement Agreement): Revised Hopkins Map

Attachment 2 (Exhibit D-1 to Settlement Agreement): Revised Form of Hopkins Conservation Parcel Grant Deed

Attachment 3 (Exhibit F-1 to Settlement Agreement): Revised Form of MV Workforce Housing Parcel Grant Deed

Attachment 4 (Exhibit G-1 to Settlement Agreement): Revised Form of Siller Conservation Easement

Attachment 5 (Exhibit F to Revised Siller Conservation Easement): Map Depicting Proposed Locations of Downhill Skiing Trails

Attachment 6 (Exhibit E-2 to Settlement Agreement): Map Depicting Proposed Location of the Timilick Tahoe Road Easement

EXHIBIT G

ANNE E. MUDGE (#133940)
GREGORY C. GATTO (#226903)
STOEL RIVES LLP
111 Sutter Street, Suite 700
San Francisco, CA 94104
Telephone: (415) 617-8900
Facsimile: (415) 676-3000

WILLIAM A. FALIK (#53499)
LAW OFFICES OF WILLIAM A. FALIK
100 Tunnel Road
Berkeley, CA 94705
Telephone: (510) 540-5960
Facsimile: (510) 704-8803

Attorneys for Real Parties in Interest
ROSEVILLE FIDDYMENT LAND VENTURE, LLC, SIGNATURE PROPERTIES, INC., 1600 PLACER INVESTORS, L.P., and WESTPARK COMMUNITY BUILDERS, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

MICHAEL CATALANO, ROB COLLINS, JOHN ELLIOTT, and GREG BAIN,

Petitioners,

v.

CITY OF ROSEVILLE, a Municipal Corporation,

Respondent.

ROSEVILLE FIDDYMENT LAND VENTURE, LLC, a Delaware Limited Liability Company; SIGNATURE PROPERTIES, INC., a California Corporation; 1600 PLACER INVESTORS, L.P., a California Limited Partnership; WESTPARK COMMUNITY BUILDERS, LLC, a Limited Liability Company, and DOES A to M, inclusive,

Real Parties in Interest.

AND CONSOLIDATED ACTION.

CASE NO. 04 CS 00489

Assigned for all purposes to The Honorable Lloyd G. Connelly Department 33

STIPULATED FINAL JUDGMENT

Action Filed: March 4, 2004

WHEREAS, on February 4, 2004, the City of Roseville (the "City") certified a Final Environmental Impact Report for a project (the "Project") proposed by Westpark Community Builders, LLC, 1600 Placer Investors, L.P., Signature Properties, Inc., and Roseville/Fiddyment Land Venture, LLC (together referred to as "Developers");

WHEREAS, on March 4, 2004, Petitioners MICHAEL CATALANO, ROB COLLINS, JOHN ELLIOT, and GREG BAIN filed a civil lawsuit entitled Michael Catalano, et al. v. City of Roseville, et al. (Case No. SCV 16913) in Placer County Superior Court challenging approval of the Project. The lawsuit named the City as Respondent and Developers as Real Parties in Interest;

WHEREAS, on March 5, 2004, a separate lawsuit, filed by Plaintiffs/Petitioners TOWN OF LOOMIS, SIERRA CLUB AND SIERRA FOOTHILLS AUDUBON SOCIETY entitled Sierra Club et al. v. City Council of the City of Roseville, et al. (Case No. SCV 16918) was also filed in Placer County Superior Court to challenge the City's approval of the Project. The City was named as Respondent/Defendant and Developers were named as Real Parties in Interest;

WHEREAS, pursuant to stipulation, both actions were ordered consolidated on April 8, 2004, and titled *Michael Catalano v. City of Roseville* Case No. SCV 16913 (the "Action"). Also on April 8, 2004, pursuant to stipulation, the Placer County Superior Court ordered the Action transferred to the Sacramento County Superior Court, where it was assigned Case No. 04CS00489;

WHEREAS, the parties agree to settle the disputes between them and have reached a settlement of these consolidated actions.

NOW THEREFORE the parties stipulate as follows:

1. Upon entry, this stipulated judgment will serve to dismiss this Action in its entirety with prejudice.

2. Judgment shall be entered in accordance with the settlement agreements entered into by the parties, true and correct copies of which are attached hereto as Exhibit A ("Sierra Club/Sierra Foothills Audubon Society Agreement"), Exhibit B ("Loomis Agreement"), and

Exhibit C ("Catalano Agreement"), except as expressly modified by the provisions of this Stipulation, as follows:

a. The caption and first sentence of Section 1 of the Sierra Club/ Sierra Foothills Audubon Society Agreement shall be deleted.

b. Section 3 of the Loomis Agreement shall be deleted.

Judgment on this Stipulation shall not include any determination of a prevailing party for any purposes.

IT IS SO STIPULATED AND AGREED.

DATED: ~~August~~ September 2, 2004

STOEL RIVES LLP

By: _____
ANNE E. MUDGE
GREGORY C. GATTO
Attorneys for Real Parties in Interest
ROSEVILLE FIDDYMENT LAND VENTURE, LLC, SIGNATURE PROPERTIES, INC., 1600 PLACER INVESTORS, L.P., and WESTPARK COMMUNITY BUILDERS, LLC

DATED: August _____, 2004

SHUTE MIHALY & WEINBERGER LLP

By: _____
ELLEN J. GARBER
Attorneys for Respondents
CITY OF ROSEVILLE, CITY COUNCIL OF ROSEVILLE and CITY OF ROSEVILLE PLANNING COMMISSION

DATED: August 30, 2004

LAW OFFICE OF J. WILLIAM YEATES

By: _____
J. WILLIAM YEATES
Attorneys for Petitioners/Plaintiffs
SIERRA CLUB and SIERRA CLUB FOOTHILLS AUDUBON SOCIETY

Exhibit C ("Catalano Agreement"), except as expressly modified by the provisions of this Stipulation, as follows:

a. The caption and first sentence of Section 1 of the Sierra Club/ Sierra Foothills Audubon Society Agreement shall be deleted.

b. Section 3 of the Loomis Agreement shall be deleted.

Judgment on this Stipulation shall not include any determination of a prevailing party for any purposes.

IT IS SO STIPULATED AND AGREED.

DATED: August _____, 2004

STOEL RIVES LLP

By: _____
ANNE E. MUDGE
GREGORY C. GATTO
Attorneys for Real Parties in Interest
ROSEVILLE FIDDYMENT LAND VENTURE, LLC, SIGNATURE PROPERTIES, INC., 1600 PLACER INVESTORS, L.P., and WESTPARK COMMUNITY BUILDERS, LLC

DATED: ~~August~~ September 3, 2004

SHUTE MIHALY & WEINBERGER LLP

By: Ellen J. Garber
ELLEN J. GARBER
Attorneys for Respondents
CITY OF ROSEVILLE, CITY COUNCIL OF ROSEVILLE and CITY OF ROSEVILLE PLANNING COMMISSION

DATED: August _____, 2004

LAW OFFICE OF J. WILLIAM YEATES

By: _____
J. WILLIAM YEATES
Attorneys for Petitioners/Plaintiffs
SIERRA CLUB and SIERRA CLUB FOOTHILLS AUDUBON SOCIETY

DATED: August 30, 2004

LAW OFFICES OF DONALD MOONEY

By: _____
DONALD B. MOONEY
Attorneys for Petitioner/Plaintiff
TOWN OF LOOMIS

DATED: August _____, 2004

WILLIAM D. KOPPER

By: _____
WILLIAM D. KOPPER
Attorneys for Petitioners MICHAEL CATALANO, ROB COLLINS, JOHN ELLIOT, and GREG BAIN

ORDER AND FINAL JUDGMENT

IT IS SO ORDERED. The Court hereby enters JUDGMENT in accordance with the terms of the Stipulated Judgment set forth above and related settlement agreements attached hereto as Exhibit A, Exhibit B, and Exhibit C.

DATED: August _____, 2004

_____
Judge, Sacramento County Superior Court

DATED: August ____, 2004

LAW OFFICES OF DONALD MOONEY

By: _____
DONALD B. MOONEY
Attorneys for Petitioner/Plaintiff
TOWN OF LOOMIS

DATED: ~~August~~ Sept. 3, 2004

WILLIAM D. KOPPER

By: _____
WILLIAM D. KOPPER
Attorneys for Petitioners MICHAEL CATALANO, ROB COLLINS, JOHN ELLIOT, and GREG BAIN

ORDER AND FINAL JUDGMENT

IT IS SO ORDERED. The Court hereby enters JUDGMENT in accordance with the terms of the Stipulated Judgment set forth above and related settlement agreements attached hereto as Exhibit A, Exhibit B, and Exhibit C.

DATED: August ____, 2004

_____
Judge, Sacramento County Superior Court

EXHIBIT A

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims ("Agreement") is entered into by and between Plaintiffs/Petitioners SIERRA CLUB AND SIERRA FOOTHILLS AUDUBON SOCIETY (together referred to as "SC/SFAS"), and Respondents/Defendants CITY OF ROSEVILLE, CITY COUNCIL OF THE CITY OF ROSEVILLE, and CITY OF ROSEVILLE PLANNING COMMISSION, (together referred to as the "City"), and Real Parties in Interest WESTPARK COMMUNITY BUILDERS, LLC ("Westpark"), 1600 PLACER INVESTORS, L.P. ("1600 Placer"), SIGNATURE PROPERTIES, INC, and ROSEVILLE/FIDDYMENT LAND VENTURE, LLC ("RFLV") (together referred to as "Developers"). SC/SFAS, City, and Developers are collectively referred to as the "Parties."

RECITALS

A. On February 4, 2004, the City of Roseville certified a Final Environmental Impact Report for a project proposed by Developers (the "Project") that includes (1) amending a 5,527-acre area immediately west of the City's corporate boundaries ("Sphere of Influence Amendment Area") to bring it into the City's sphere of influence; (2) adopting the West Roseville Specific Plan ("WRSP"), which covers a 3,162-acre portion of the 5,527-acre Sphere of Influence Amendment Area; and (3) annexing the WRSP Area into the City's jurisdiction.

B. A civil lawsuit (the "Action") entitled *Sierra Club et al. v. City Council of the City of Roseville, et al.* (Case No. SCV 16918), in which SC/SFAS are Petitioners/Plaintiffs, was filed March 5, 2004 in Placer County Superior Court. The Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief alleges failure to comply with the California Environmental Quality Act, State Planning and Zoning law, and other applicable laws. Further, the Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief seeks a temporary restraining order, preliminary and permanent injunction, and/or a stay order as well as costs and attorneys' fees. Pursuant to stipulation, the Action was ordered consolidated with *Michael Catalano, et al. v. City of Roseville et al.* (Case No. SCV 16913), on April 8, 2004, and

retitled *Michael Catalano, et al. v. City of Roseville* (Case No. SCV 16913).

C. On April 8, 2004, pursuant to stipulation, the Placer County Superior Court ordered the Action transferred to the Sacramento County Superior Court, where it was assigned Case No. 04CS00489.

D. The City and Developers dispute the claims in the Action. Developers filed an Answer in the Action on May 25, 2004 and the City filed an Answer on June 2, 2004.

E. The claims and allegations of the Verified Petition for Writ of Mandate are incorporated by reference into this Agreement solely for the purpose of identifying the various allegations set forth by SC/SFAS.

F. As is set forth in this Agreement, the Parties mutually desire to avoid further litigation and to remove from litigation all claims, counterclaims, and disputes among them of any kind or nature relating to SC/SFAS's Verified Petition for Writ of Mandate and the Action. As a result, the Parties have agreed to settle such claims, counterclaims and disputes on the terms and conditions set forth below.

TERMS AND CONDITIONS

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

1. Dismissal of Litigation. SC/SFAS shall sign and deliver to respondents a standard form Dismissal With Prejudice in the case known as *Catalano, et al. v. City of Roseville* within three (3) business days of execution of this Agreement. SC/SFAS agree not to file or join or support with any financial resources over which they have control any judicial claim, judicial action, or judicial proceeding challenging the legality of any aspect of the City's approval of the WRSP (including subsequent approvals or actions necessary or desirable to implement the WRSP, including but not limited to approval of tentative maps, conditional use permits, building and grading permits, and environmental analyses required for such approvals), as long as those approvals are fully consistent with the WRSP as approved by the City on February 4, 2004. SC/SFAS also agree not to file or join or support with any financial resources over which they

have control any judicial claim, judicial action or judicial proceeding challenging any public agency approval relating to the WRSP, so long as such agency approval is fully consistent with the WRSP as approved by the City on February 4, 2004. This Agreement may be pled as a full and complete defense to, and may be used as a basis for injunctive relief against, any action, suit or other proceeding which may be instituted, prosecuted, or attempted in breach of this Agreement.

2. Habitat/Open Space

a. Developers shall extend a loan of $8 million to the Placer Land Trust for the purpose of acquiring, protecting and managing open space/habitat land ("Trust"), with highest priority given to vernal pool grasslands and/or annual grasslands similar to the habitat types impacted by WRSP, in the Phase I Placer Legacy area of Placer County. Developers shall loan the money according to the following schedule:

i. $50,000 by January 20, 2005.

ii. $4.95 million at the time of the issuance of the first building permit;

iii. $2 million on the first anniversary of the issuance of first building permit;

iv. $1 million on the second anniversary of the issuance of the first building permit.

b. To generate funds for the activities of the Trust, a conveyance fee shall be imposed on the resale of each unit of residential housing in the amount of 0.5% of the total sale price, which fee would expire 20 years from the first sale of each unit. This conveyance fee shall be a covenant running with land on each qualifying lot in the WRSP (as defined under the Community Benefit Conveyance Fee Agreement (see paragraph 2.d.)) and shall be referenced in all Covenants, Conditions and Restrictions ("CCRs") for the residential portions of WRSP.

c. As the conveyance fee is collected, 50% of the fees collected each year shall be used to repay Developers' $8 million loan until the loan is paid in full. The Trust shall

pay interest of 4.0% per annum on the $2 million and $1 million loans made pursuant to subsections 2.a.iii and 2.a.iv, above. Repayments from conveyance fees shall be credited first to the interest and then to the principal on the $2 million and $1 million loans. No interest shall be paid on the $50,000 and $4.95 million loans made pursuant to subsection 2.a.i and 2.a.ii, above.

d. Within 15 days of the execution of this Agreement, Developers will execute a loan agreement with the Trust, as shown in Exhibit A and will execute a Community Benefit and Conveyance Fee Agreement as shown in Exhibit B. The executed Community Benefit and Conveyance Fee Agreement will be placed into escrow with binding instructions that it shall be recorded concurrently with the recordation of each final map for the single family residential lots within the WRSP.

3. Transit

a. Upon the issuance of the 3000th building permit, City shall implement peak hour shuttle service to the Watt/I-80 Light Rail Station. The shuttle service shall consist of one light-duty 15-passenger bus (plus one spare bus) operating on approximately one-hour headways from the WRSP to the Watt/I-80 Light Rail Station, Monday thru Friday, 6:00 a.m. to 9:00 a.m. and 3:00 p.m. to 6:00 p.m. The shuttle service shall operate for a period of five years, at which time the City shall evaluate whether ridership justifies continuing the service.

b. City shall enhance its existing local fixed route bus system with the goal of achieving an increase of 28,244 trips per year. City may adjust service should ridership fail to justify the increased number of runs.

c. Developers shall promote transit to new project residents, providing transit information and a 20-ride punch pass for fixed route services.

d. City is committed to working with Placer County toward coordinating transit service that would link the WRSP and the proposed Placer Vineyards project so that both could efficiently link with the regional transit system.

4. The Village Center

a. Developers, or their successors in interest, shall submit tentative maps, as required, for the Village Center no later than 12 months after the date of the execution of this Agreement.

b. The infrastructure designed for high density housing shall be in place within three years of the date of issuance of first building permit for the first residential unit within the WRSP.

c. Developers shall not request any material downzoning (defined as a reduction in the overall residential density of the Village Center of more than 10%) for a period of 10 years from the date of the issuance of the first building permit for any structure within the WRSP.

d. If there is material downzoning of the Village Center (defined as a reduction in the overall residential density of the Village Center of more than 10%), Developers shall pay $1,606,474 to the Placer County Air Pollution Control District's offsite mitigation fund.

e. During the term of the Development Agreement, the City agrees to support the development of the Village Center as described in the WRSP and agrees not to initiate any downzoning of the high density residential areas in the Village Center.

5. Air Quality Mitigation

a. Developers shall implement the following additional mitigation measures as part of the development of the WRSP:

i. Use low VOC coatings per District Rule 218 Architectural Coatings.

ii. Introduce window glazing, wall insulation and efficient ventilation methods.

(1) Meet at least the minimum standards of Title 24 (Code of California Regulations) energy conservation measures.

(2) Provide residential air conditioning units that exceed Title 24 required SEER (Seasonal Energy Efficiency Ratio) rating by 2 points. In addition the units shall have an EER (Energy Efficiency Ratio) of 12 or greater.

(3) All two-story homes shall have zoned HVAC systems with two units and two thermostats or one unit with two thermostats that will control the upstairs and downstairs independently.

(4) Commercial air conditioning units of 5 tons or less shall meet the Consortium for Energy Efficiency (CEE) Tier II specifications.

iii. Site design to maximize telecommunication including an appropriate network infrastructure.

(1) Encourage competition among broadband service providers by providing space within the Joint Utility trench along major arterials and neighborhood roadways.

(2) Provide fiber optic communication services to individual homes and employment parcels.

(3) Require at a minimum CAT-5 wiring, or newer technology in the future, to every home and commercial building.

iv. Provide satellite work offices when appropriate.

(1) Encourage the marketing of employment land uses within the community to existing large employers as alternatives to expanding employment at existing sites.

(2) Provide up to date communication technology to the site (via the Joint Utility trench) to encourage satellite expansion.

v. Design/establish telecommuting programs for office/industrial complexes.

(1) Provide fiber optic communication systems to office and industrial sites as part of the basic site infrastructure.

(2) Require a minimum CAT-5 wiring, or equivalent technology within office and industrial buildings.

(3) Provide information about the community wide communication and technology system with marketing materials for office and industrial sites.

vi. Develop or improve bicycle/pedestrian paths between destinations using public and/or utility right-of-ways.

(1) Coordinate the WRSP biking and walking trail network with the City Transportation Manager to ensure efficient linkage to the existing City trail network.

(2) Provide logical connection points from major thoroughfares to the off street trail system to provide convenient access to bicycle commute routes from neighborhoods.

vii. Smart Vent System. Developers shall install a "Smart Vent," or an equivalent system, on all single family detached residences.

b. In addition to the $758,700 required to be paid by Developers to the Placer County Air Pollution Control District under the Development Agreement, Developer will pay an off-site mitigation program fee to the Placer County Air Pollution Control District offsite mitigation fund in the amount of $1,047,974 to be paid by payment of a fee upon the issuance of each building permit ("Additional Air Quality Fee"). The Additional Air Quality Fee shall be collected by imposition of a building permit fee for every residential unit in the amount of $134.10 per unit. The City shall transfer Additional Air Quality Fee funds collected in accordance with this Agreement to the Placer County Air Pollution Control District on or before January 30 of each calendar year until 2025 or the project is built out, whichever occurs later. Attached as Exhibit C to this Agreement is a non-binding projection of the anticipated rate at which fees will be collected by the City. It is expressly understood and agreed by the Parties that this projection is a non-binding estimate only and the actual rate at which fees are collected may be different. The funds will be applied or utilized in accordance with the April 21, 2001

approved policy regarding Land Use Air Quality Mitigation Funds as adopted by the Placer County Air Pollution Control District Board of Directors, unless a specific air quality project is approved through action of the District Board. The adopted policies express a preference that the funded emission reduction mitigation occur as close as is possible to the project that is being mitigated (i.e. WRSP and the City of Roseville). Such projects, programs and services may include, but shall not be limited to, replacement of non-EPA-certified wood stoves, transit vehicle conversions, and retrofitting vehicles with cleaner-burning alternative fuels.

6. Water Supply. The City is committed to engage in a regional dialogue with the Water Forum Successor Effort related to water supply and land use.

7. Mutual Release.

a. SC/SFAS, on their own behalf and on behalf of their predecessors, successors, assigns, subsidiaries, affiliates, officers, directors, employees, shareholders and attorneys, hereby acknowledge full and complete satisfaction of, covenants not to sue with respect to, and release and discharge the City and/or Developers and their predecessors, successors, assigns, subsidiaries, affiliates, officers, directors, employees, shareholders, members, managers and attorneys from any and all claims, demands, actions, causes of action, suits, liabilities, losses, agreements, contracts, covenants, wages, debts, costs, attorneys' fees or expenses, known or unknown, suspected or unsuspected, that SC/SFAS now has or may ever have had against any of the released persons and entities, arising out of or related to any and all claims described in, or that could have been described in, or arising out of or in any way related to, the Action.

b. The City and Developers, on their own behalf and on behalf of their predecessors, successors, assigns, subsidiaries, affiliates, officers, directors, employees, shareholders, members, managers and attorneys, hereby acknowledge full and complete satisfaction of, covenants not to sue with respect to, and release and discharge SC/SFAS and their predecessors, successors, assigns, subsidiaries, affiliates, officers, directors, employees, shareholders and attorneys, from any and all claims, demands, actions, causes of action, suits,

liabilities, losses, agreements, contracts, covenants, wages, debts, costs, attorneys' fees or expenses, known or unknown, suspected or unsuspected, that the City or Developers now have or may ever have had against any of the released persons and entities, including without limitation any and all claims arising out of or in any way related to the Action.

8. No Assignment. The Parties represent and warrant that they have not sold, assigned, transferred, conveyed or otherwise disposed of any claim, demand, cause of action, obligation, damage or liability released in paragraph 7 above, and each further agrees to indemnify and hold the other harmless from any liability, claims, demands, damages, costs, expenses, and attorneys' fees incurred by any such assignment or transfer.

9. General Release and Waiver of Civil Code Section 1542. With respect to claims related to the action within the foregoing releases, the Parties specifically and expressly waive any right and benefit available to them under the provisions of Section 1542 of the Civil Code of the State of California which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

It is understood and agreed by the parties that this Agreement is a full and final general release and shall extinguish all of the Parties past and present claims, demands and causes of action against each other, whether known or unknown, foreseen or unforeseen, anticipated or unanticipated, that arise out of or in any way relate to the Action, which claims, demands and causes of action are remised and forever discharged.

10. Notices. All notices and other communications required to be provided pursuant to this Agreement shall be by facsimile, followed by first class mail to the following persons at the following addresses, phone and facsimile numbers:

TO DEVELOPERS:

William A. Falik
Westpark Community Builders, LLC
100 Tunnel Road
Berkeley, California 94705
Telephone: (510) 540-5960
Facsimile: (510) 704-8803

John Murray
Westpark Community Builders, LLC
2150 Douglas Boulevard, Suite 110
Roseville, California 95661
Telephone: (916) 774-3400
Facsimile: (916) 774-3434

James W. McKeehan
Signature Properties
4670 Willow Road, Suite 200
Pleasanton, California 94588
Telephone: (925) 463-1122
Facsimile: (925) 463-0832

With a copy to:

Anne E. Mudge
Stoel Rives LLP
111 Sutter Street, Suite 700
San Francisco, California 94104
Telephone: (415) 617-8900
Facsimile: (415) 676-3000

TO THE CITY OF ROSEVILLE:

W. Craig Robinson, City Manager
City of Roseville
311 Vernon Street
Roseville, California 95678
Telephone: (916) 774-5362
Facsimile: (916) 774-5485

With a copy to:

Mark J. Doane and Brita J. McNay
Roseville City Attorney
311 Vernon Street
Roseville, California 95678
Telephone: (916) 774-5325
Facsimile: (916) 773-7348

Ellen J. Garber
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, California 94102
Telephone: (415) 552-7272
Facsimile: (415) 552-5816

TO SC/SFAS:

Terry Davis
Sierra Club Mother Lode Chapter
1414 K Street, Suite 500
Sacramento, California 95814
Telephone: (916) 557-1100 ext. 108
Facsimile: (916) 557-9669

Ed Pandolfino
Sierra Foothills Audubon Society
PO Box 1937
Grass Valley, CA 95945
Telephone: (916) 486-9174
Facsimile: (916) 846-9174

With a copy to:

J. William Yeates
Law Office of William Yeates
3400 Cottage Way, Suite K
Sacramento, California 95825
Telephone: (916) 609-3000
Facsimile: (916) 609-5001

11. Advice of Counsel. In executing this Agreement, the Parties acknowledge that they have consulted with and been advised by their respective attorneys, and that they have executed this Agreement after independent investigation, and without fraud, duress or undue influence. The Parties further acknowledge and agree that they have had a reasonable period of time for deliberation before executing this Agreement.

12. Future Waivers. No waiver by the Parties or by their respective attorneys of any condition or term of this Agreement shall be deemed a waiver of any other condition or provision at the same or any other time.

13. Modification. This Agreement may be modified only in a writing signed by the Parties.

14. No Admission of Liability. This Agreement is the result of a compromise and shall never at any time for any purpose be considered as an admission of liability or responsibility on the part of any party hereto, and each party continues to deny any liability to the other, and further agrees not to represent to any other person or entity that this Agreement, or any of the provisions hereof, represents a confession or admission of liability on the part of any other party.

15. No Representations. Each party to this Agreement acknowledges that it is fully aware of the significance and legal effect of this Agreement, including its release provisions, and is not entering into this Agreement in reliance on any representation, promise, or statement made by any party, except those explicitly contained in this Agreement.

16. Mistake. Each of the Parties to this Agreement has investigated the facts pertaining to the Action and to this Agreement to the extent each party deems necessary. In entering into this Agreement, each party assumes the risk of mistake with respect to such facts. This Agreement is intended to be final and binding upon the Parties regardless of any claim of mistake.

17. Severability. The provisions of this Agreement are contractual, and not mere recitals, and shall be considered severable, so that if any provision or part of this Agreement shall at any time be held invalid, that provision or part thereof shall remain in force and effect to the extent allowed by law, and all other provisions of this Agreement shall remain in full force and effect, and be enforceable.

18. Applicable Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

19. Construction. This Agreement has been reviewed by the Parties, and by their respective attorneys, and the Parties have had a full opportunity to negotiate the contents of this Agreement. The Parties expressly waive any common law or statutory rule of construction that ambiguity should be construed against the drafter of this Agreement, and agree that the language in all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning.

20. No Third Party Beneficiaries. The mutual promises in this Agreement are intended only for the benefit of the parties. The parties agree that there are no intended or incidental third party beneficiaries to this Agreement.

21. Survival of Provisions. All promises, covenants, releases, representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated herein.

22. Attorneys' Fees Arising Out of The Enforcement of the Agreement. In the event of litigation arising out of any alleged breach of this Agreement, the prevailing party shall be

entitled to recover its costs, expenses and reasonable attorneys' fees in addition to any other relief to which it may be entitled.

23. Event of Default. Any breach or default of any term, covenant, or condition set forth in this Agreement not fully and unconditionally cured by the defaulting party, where such failure shall continue for a period of thirty (30) days after written notice thereof, shall constitute an "Event of Default". Any delay in providing any party with any such notice shall not constitute a waiver of any breach or default.

24. Binding Effect. This Agreement shall bind and inure to the benefit of each party and each party's successors, assigns, heirs, officers, directors, employees, members, representatives, managers, principals and agents. For the Sierra Club, any reference to "members" means those individuals who are authorized to act on behalf of the Sierra Club.

25. Effective Date. This Agreement shall be effective as of the date upon which all of the signatories have signed the agreement.

26. Execution in Counterpart. This Agreement may be executed in counterpart, and all executed copies are duplicate originals, equally admissible in evidence. The Parties agree that the transmission of an executed copy of this Agreement by facsimile shall be valid and binding, and shall have the same full force and effect as if an executed original of this Agreement had been delivered.

27. Entire Agreement. This Agreement contains the entire agreement among the Parties hereto with respect to the matters covered hereby, and supersedes all prior agreements, written or oral, among the Parties. No other agreement, statement or promise made by any party not contained herein shall be binding or valid.

28. Further Documents. Each party will execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and documents as may be necessary in order to consummate this Agreement.

29. Time Of the Essence. Time is of the essence of this Agreement and the performance by each party hereto of the obligations on that party's part to be performed.

30. Force Majeure Events. If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or other materials or reasonable substitute for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire, flood, storm, explosion, earthquake or other casualty, or any other cause beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused to the extent performance is no longer practically possible. To the extent that obligations can still be performed as a practical matter at the termination of any of the events described above, then performance of the obligations shall be delayed for a period equal to the period of such cause for failure to perform.

31. Recitals in Caption. The recitals in the captions of the paragraphs and subparagraphs of this Agreement are for convenience and reference only; the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

32. Warranty of Authority. Each individual executing this Agreement on behalf of any party represents that he/she is authorized to execute this Agreement on behalf of the party or parties he/she purports to represent and does so execute this document on behalf of said party.

Approved as to Form:

STOEL RIVES, LLP

Dated: August 17, 2004

By: Anne E. Mudge

Anne E. Mudge
Attorneys for Real Parties in Interest

REAL PARTIES IN INTEREST

Dated: 8/30/04

WESTPARK COMMUNITY BUILDERS / 1600 PLACER

By: _____
John Murray

SIGNATURE PROPERTIES / RFLV

Dated: _____

By: _____
James W. McKeehan

Approved as to Form:

ROSEVILLE CITY ATTORNEY

Dated: _____

By: _____
Mark J. Doane
Attorneys for City of Roseville

CITY OF ROSEVILLE

Dated: _____

By: _____
W. Craig Robinson
City Manager

Approved as to Form:

LAW OFFICE OF WILLIAM YEATES

Dated: _____

By: _____
J. William Yeates
Attorneys for Sierra Club/Sierra Foothills Audubon Society

SIERRA CLUB

Dated: _____

By: _____
Terry Davis

REAL PARTIES IN INTEREST

Dated:_____

WESTPARK COMMUNITY BUILDERS / 1600 PLACER

By:_____
John Murray

SIGNATURE PROPERTIES / RFLV

Dated: 8/19/04

By:_____
James W. McKeehan

Approved as to Form:

ROSEVILLE CITY ATTORNEY

Dated:_____

By:_____
Mark J. Doane
Attorneys for City of Roseville

CITY OF ROSEVILLE

Dated:_____

By:_____
W. Craig Robinson
City Manager

Approved as to Form:

LAW OFFICE OF WILLIAM YEATES

Dated:_____

By:_____
J. William Yeates
Attorneys for Sierra Club/Sierra Foothills Audubon Society

SIERRA CLUB

Dated:_____

By:_____
Terry Davis

REAL PARTIES IN INTEREST

WESTPARK COMMUNITY BUILDERS /
1600 PLACER

Dated:_____

By:_____
John Murray

SIGNATURE PROPERTIES / RFLV

Dated:_____

By:_____
James W. McKeehan

Approved as to Form:

ROSEVILLE CITY ATTORNEY

Dated:_____

By:_____
Mark J. Doane
Attorneys for City of Roseville

CITY OF ROSEVILLE

Dated:_____

By:_____
W. Craig Robinson
City Manager

Approved as to Form:

LAW OFFICE OF WILLIAM YEATES

Dated:_____

By:_____
J. William Yeates
Attorneys for Sierra Club/Sierra Foothills
Audubon Society

REAL PARTIES IN INTEREST

Dated: 8/30/04

WESTPARK COMMUNITY BUILDERS / 1600 PLACER

By: _____
John Murray

SIGNATURE PROPERTIES / RFLV

Dated: _____

By: _____
James W. McKeehan

Approved as to Form:

ROSEVILLE CITY ATTORNEY

Dated: _____

By: _____
Mark J. Doane
Attorneys for City of Roseville

CITY OF ROSEVILLE

Dated: _____

By: _____
W. Craig Robinson
City Manager

Approved as to Form:

LAW OFFICE OF WILLIAM YEATES

Dated: August 30, 2004

By: _____
J. William Yeates
Attorneys for Sierra Club/Sierra Foothills Audubon Society

SIERRA CLUB

Dated: 8/30/04

By: _____
Terry Davis

SIERRA FOOTHILLS AUDUBON SOCIETY

Dated: 8/30/04

By: _____
Ed Pandolfino

EXHIBIT B

RECORDING REQUEST BY:
WHEN RECORDED MAIL TO:

WEINTRAUB GENSHLEA
CHEDIAK SPROUL
400 Capitol Mall, Suite 1100
Sacramento, CA 95814
Attn: Curtis C. Sproul

(Space Above for Recorder's Use)

COMMUNITY BENEFIT CONVEYANCE FEE AGREEMENT

(West Roseville Specific Plan/Phase One of the Placer Legacy Project)

NOTICE OF CONVEYANCE FEE AND COMMUNITY BENEFIT CONVEYANCE FEE AGREEMENT

(West Roseville Specific Plan/Phase One of the Placer Legacy Project)

This Community Benefit Conveyance Fee Agreement ("Agreement") is made and entered into as of this____ day of _____, 2004, by and between the Placer Land Trust, a California nonprofit public benefit corporation ("Placer Land Trust" or the "Trust"), and 1600 Placer Investors, LP, a California limited partnership and Signature Properties, Inc., a California corporation (collectively, the "Landowners"). The Trust and Landowners are sometimes referred to herein collectively as the "Parties", or each, individually, as a "Party". Capitalized terms within the Recitals are defined in Section 1 of this Agreement unless otherwise defined therein.

RECITALS

A. Landowners own that certain real property located in the City of Roseville, Placer County, California, consisting of 3,162 acres, more or less, which comprises the West Roseville Specific Plan ("WRSP") area (the "WRSP Area"). The WRSP Area is more particularly described in Exhibit "A", attached hereto.

B. The Trust is a tax-exempt public charity of the kind described in Section 815.3 of the California Civil Code and a "qualified organization" within the provisions of Section 170(h) of the Internal Revenue Code. The mission of the Trust is to work with landowners and conservation partners to permanently preserve natural open spaces and agricultural lands in Placer County.

C. The Trust expects to receive a portion of the funds it needs to operate, and, in accordance with Section 4 below, to establish a fund, the income of which will be used for the permanent management and maintenance of acquired properties from the Community Benefit Conveyance Fees ("Benefit Fees") set forth herein, among other sources.

D. A crucial element in the implementation of the WRSP is the acquisition, protection and future management of open space and habitat land for the benefit of residents within the WRSP Area, Roseville and west Placer County. To implement that community planning element, Landowners are entering into this Agreement with the Trust to acquire, protect and manage open space/habitat land in the Phase 1 Placer Legacy area of Placer County (the "Benefited Property") as more particularly identified in the Map attached hereto as Exhibit "B." To the extent feasible, the highest priority will be given by the Trust to acquisition, protection or management of lands that include vernal pool grasslands and/or annual grasslands similar to the habitat types impacted by WRSP. Landowners and Trust have agreed that a portion of the funds Trust requires to operate and to implement its mission, programs and activities will be provided by committing Benefit Fees to the Trust in connection with transfers of Residences, other than transfers of Excluded Residences, within the Covered Property as defined in Section 1.04, below.

AGREEMENT

NOW THEREFORE, for mutual consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, and the covenants, conditions, restrictions and other promises set forth in this Agreement, the Parties hereby agree as follows:

1. Definitions. As used herein, the following terms have the following meanings:

1.01. Agreement means this Community Benefit Conveyance Fee Agreement.

1.02. Beneficiary means a beneficiary under a Mortgage and the assignees of such beneficiary.

1.03. Community Benefit Convevance Fee or Benefit Fee means and refers to the fee to be paid to Trust in connection with each Transfer. The Benefit Fee shall be equal to one half of one percent (0.5%) of the total Purchase Price of a Residence in the Covered Property in each transaction resulting in a Transfer.

1.04. Covered Property means any portion of the WRSP Area that is subdivided into residential Lots that are subject to this Agreement and the Benefit Fee obligations set forth below.

1.05. Dispute means and refers to any dispute between or among any of Landowners, the Trust, or between any Owner and Landowners, and/or the Trust, concerning the amount, obligation to pay or other issue concerning the Benefit Fees under this Agreement or concerning any other dispute arising under this Agreement.

1. 06. Landowners means and refers to 1600 Placer Investors, LP, a California limited partnership and Signature Properties, Inc., a California corporation.

1.07. Lot means any residential Lot or parcel of land shown on any Recorded subdivision map or Recorded parcel map of any portion of the Covered Property that is improved with a Residence, other than any residential lot within the WRSP Area that is part of a subdivision where the approved density is "High Density" under the City of Roseville Zoning Code (thirteen (13) units to the acre or more), or any residential lot that is subject to current, recorded affordability restrictions pursuant to requirements set forth in the Development Agreements between the City and Developers.

1.08. Merchant Builder means and refers to any person or entity who owns or acquires any portion of the Covered Property for the purpose of developing five (5) or more Lots and reselling such Lots, improved with Residences, to the general public pursuant to a public report issued by the California Department of Real Estate pursuant to Business and Professions Code section 11018.1.

1.09. Mortgage means any Recorded mortgage or deed of trust or other conveyance of one or more Lots within any portion of the Covered Property to secure

performance of any obligations, which will be reconveyed upon completion of such performance. A "First Mortgage" is any Mortgage with lien priority over all other Mortgages on the subject property.

1.10. Official Records means the official records of the Placer County, California, Recorder.

1.11. Owner means any Person or Persons, including the Landowners and any Merchant Builders, holding record title to any Lot. The term "Owner" includes a seller under an executory contract of sale, but excludes Beneficiaries.

1.12. Person means a natural individual or any entity with the legal right to hold title to a portion of the Covered Property.

1.13. Trust means and refers to the Placer Land Trust, a California nonprofit public benefit corporation.

1.14. Purchase Price means the total purchase price or other consideration given by the transferee to the transferor in a transaction resulting in a Transfer, including, but not limited to, the sum of actual cash paid, the fair market value of services performed or real and personal property delivered or conveyed in exchange for the Transfer, and the amount of any lien, Mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price, or remaining unpaid on the property at the time of the Transfer, but excluding any third-party cost or charge incurred by the transferor or the transferee in connection with the transaction.

1.15. Recorded means the recordation, filing or entry of a document in the Official Records.

1.16. Residence means any Lot in the Covered Property that is improved with a residential dwelling unit which has been issued a certificate of occupancy by the City Building Department.

1.17. Transfer means the sale or exchange of a Lot at any time during the term of this Agreement by an Owner to a transferee in a transaction for which a public report issued by the California Department of Real Estate pursuant to Business and Professions Code section 11018.1 is required. None of the following transactions shall constitute a "Transfer" under this Agreement:

(a) The transfer of an interest in a Lot to secure the performance of an obligation, such as a Mortgage or a lien, which will be reconveyed upon the completion of such performance.

(b) The first sale or exchange of a Lot by Landowner or any Merchant Builder following issuance of a notice of completion or certificate of occupancy for a residential unit on the Lot.

(c) A transfer resulting from a foreclosure (by judicial foreclosure or trustee's sale) by the Beneficiary of a First Mortgage, or by an association (as defined in Civil Code section 1351(a)) or a transfer in lieu thereof.

(d) A transfer of a Lot by a transferor or the transferor's spouse into a revocable inter-vivos trust which is an exempt transfer under California Revenue and Taxation Code Section 62(d).

(e) Any inter-spousal transfer (as defined in California Revenue and Taxation Code section 63) or transfer between parents and any of their children (as defined in California Revenue and Taxation Code Section 63.1).

(f) A change in ownership where the transferee is not locally assessed by the Office of the County Tax Assessor.

(g) Any transfer of real property to any public agency, entity or district, or any utility service provider.

(h) Any transfer of real property to an association (defined in Section 1351(a) of the California Civil Code) as common area (defined in Section 1351(b) of the California Civil Code).

(i) The rental or lease of a Lot.

(j) An exchange pursuant to an exchange program as defined in California Business and Professions Code section 11003.5(d).

(k) Any transfer of a Lot by either Landowner or by a Merchant Builder, regardless of whether the transfer is one for which a public report issued by the California Department of Real Estate pursuant to Business and Professions Code section 11018.1 is required.

2. Acknowledgment of Benefit. Trust represents and covenants that it will use the Benefit Fees for the purposes described in Paragraphs "C" and "D" of the Recitals to this Agreement. Decisions regarding all aspects of the method and manner in which such purposes shall be achieved shall be made by Trust in its sole discretion. Landowners believe, nonetheless, that the open space and vernal pool land management and preservation to be provided by Trust in the Phase 1 Placer Legacy area, which is more particularly depicted in the map attached hereto as Exhibit "B", will enhance the value of and benefit all lands within the WRSP Area and the inhabitants therein. Each Owner who acquires a Lot in the Covered Property by such acquisition agrees to and acknowledges the statements made in this Section 2.

3. Community Benefit Fee.

3.01. When Due and Paid. A Benefit Fee in the amount determined as provided

in Section 1.03 above shall be paid to Trust each time a Lot is Transferred (subject to the exchange transfer limit specified in Section 3.05, below). Such payment shall be made on or before the closing or effective date of the Transfer.

3.02. Late Charges. The Benefit Fee shall be considered late if not paid within five (5) business days after the closing or effective date of the Transfer. A late fee of one-half of one percent (0.5%) of the Benefit Fee shall apply thereafter for each day such payment is late, up to a maximum of ten percent (10%) of the Benefit Fee.

3.03. Covenant to Pay and Creation of Lien. Each Owner, by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay the Benefit Fee to Trust, if applicable. Such fee, together with interest thereon, late charges, attorneys' fees, court costs, and other costs of collection thereof as hereinafter provided, shall be a lien and charge upon the Lot, the Transfer of which gives rise to the Benefit Fee.

3.04. Mandatory Notice. Every Owner must notify Trust within twenty (20) days of the execution of a contract to Transfer a Lot. Such notice shall include the following information: (i) the name of the transferor and transferee; (ii) an identification of the Lot being Transferred; (iii) the proposed Purchase Price for the Lot Transfer; (iv) the proposed closing or effective date of the Transfer; (v) the name, address and phone number of the escrow holder for the Transfer; and (vi) the name of the escrow officer. If any of the information set forth above is not available when the notice is originally sent to Trust, the Owner shall notify Trust as soon as such information becomes available. In addition, each Owner shall accurately update Trust if any of such information provided shall change on or prior to the closing or effective date of the Transfer.

3.05. Exchange Transfer. If a particular transaction involves more than one Transfer solely because the Lot is held for an interim period by an accommodation party as a part of a tax-deferred exchange under section 1031 of the Internal Revenue Code (or comparable superseding statute), and provided there is no increase in consideration given, then, for the purposes of this Agreement, only one Transfer shall be deemed to have occurred and only one Benefit Fee must be paid in connection therewith, and the accommodation party shall not have any liability for payment of such Benefit Fee.

3.06. Escrow Demand. Trust is authorized to place a demand for payment of the Benefit Fee in the escrow (if any) for each Transfer. The demand shall state (i) either the amount of the Benefit Fee that is due or the formula for calculating the amount of the Benefit Fee that is due, and (ii) that the Benefit Fee is due on or before close of the escrow for the Transfer. The transferor and transferee shall execute any and all documents reasonably requested by escrow holder to effectuate such payment on or before the close of escrow.

3.07. Benefit Fee Payor. The obligation to pay the Benefit Fee in each Transfer is a joint and several obligation of the transferor and the transferee in each transaction that is subject to this Agreement and not an obligation of any other Owner of any other Lot in the

Covered Property. The transferor and transferee in each transaction may, as a matter between themselves, allocate the obligation to pay in any manner they so choose. If the transferor and transferee fail to pay the Benefit Fee, Trust may take all actions authorized at law or equity, or otherwise set forth within this Agreement, to collect the Benefit Fee from the transferor and/or transferee.

4. WRSP Advisory Committee. The Placer Land Trust will establish a WRSP Advisory Committee which will advise the Trust with regard to potential acquisitions of property interests which meet the objectives of this Agreement. The Advisory Committee shall consist of two members, one designated by the City of Roseville and one designated jointly by the Sierra Club and the Sierra Foothills Audubon Society. The WRSP Advisory Committee may make recommendations to the Trust with regard to acquisitions consistent with the purposes of this Agreement, and the Trust may make recommendations to the WRSP Advisory Committee. Any recommendation for acquisition shall include a detailed proposal for the ongoing management and stewardship of the subject property, and for the means of payment for such ongoing management and stewardship. No funding will be allocated or disbursed from Community Benefit Conveyance Fees for acquisition of property interests, and the Trust will not be authorized to enter into any binding agreement respecting such acquisition of property interests using Community Benefit Conveyance Fee funding, without the unanimous prior concurrence of the members of the WRSP Advisory Committee. It is understood that other jurisdictions may have projects which include similar Community Benefit Conveyance Fees as provided in this Agreement and that the Placer Land Trust may establish other similar Advisory Committees involving such other jurisdictions which may in the future participate with the Placer Land Trust in the use of other funds for similar purposes.

5. Binding Effect. Landowners and Trust hereby declare that the Covered Property will be held, leased, transferred, encumbered, used, occupied and improved subject to the reservations, rights, covenants, conditions and equitable servitudes contained in this Agreement, all of which are for the purpose of enhancing the attractiveness and desirability of the Covered Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Covered Property. The reservations, rights, covenants, conditions and equitable servitudes set forth in this Agreement will (1) run with and burden the Covered Property and will be binding upon all Persons having or acquiring any interest in the Covered Property or any part thereof, their heirs, successors and assigns; (2) inure to the benefit of every portion of the Covered Property and the Benefited Property and any interest therein; (3) inure to the benefit of and be binding upon Landowners and the Trust, and their respective successors-in-interest, assigns, heirs, officers, directors, employees, members, representatives, managers, principals and agents, each Owner and each Owner's successors-in-interest; and (4) may be enforced by Landowners, the Trust, and each Owner. The Parties hereby acknowledge and agree that the obligation to pay a Benefit Fee upon the Transfer of any of the Covered Property is not a personal covenant or obligation of the Landowners or any Merchant Builder, and that, except as specifically set forth herein at Section 1.14, neither Landowners and Merchant Builder shall be obligated to pay any Benefit Fee regarding any portion of the Covered Property.

6. Mortgages.

6.01. Rights of Beneficiaries. Nothing in this Agreement nor any amendment to or breach of this Agreement defeats or renders invalid the rights of the Beneficiary under any Recorded Mortgage encumbering any Lot made in good faith and for value, provided that, after the foreclosure or a transfer in lieu of foreclosure of any such Mortgage, such Lot will remain subject to this Agreement.

6.02. Subordination to First Mortgages. Subject to Section 6.01, the rights and obligations of the Parties hereunder concerning any Lot shall be subject and subordinate to the lien of any Recorded First Mortgage encumbering that Lot.

6.03. Effect of Foreclosure. No foreclosure of a Mortgage on a Lot or a transfer in lieu of foreclosure shall impair or otherwise affect Trust's right to pursue payment of any Benefit Fee due in connection with the Transfer of that Lot from the transferor or a transferee obligated to pay it. No foreclosure or transfer in lieu thereof shall relieve such Lot or the purchaser thereof from liability for any Benefit Fee(s) thereafter becoming due or from the lien therefor.

6.04. Estoppel Certificate. Within twenty (20) days of the receipt of a written request from any Owner of a Lot for which no Benefit Fee is due and owing and as to which Lot Trust holds no lien, Trust shall deliver to such Owner an executed estoppel certificate certifying that no Benefit Fee is due and owing for such Lot and that Trust holds no lien against such Lot. The fee assessed to such Owner for issuance of an Estoppel Certificate shall be one hundred dollars ($100).

7. Enforcement.

7.01. Remedies. Trust shall be entitled to any and all rights and remedies available at law or equity in order to collect the Benefit Fees owed it, including, but not limited to, specific performance and rights of lien.

7.02. Small Claims Court. Any Dispute which is within the jurisdiction of a small claims court shall be resolved by a small claims court proceeding. Either Party may submit the Dispute to such court.

7.03. Attorneys' Fees. The prevailing party in any Dispute shall be entitled to recover its attorneys' fees and court costs from the other party.

7.04. Enforcement by Lien. There is hereby created a claim of lien, with power of sale, on each and every Lot to secure prompt and faithful performance of each Owner's obligations under this Agreement for the payment to Trust of the Benefit Fees, together with interest thereon at the maximum legal rate per annum from the date of delinquency, and all late charges and costs of collection which may be paid or incurred by the Trust in connection therewith, including reasonable attorneys' fees. At any time after the delinquency, Trust may elect to file and record in the Office of the Placer County Recorder a notice of default and claim

of lien against the Lot of the defaulting Owner. Such notice of default and claim of lien shall be executed and acknowledged by any officer of Trust and shall contain substantially the following information:

(a) The name of the defaulting Owner, along with a legal description of the Lot;

(b) The total amount of the delinquency, interest thereon, late charges, collection costs and reasonable attorneys' fees;

(c) A statement that the notice of default and claim of lien is made by Trust pursuant to this Agreement; and

(d) A statement that a lien is claimed and will be foreclosed against the Lot in an amount equal to the amount stated.

Upon such recordation of a duly executed original or copy of such notice of delinquent assessment and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment as the laws of the State of California may from time to time be changed or amended. The trustee for all purposes related thereto (including, but not limited to, the taking of all actions which would ordinarily be required of a trustee under a foreclosure of a deed of trust) shall be a neutral third party with prior trustee experience as selected by Trust. Trust shall have the power to bid at any foreclosure sale, trustee's sale or judgment sale, and to purchase, acquire, lease, hold, mortgage and convey any Lot acquired at such sale subject to the provisions of this Agreement. Reasonable attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law.

The proceeds of any foreclosure, trustee's or judgment sale provided for in this Agreement shall first be paid to discharge court costs, court reporter charges, reasonable attorneys' fees, title costs and costs of the sale, and all other expenses of the proceedings and sale, and the balance of the proceeds, after satisfaction of all charges, monetary penalties and unpaid Benefit Fees hereunder or any liens, and subject to the rights of any Mortgagee shall be paid to the defaulting Owner. The purchaser at any such sale shall obtain title to the Lot free from the sums or performance claimed (except as stated in this subsection) but otherwise subject to the provisions of this Agreement; and no such sale or transfer shall relieve such Lot or the purchaser thereof from liability for any Benefit Fees, other payments or performance thereafter becoming due or from the lien therefor as provided for in this subsection. All sums due and owing hereunder but still unpaid shall remain the obligation of and shall be payable by the person foreclosed upon.

Upon the timely curing of any default for which a notice of default or claim of lien was filed by Trust, the officers of Trust are hereby authorized to record an appropriate release of such lien in the Office of the County Recorder.

8. Miscellaneous.

8.01. Term and Amendment.

(a) Term. With respect to each Lot in the Covered Property, the term of this Agreement shall be twenty (20) years commencing on the date of the first close of escrow in the sale of the Lot following issuance of a notice of completion for a residential dwelling unit constructed on the Lot. Accordingly, the term of this Agreement will vary from one Lot to another within the Covered Property, depending on the date that the Lot is both improved with a residential dwelling unit and sold to the first purchaser of that improved Lot.

(b) Amendment. Trust has the right to unilaterally amend this Agreement to conform this Agreement to law. The Landowners also have the right to unilaterally amend this Agreement to conform this Agreement to law, lender guidelines or California Department of Real Estate requirements subject only to the obligation to give the Trust prior notice of any such amendment.

8.02. Authority. Each individual signatory hereto represents and warrants that he or she is duly authorized to sign this Agreement and is personally bound, or, if signing on behalf of another, is authorized to do so and that the other is bound.

8.03. Assignment. Trust may, by written assignment, assign its rights and delegate its duties under this Agreement to any entity that is exempt from federal taxation pursuant to Internal Revenue Code Section 501(c)(3) or 501(c)(4) that assumes all of Trust's obligations hereunder.

8.04. Disclaimers. Nothing herein (a) creates any right or remedy for the benefit of any Person not a party hereto, or (b) creates a fiduciary relationship, an agency, or partnership.

8.05. Construction. Whenever the context of this Agreement requires, the singular shall include the plural and the masculine shall include the feminine and/or the neuter. Except for the definitions in Section 1, where the heading in each subsection is the word being defined, article and section headings are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

8.06. Notices. All notices required or allowed shall be in writing and shall be sent to the addresses shown beside the signatures of the Parties, below. A Party may change its address for notice by giving notice to the other Parties. Notice may be delivered by personal delivery, facsimile transmission during normal business hours of the recipient, a reputable overnight delivery service, or U.S. Mail sent certified with return receipt requested. Notices are effective on the earlier of the date received, the date of the delivery receipt, or the third day after postmarked, as applicable. Each Owner who transfers a Lot shall send the name and mailing address of the transferee to Trust.

8.07. Time. Time is of the essence of all provisions hereof where time is a factor.

8.08. Waiver. No right or remedy will be waived unless the waiver is in writing and signed by the Party claimed to have made the waiver. One waiver will not be interpreted as a continuing waiver.

8.09. Incorporation of Recitals. The Recitals set forth above are incorporated herein by this reference.

8.10. Severability. Invalidation of any portion or provision of this Agreement by judgment or court order shall in no way affect any other portions or provisions, which shall remain in full force and effect.

8.11. Judicial Reference. Any Dispute which is beyond the jurisdiction of a small claims court shall be submitted to general judicial reference pursuant to California Code of Civil Procedure Sections 638(a) and 641 through 645 or any successor statues thereto. The Parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding. The dispute resolution procedure in this Section 8.11 is implemented in accordance with the intent and philosophy of the Federal Arbitration Act (9 U.S.C.§§ 1-16) which is designed to encourage use of alternative methods of dispute resolution that avoid costly and potentially lengthy traditional court proceedings. The dispute resolution procedure in this Section is to be interpreted and enforced as if it were a proceeding authorized by the Federal Arbitration Act. Parties interpreting this Section shall follow the federal and state court rulings which provide that the Federal Arbitration Act (l) is a congressional declaration of a liberal federal policy favoring arbitration agreements, notwithstanding California's substantive or procedural policies to the contrary, (2) requires that federal and state courts rigorously enforce agreements to arbitrate, and (3) requires that the scope of arbitrable issues be resolved in favor of arbitration. Specifically, this Section is to be interpreted in accordance with Allied-Bruce Terminix Companies v. Dobson, 115 S.Ct. 834 (1995). References in this Section to California Code sections are not to be interpreted as a waiver of rights created under federal law.

The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The Parties shall use the procedures adopted by Judicial Arbitration and Mediation Services/Endispute ("JAMS") for judicial reference (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the Parties), provided that the following rules and procedures shall apply in all cases unless the Parties agree otherwise:

(a) Venue shall be in Placer County, California, unless the parties agree to another venue;

(b) The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters;

(c) Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services. or. if no entity is involved. by the court with appropriate jurisdiction;

(d) The referee may require one or more pre-hearing conferences;

(e) The Parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;

(f) A stenographic record of the trial shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;

(g) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable; and .

(h) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

The statement of decision of the referee upon all of the issues considered by the referee is binding upon the parties, and, upon filing of the statement of decision with the Clerk of the Court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the Court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties.

8.12 Recordation. Upon execution, this Notice of Conveyance Fee and Community Benefit and Conveyance Fee Agreement will be placed into escrow with binding instructions that it shall be recorded concurrently with the recordation of each final map for the single family residential lots within the WRSP.

8.13. Execution in Counterpart. This Agreement may be executed in counterpart, and all executed copies are duplicate originals, equally admissible in evidence. The Parties agree that the transmission of an executed copy of this Agreement by facsimile shall be valid and binding, and shall have the same full force and effect as if an executed original of this Agreement had been delivered.

BY INITIA' 'NG BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE FOREGOING AND ACCEPT THAT THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL.

JWM JM
Landowners' Initials

Trust's Initials

/
/

IN WITNESS WHEREOF, the Parties have executed this Community Benefit Fee Agreement effective as of the date first set forth above.

Address: P.O. Box 9222
Auburn, CA 95603

"TRUST"

PLACER LAND TRUST,
a California nonprofit public benefit corporation

By: _____

Name: Robert J. Cooley-Gilliom

Title: President

By: _____

Name: Patricia Callan-McKinney

Title: Treasurer

Address:

"LANDOWNERS"

1600 PLACER INVESTORS, LP
a California limited partnership

By: _____

Name: _____

Title: _____

SIGNATURE PROPERTIES, INC.
a California corporation

By: _____

Name: _____

Title: _____

STATE OF CALIFORNIA)
) ss
COUNTY OF PLACER)

On August 17, 2004, before me, Sharyse Nicholls, personally appeared Robert J. Cooley-Gilliom, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that, by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Sharyse Nicholls
Notary Public

SST1 SHARYSE NICHOLLS Comm. # 1460793 NOTARY PUBLIC-CALIFORNIA PLACER COUNTY MY COMM. EXPIRES JAN 8, 2008 SST1

STATE OF CALIFORNIA)
) ss
COUNTY OF PLACER)

On August 17, 2004, before me, Sharyse Nicholls, personally appeared Patricia Callan-McKinney, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that, by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Sharyse Nicholls
Notary Public

SST1 SHARYSE NICHOLLS Comm. # 1460793 NOTARY PUBLIC-CALIFORNIA PLACER COUNTY MY COMM. EXPIRES JAN 6, 2008 SST1

IN WITNESS WHEREOF, the Parties have executed this Community Benefit Fee Agreement effective as of the date first set forth above.

Address: P.O. Box 9222
Auburn, CA 95603

"TRUST"

PLACER LAND TRUST,
a California nonprofit public benefit corporation

By: Robert J. Cooley-Gilliom

Name: Robert J. Cooley-Gilliom

Title: President

By: Patricia Callan-McKinney

Name: Patricia Callan-McKinney

Title: Treasurer

Address:

"LANDOWNERS"

1600 PLACER INVESTORS, LP
a California limited partnership

By: _____

Name: _____

Title: _____

SIGNATURE PROPERTIES, INC.
a California corporation

By: _____

Name: James W McKeehan

Title: Exec. V.P.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California
County of ALAMEDA } ss.

On AUGUST 19, 2004 (Date) before me, RUTH STAMOS, NOTARY PUBLIC. (Name and Title of Officer (e.g., "Jane Doe, Notary Public"))

personally appeared JAMES W. MCKEEHAN (Name(s) of Signer(s))

☑ personally known to me
☐ 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.

WITNESS my hand and official seal.

Ruth Stamos
Signature of Notary Public

RUTH STAMOS
Commission # 1457360
Notary Public - California
Alameda County
My Comm. Expires Jan 18, 2008

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: NOTICE OF CONVEYANCE FEE

Document Date: _____ Number of Pages: 18

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

IN WITNESS WHEREOF, the Parties have executed this Community Benefit Fee Agreement effective as of the date first set forth above.

Address: P.O. Box 9222
Auburn, CA 95603

"TRUST"

PLACER LAND TRUST,
a California nonprofit public benefit corporation

By: _____

Name: Robert J. Cooley-Gilliom

Title: President

By: _____

Name: Patricia Callan-McKinney

Title: Treasurer

Address:

"LANDOWNERS"

1600 PLACER INVESTORS, LP
a California limited partnership

By: _____

Name: JOHN M MURPHY

Title: MANAGING PARTNER

SIGNATURE PROPERTIES, INC.
a California corporation

By: _____

Name: _____

Title: _____

State of California)
ss.
County of PLACER)

On AUGUST 27, 2004 before me, JULIA E. PICKARD , Notary Public personally appeared JOHN M. MURRAY personally known to me (or 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.

Witness my hand and official seal.

SIGNATURE Julia E. Pickard

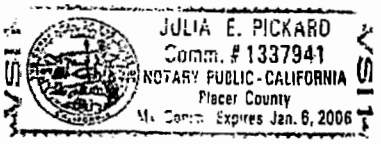

EXHIBIT "A"
to the
Community Benefit Conveyance Fee Agreement

Description of WRSP Area

WEST ROSEVILLE SPECIFIC PLAN AREA

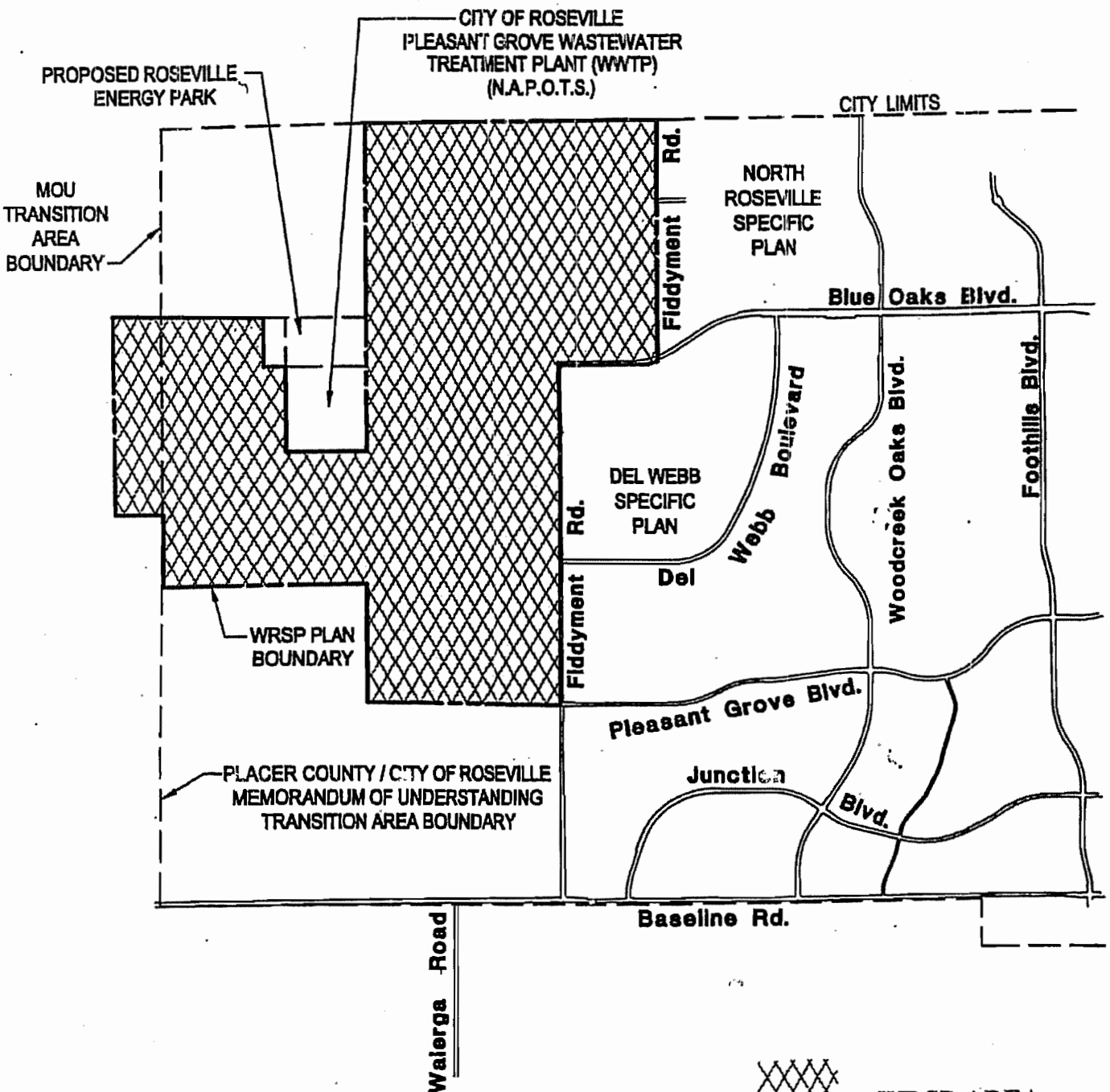

EXHIBIT "B"
to the

Community Benefit Conveyance Fee Agreement

Map of The Placer Legacy Phase I Area

PHASE 1 OF THE
PLACER LEGACY OPEN SPACE AND
AGRICULTURAL CONSERVATION PROGRAM

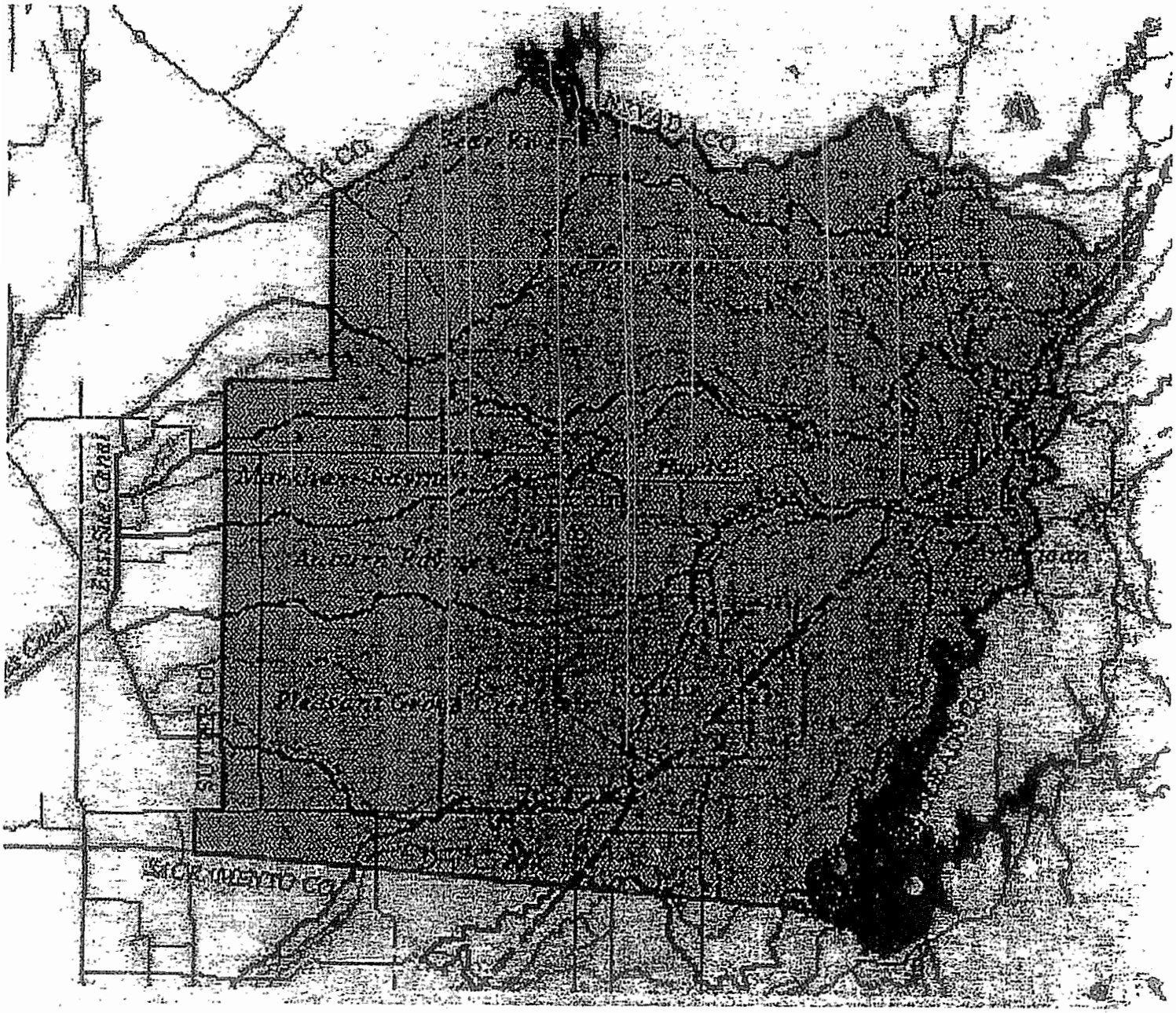

EXHIBIT B

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims ("Agreement") is entered into by and between Petitioner/Plaintiff TOWN OF LOOMIS ("Loomis") and Respondents/Defendants CITY COUNCIL OF THE CITY OF ROSEVILLE, CITY OF ROSEVILLE PLANNING COMMISSION, and CITY OF ROSEVILLE (together referred to as "the City"), and Real Parties in Interest WESTPARK COMMUNITY BUILDERS, LLC, 1600 PLACER INVESTORS, L.P., SIGNATURE PROPERTIES, INC., and ROSEVILLE/FIDDYMENT LAND VENTURE, LLC, (together referred to as "Developers"), collectively referred to as the "Parties."

RECITALS

A. On February 4, 2004, the City certified a Final Environmental Impact Report for a project proposed by Developers (the "Project") that includes (1) amending a 5,527-acre area immediately west of the City's corporate boundaries to bring it into the City's sphere of influence; (2) adopting the West Roseville Specific Plan ("WRSP"), which covers a 3,162-acre portion of the 5,527-acre Sphere of Influence Amendment Area; and (3) annexing the WRSP Area into the City's jurisdiction.

B. A civil lawsuit (the "Action") entitled *Sierra Club et al. v. City Council of the City of Roseville, et al.* Case No. SCV 16918, in which Loomis is a Petitioner/Plaintiff, was filed March 5, 2004 in Placer County Superior Court. The Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief alleges failure to comply with the California Environmental Quality Act, State Planning and Zoning law, and other applicable laws. Further, the Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief seeks a temporary restraining order, preliminary and permanent injunction, and/or a stay order as well as costs and attorneys' fees. Pursuant to stipulation, the Action was ordered consolidated with

Michael Catalano et al. v. City of Roseville et al. Case No. SCV 16913, on April 8, 2004, and retitled *Michael Catalano v. City of Roseville* Case No. SCV 16913.

C. On April 8, 2004, pursuant to stipulation, the Placer County Superior Court ordered the Action transferred to the Sacramento County Superior Court and was assigned Case No. 04CS00489.

D. The City and Developers dispute the claims in the Action.

E. The claims and allegations of the Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief are incorporated by reference into this Agreement solely for the purpose of identifying the various allegations set forth by Loomis.

F. As is set forth in this Agreement, the Parties mutually desire to avoid further litigation and to remove from litigation all claims, counterclaims, and disputes among them of any kind or nature relating to Loomis' Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and the Action. As a result, the Parties have agreed to settle such claims, counterclaims and disputes on the terms and conditions set forth below.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

TERMS AND CONDITIONS

1. Settlement Payment.

a. The City shall impose, and Developers (or their successors in interest) shall pay to the City, a fee of $75.00 per unit at the time of issuance of each residential building permit issued by the City in connection with the Project. The maximum number of residential building permits authorized under the Project, which includes the WRSP is 8,390. The City shall remit all payments contributed from Developers pursuant to the section above to Loomis by December 31 of each year until the City issues the final building permit for the Project.

b. Loomis shall use all funds collected pursuant to this Agreement solely for improvements to the portions of Sierra College Boulevard within the Town, which runs from Granite Drive to the northern Town limits ("Improvement"). Loomis further agrees that with the payment of funds pursuant to this Agreement the Developers have fully paid their pro-rata fair share of Loomis roadway improvements that are attributed to the Project as presently approved and that Loomis shall not seek any other payments of any kind from Developer or City in connection with the Project. At its discretion, Loomis may seek additional funds from the South Placer Regional Transportation Authority ("SPRTA") to the extent the fees paid hereunder are not sufficient to cover the actual cost of the Improvement. City shall support Loomis' request for such additional funds if required to cover the actual cost of the Improvement.

c. At Developers' request, City shall promptly request reimbursement from the South Placer Regional Transportation Authority ("SPRTA") for all funds paid pursuant to paragraph 1(a) above that are in excess of Developers' obligation to pay for the Improvement under its Development Agreements with City. City shall promptly remit any funds reimbursed by SPRTA to Developers, or credit all reimbursed amounts against other payments or fees due from Developer to City.

2. Support For The Project. Loomis will not advocate against the Project publicly. Loomis further agrees not to file or join or support with any financial resources over which they have control any judicial claim, judicial action, or judicial proceeding challenging the legality of any aspect of the City's approval of the WRSP (including subsequent approvals or actions necessary or desireable to implement the WRSP, including but not limited to approval of tentative maps, conditional use permits, building and grading permits and environmental analyses required for such approvals), or do anything that would impair the City's or Developers' defense of such approvals, as long as those approvals are fully consistent with the WRSP as approved by the City on February 4, 2004. Loomis also agrees not to file or join or

support with any financial resources over which they have control any judicial claim, judicial action or judicial proceeding challenging any public agency approval relating to the WRSP, so long as such agency approval is fully consistent with the WRSP as approved by the City on February 4, 2004. This Agreement may be pled as a full and complete defense to, and may be used as a basis for injunctive relief against, any action, suit or other proceeding which may be instituted, prosecuted, or attempted in breach of this Agreement.

3. Dismissal. Within five business days of the execution of this Agreement, Loomis shall dismiss the Action and each and every cause of action therein with prejudice by filing a Request for Dismissal as to Loomis with the Sacramento County Superior Court. The Request for Dismissal shall apply only to the Town of Loomis and not to any other petitioner in this matter.

4. Mutual Release.

a. Loomis, on its own behalf and on behalf of its predecessors, successors, assigns, subsidiaries, affiliates, officers, directors, employees, shareholders and attorneys, hereby acknowledges full and complete satisfaction of, covenants not to sue with respect to, and releases and discharges the City and/or Developers and their predecessors, successors, assigns, subsidiaries, affiliates, officers, directors, employees, shareholders, members, managers and attorneys from any and all claims, demands, actions, causes of action, suits, liabilities, losses, agreements, contracts, covenants, wages, debts, costs, attorneys' fees or expenses, known or unknown, suspected or unsuspected, that Loomis now has or may ever have had against any of the released persons and entities, arising out of or related to any and all claims described in, or that could have been described in, or arising out of or in any way related to, the Action.

b. The City and Developers, on their own behalf and on behalf of their predecessors, successors, assigns, subsidiaries, affiliates, officers, directors, employees, shareholders, members, managers and attorneys, hereby acknowledge full and complete

satisfaction of, covenants not to sue with respect to, and releases and discharges Loomis and its predecessors, successors, assigns, subsidiaries, affiliates, officers, directors, employees, shareholders and attorneys, from any and all claims, demands, actions, causes of action, suits, liabilities, losses, agreements, contracts, covenants, wages, debts, costs, attorneys' fees or expenses, known or unknown, suspected or unsuspected, that the City and/or Developers now has or may ever have had against any of the released persons and entities, including without limitation any and all claims arising out of or in any way related to the Action.

5. No Assignment. The Parties represent and warrant that they have not sold, assigned, transferred, conveyed or otherwise disposed of any claim, demand, cause of action, obligation, damage or liability released in paragraph 4 above, and each further agrees to indemnify and hold the other harmless from any liability, claims, demands, damages, costs, expenses, and attorneys' fees incurred by any such assignment or transfer.

6. General Release and Waiver of Civil Code Section 1542. With respect to claims within the foregoing releases, the Parties specifically and expressly waive any right and benefit available to them under the provisions of Section 1542 of the Civil Code of the State of California which provides:

> A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

It is understood and agreed by the parties that this Agreement is a full and final general release and shall extinguish all of the Parties past and present claims, demands and causes of action against each other, whether known or unknown, foreseen or unforeseen, anticipated or unanticipated, that arise out of or in any way relate to the Action, which claims, demands and causes of action are remised and forever discharged.

7. Notices. All notices and other communications required to be provided pursuant to this Agreement shall be by facsimile, followed by first class mail to the following persons at the following addresses, phone and facsimile numbers:

TO DEVELOPERS:

William A. Falik
Westpark Associates
100 Tunnel Road
Berkeley, California 94705
Telephone: (510) 540-5960
Facsimile: (510) 704-8803

James W. McKeehan
Signature Properties
4670 Willow Road, Suite 200
Pleasanton, California 94588
Telephone: (925) 463-1122
Facsimile: (925) 463-0832

With a copy to:

Anne E. Mudge
Stoel Rives LLP
111 Sutter Street, Suite 700
San Francisco, California 94104
Telephone: (415) 617-8900
Facsimile: (415) 676-3000

TO THE CITY OF ROSEVILLE:

W. Craig Robinson, City Manager
City of Roseville
311 Vernon Street
Roseville, California 95678
Telephone: (916) 774-5362
Facsimile: (916) 774-5485

With a copy to:

Mark J. Doane
Roseville City Attorney
311 Vernon Street
Roseville, California 95678
Telephone: (916) 774-5325
Facsimile: (916) 773-7348

TO THE TOWN OF LOOMIS:

Perry Beck
Town Manager
6140 Horseshoe Bar Road, Suite K
Loomis, California 95650
Telephone: (916) 652-1840
Facsimile: (916) 652-1847

With a copy to:

Donald B. Mooney
Law Offices of Donald B. Mooney
129 C Street, Suite 2
Davis, California 95616
Telephone: (530) 758-2377
Facsimile: (530) 758-7169

8. Advice of Counsel. In executing this Agreement, the Parties acknowledge that they have consulted with and been advised by their respective attorneys, and that they have executed this Agreement after independent investigation, and without fraud, duress or undue influence. The Parties further acknowledge and agree that they have had a reasonable period of time for deliberation before executing this Agreement.

9. Future Waivers. No waiver by the Parties or by their respective attorneys of any condition or term of this Agreement shall be deemed a waiver of any other condition or provision at the same or any other time.

10. Modification. This Agreement may be modified only in a writing signed by the Parties.

11. No Admission of Liability. This Agreement is the result of a compromise and shall never at any time for any purpose be considered as an admission of liability or responsibility on the part of any party hereto, and each party continues to deny any liability to the

other, and further agrees not to represent to any other person or entity that this Agreement, or any of the provisions hereof, represents a confession or admission of liability on the part of any other party.

12. No Representations. Each party to this Agreement acknowledges that it is fully aware of the significance and legal effect of this Agreement, including its release provisions, and is not entering into this Agreement in reliance on any representation, promise, or statement made by any party, except those explicitly contained in this Agreement.

13. Mistake. Each of the Parties to this Agreement has investigated the facts pertaining to the Action and to this Agreement to the extent each party deems necessary. In entering into this Agreement, each party assumes the risk of mistake with respect to such facts. This Agreement is intended to be final and binding upon the Parties regardless of any claim of mistake.

14. Severability. The provisions of this Agreement are contractual, and not mere recitals, and shall be considered severable, so that if any provision or part of this Agreement shall at any time be held invalid, that provision or part thereof shall remain in force and effect to the extent allowed by law, and all other provisions of this Agreement shall remain in full force and effect, and be enforceable.

15. Applicable Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

16. Construction. This Agreement has been reviewed by the Parties, and by their respective attorneys, and the Parties have had a full opportunity to negotiate the contents of this Agreement. The Parties expressly waive any common law or statutory rule of construction that ambiguity should be construed against the drafter of this Agreement, and agree that the language in all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning.

17. No Third Party Beneficiaries. The mutual promises in this Agreement are intended only for the benefit of the parties. The parties agree that there are no intended or incidental third party beneficiaries to this Agreement.

18. Survival of Provisions. All promises, covenants, releases, representations and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated herein.

19. Attorneys' Fees Arising Out of The Agreement. In the event of litigation arising out of any alleged breach of this Agreement, the prevailing party shall be entitled to recover its costs, expenses and reasonable attorneys' fees in addition to any other relief to which it may be entitled.

20. Binding Effect. This Agreement shall bind and inure to the benefit of each party and each party's successors and assigns.

21. Effective Date. This Agreement shall be effective as of the date upon which all of the signatories have signed the agreement and the separate Settlement Agreement and Mutual Release of Claims Regarding Attorney's Fees and Costs between Loomis and Developers.

22. Execution in Counterpart. This Agreement may be executed in counterpart, and all executed copies are duplicate originals, equally admissible in evidence. The Parties agree that the transmission of an executed copy of this Agreement by facsimile shall be valid and binding, and shall have the same full force and effect as if an executed original of this Agreement had been delivered.

23. Entire Agreement. This Agreement contains the entire agreement among the Parties hereto with respect to the matters covered hereby, and supersedes all prior agreements, written or oral, among the Parties. No other agreement, statement or promise made by any party not contained herein shall be binding or valid.

24. Further Documents. Each party will execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such further instruments and documents as may be necessary in order to consummate this Agreement.

25. Time Of the Essence. Time is of the essence of this Agreement and the performance by each party hereto of the obligations on that party's part to be performed.

26. Recitals in Caption. The recitals in the captions of the paragraphs and subparagraphs of this Agreement are for convenience and reference only; the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

Approved as to Form:

STOEL RIVES, LLP

Dated: Aug. 17 2004

By: Anne E Mudge
Anne E. Mudge
Attorneys for Real Parties in Interest

REAL PARTIES IN INTEREST

Dated: _____

By: _____
William A. Falik

Dated: _____

By: _____
James W. McKeehan

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STOEL RIVES, LLP

Dated: Aug. 17, 2004

By: _____
Anne E. Mudge
Attorneys for Real Parties in Interest

REAL PARTIES IN INTEREST

Dated: _____

By: _____
~~William A. Falik~~
John McKeehan

Dated: _____

By: _____
James W. McKeehan

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STOEL RIVES, LLP

Dated: Aug. 17, 2004

By: _____
Anne E. Mudge
Attorneys for Real Parties in Interest

REAL PARTIES IN INTEREST

Dated: _____

By: _____
William A. Falik

Dated: 8/19/04

By: _____
James W. McKeehan

Approved as to Form:

ROSEVILLE CITY ATTORNEY

Dated: 8/27/04

By: _____
Mark J. Doane
Attorneys for City of Roseville

CITY OF ROSEVILLE

Dated: 8/27/04

By: _____
W. Craig Robinson
City Manager

Approved as to Form:

LAW OFFICES OF DONALD MOONEY

Dated: _____

By: _____
Donald B. Mooney
Attorneys for Town of Loomis

TOWN OF LOOMIS

Dated: _____

By: _____
Perry Beck
Town Manager

Approved as to Form:

ROSEVILLE CITY ATTORNEY

Dated:_____ By:_____

Mark J. Doane
Attorneys for City of Roseville

CITY OF ROSEVILLE

Dated:_____ By:_____

W. Craig Robinson
City Manager

Approved as to Form:

LAW OFFICES OF DONALD MOONEY

Dated: 8/23/04 By:_____

Donald B. Mooney
Attorneys for Town of Loomis

TOWN OF LOOMIS

Dated: 8/20/04 By:_____

Perry Beck
Town Manager

EXHIBIT H

MUTUAL BENEFIT AGREEMENT
(The Club at Playa Vista)

This Mutual Benefit Agreement ("Agreement") is entered into by and between The Club at Playa Vista, a California nonprofit public benefit corporation ("The Club"), and the Ballona Wetlands Conservancy, a California nonprofit public benefit corporation ("Conservancy").

RECITALS

1. Conservancy is a California nonprofit public benefit corporation organized to preserve and enhance natural areas for conservation and for aesthetic, scientific, charitable and educational purposes and is qualified under California Civil Code Section 818.3 to acquire and hold conservation easements. Conservancy is an entity exempt from income tax pursuant to Internal Revenue Code Section 501(c)(3) and California Revenue and Taxation Code Section 23701(d).

2. The Club is a California non-profit public benefit corporation organized and operated to be exempt from income tax as an organization described in Internal Revenue Code Section 501(c)(4) and California Revenue and Taxation Code Section 23701f. The Club was formed to promote the common good and general welfare of the people of Playa Vista by fostering a unique sense of community through sponsorship of a variety of activities and programs.

3. Conservancy desires to assume the obligation to maintain that certain freshwater system to be developed as part of Playa Vista and consisting of a riparian corridor located in Playa Vista Area D and a freshwater marsh to be located in Playa Vista Area B (the "Freshwater System"). The Freshwater System is to be constructed pursuant to permits issued by the City of Los Angeles, the California Coastal Commission (Permit No. 5-91-463) and the U.S. Army Corps of Engineers (Permit No. 90-426-EV (presently the subject of judicial review)) and such further regulatory permits and approvals and amendments thereto as may be obtained in connection with the construction thereof, including any modifications to the design of such system. It is further contemplated that the Conservancy will from time to time assume further obligations to maintain a restored saltwater marsh and related upland habitat areas to be developed in Playa Vista Area B and other wetland and habitat restoration areas located elsewhere within Playa Vista. The Freshwater System and such other habitat areas, as and when Conservancy assumes responsibility for maintenance of the same, are referred to in this Agreement as the "Habitat Areas."

4. The Conservancy provides benefits to The Club and the people The Club serves through maintenance and enhancement of the Habitat Areas which, in turn, provide open space, aesthetic and educational benefits and opportunities for The Club and the people The Club serves. The Freshwater System will also mitigate stormwater runoff from Playa Vista in compliance with applicable regulatory requirements.

5. The Club receives funding, in part through collection of fees imposed on the transfer of certain properties in Playa Vista.

6. The Club has agreed to contribute to the annual operating expenses of the Conservancy in recognition of the benefits provided by the Conservancy to The Club and the people The Club serves.

AGREEMENT

The Club and Conservancy confirm the accuracy of the foregoing recitals and agree as follows:

1. **Conservancy Obligations.** Conservancy shall maintain, protect and enhance the Habitat Areas in the manner described in the applicable permits issued by the U.S. Army Corps of Engineers, the California Coastal Commission, the City of Los Angeles and other cognizant regulatory agencies and any approved Habitat Monitoring and Mitigation Plans and similar operations and maintenance plans or manuals approved by such agencies pursuant to such permits, and in the manner described in that certain draft Operations and Maintenance Manual dated August 6, 2000, as such Operations and Maintenance Manual may be finally adopted, subject to review and reasonable approval of the Conservancy (collectively, the "Conservancy Obligations").

2. **The Club's Obligations.** The Club is obligated to pay the Residential Part of the Assessable Amount, all as defined in Section 4 and below in this Section 2.

(1) "Operating Expenses" are the Conservancy's costs of performing functions reasonably necessary for the Conservancy to comply with the Conservancy Obligations.

(2) The "Residential Part" is Fifty and Twenty One/One Hundredths Percent (50.21 %) of the Assessable Amount.

(3) All commercial property owners who have entered into an agreement with Conservancy to share part of the Assessable Amount (each, a "Commercial Owner"), together with The Club and any other maintenance company or property owners or homeowners association which has entered into a mutual benefit agreement substantially in the form of this Agreement with the Conservancy, are referred to in this Agreement as the "Assessable Entities."

3. **Term.** The term of this Agreement shall commence on the Commencement Date, defined below, and continue until the earliest to occur of the events

described in Sections 3(a) and 3(b) below.

(1) The Agreement is terminated by a writing signed by the Conservancy and The Club;

(2) A "Termination Event" (defined below) occurs and the Conservancy has not remedied the Termination Event within six (6) months of receiving a written request to cure the Termination Event from The Club.

(3) A "Termination Event" is any one of the following:

(1) A material portion of the Habitat Areas is transferred by the Conservancy without the prior written consent of The Club (which consent shall not be unreasonably withheld);

(2) The Conservancy loses its status as an entity exempt from income tax pursuant to Internal Revenue Code Section 501(c)(3) and California Revenue and Taxation Code Section 23701(d);

(3) The Conservancy materially breaches its obligations under Sections 4, 5, 6 or 8 of this Agreement;

(4) The Conservancy undertakes activities not directly related to protection of the Habitat Areas consisting of lobbying or propaganda, or otherwise attempting to influence legislation or participates in or intervenes in (including publishing or distributing statements) any political campaign on behalf of or in opposition to any candidate for political office; or

(5) The Conservancy incurs litigation expenses, including attorneys' fees, or borrows money to fund litigation, in which the Conservancy is a plaintiff, *and* any of the following entities is a defendant: The Club, any Commercial Owner, The Campus at Playa Vista Corporation, a California nonprofit public benefit corporation ("The Campus"), Playa Vista Parks and Landscape Corporation, a California nonprofit public benefit corporation ("PVPAL"), Playa Capital Company, LLC, a Delaware limited liability company, the City of Los Angeles, the County of Los Angeles or any local governmental agency (collectively, the "Playa Vista Entities"). This Section 3(c)(v) does not apply to proceedings that involve enforcement of this Agreement, the Mutual Benefit Agreement with any Commercial Owner or The Campus or the Guaranty of Payment from PVPAL, *or* address any "ongoing or threatened degradation of the Habitat Areas." The following actions do not constitute "ongoing or threatened degradation of the Habitat Areas": (i) grading, construction and development of Playa Vista, strictly in accordance with current or amended plans and permits approved by the City or County of Los Angeles, and any impacts on adjacent property caused by such grading, construction and development, and (ii) lawful maintenance, management, and operation of the properties subject to the jurisdiction of The Club, any

Commercial Owner, The Campus and PVPAL, in each case, consistent with all laws, regulations, permits, mitigation monitoring or management plans, applicable from time to time to the Habitat Areas.

(4) Notwithstanding Sections 3(a) and 3(b) above, no termination of this Agreement shall be effective unless and until another nonprofit entity has been formed or identified, is acceptable to the Assessable Entities for assuming the Conservancy Obligations, and has (1) received all assets theretofore held by the Conservancy which have been derived from funds provided by the Assessable Entities, (2) assumed all liabilities of the Conservancy arising from the Conservancy Obligations, and (3) entered into a replacement mutual benefit agreement with each Assessable Entity which is substantially identical to the mutual benefit agreement with the Conservancy which is to be terminated. Upon any Termination Event (as defined in Section 3(c)), The Club and the Conservancy agree to use their best efforts to fulfill the conditions set forth in this Section 3(d) for termination of this Agreement.

4. **Annual Determination Of The Club's Required Contribution.** During each calendar year for which the Conservancy is projected to incur Operating Expenses (each, a "Budget Year"), The Club shall pay to the Conservancy the Residential Part (as determined from time to time pursuant to Section 2 above) of the Assessable Amount (as defined below) for such year determined in accordance with the budgeting and contribution formulae set forth in this Section 4.

(1) Reporting, Budget and Payment of Required Contribution. On or before October 31st of each year, the Conservancy shall prepare and submit to The Club its good faith estimate and general itemization of (1) the Operating Expenses that will be incurred by the Conservancy during the current Budget Year (as projected through its conclusion), and (2) the Operating Expenses that it projects will be incurred during the next Budget Year (the "Operating Budget"). The Operating Budget for each Budget Year shall be the basis for determining The Club's required contribution to the Conservancy's Assessable Amount (as defined below) for such year (the "Required Contribution"). After The Club's Required Contribution is determined for a Budget Year pursuant to the applicable formulae set forth in Section 2 and this Section 4, The Club shall pay the Required Contribution in eight equal monthly installments, commencing on the first day of such Budget Year and continuing on the first day of each successive month until fully paid.

(2) Initial Year Budget and Required Contribution. Prior to the Conservancy's first year of operation, the Conservancy shall prepare an estimate of its Operating Expenses and an Operating Budget for such year (the "Initial Operating Budget" for the "Initial Budget Year"). The Club's Required Contribution for the Initial Budget Year shall be the Residential Part (determined pursuant to Section 2) of the Assessable Amount for such year, which Assessable Amount shall be equal to the sum of the following:

(1) the Initial Operating Budget, *plus*

(2) an operating contingency amount equal to five percent (5%) of the Initial Operating Budget (the "Operating Contingency"), *plus*

(3) an amount equal to twenty percent (20%) of the sum of the Initial Operating Budget plus the Operating Contingency to establish the Conservancy Reserve Fund.

(3) Ongoing Required Contributions. The Club's Required Contribution for each year after the Initial Budget Year shall be the Residential Part of the Assessable Amount for such year calculated as set forth below:

(1) The initial reference point (the "Successive Year Base Amount") for calculating the Assessable Amount for each successive Budget Year shall be the lesser of:

(1) the Operating Budget for such Budget Year, or

(2) the greatest of:

1) the Operating Expenses incurred by the Conservancy during the current Budget Year (as projected though its conclusion), or

2) the average annual Operating Expenses incurred by the Conservancy over the five immediately preceding full years of operation (inclusive of the current Budget Year, as projected though its conclusion) or such lesser number of full years that the Conservancy has been in operation, or

3) if the Operating Expenses actually incurred during the Initial Budget Year are substantially less than the Operating Budget for such year due to a delay in commencing operations, with respect to the following year only, an amount equal to the Initial Operating Budget;

provided, however, that the amounts determined pursuant to each of Sections 4(c)(i)(2)(a)-(c) above shall be adjusted upward to account for increases in the Conservancy's ongoing administrative expenses (i.e., expenditures for such recurring items as rents and salaries for classes of administrative employees) by an amount equal to such expenses for the current Budget Year times the greater of (a) five percent, or (b) the percentage by which the Consumer Price Index has increased in the last reported 12-month period preceding the date on which such calculation is being made, but only to the extent such increases are reflected in the Operating Budget for such successive Budget Year. For such purposes, the Consumer Price Index refers to the Consumer Price Index, All Urban Consumers, Los Angeles-Riverside-Orange County area (1982-84 = 100), as published by the United States Department of Labor, or if that index no

longer exists, the most relevant and substantially equivalent official index published by the United States Department of Labor or its successor.

(2) The Assessable Amount for each Budget Year following the Initial Budget Year shall be equal to the sum of the following:

(1) the Successive Year Base Amount (as defined in Section 4(c)(i) above), *plus*

(2) an operating contingency amount equal to five percent (5%) of the Successive Year Base Amount (the "Operating Contingency"), *plus*

(3) an amount (subject to the limitation set forth in Section 5 below) equal to ten percent (10%) of the sum of the Successive Year Base Amount plus the Operating Contingency to supplement and/or replenish the Conservancy Reserve Fund, *minus*

(4) all interest earned in the current Budget Year (projected through its conclusion) by the Conservancy in relation to the Conservancy Reserve Fund or otherwise earned on funds provided by the Assessable Entities, and *minus*

(5) the amount, if any, by which actual Operating Expenses incurred during the current Budget Year (projected through its conclusion) are less than the sum of the Operating Budget plus the Operating Contingency for such Budget Year.

5. **Limitation on Contributions to the Conservancy Reserve Fund.** For purposes of determining the Assessable Amount for any Budget Year after the Initial Budget Year, the amount calculated pursuant to Section 4(c)(ii)(c) above shall be limited to such amount which when added to the projected balance of the Conservancy Reserve Fund as of the beginning of such Budget Year does not exceed forty two percent (42%) of the greater of:

(1) the Successive Base Year Amount (as defined in Section 4(c)(i) above) for such Budget Year, or

(2) the average annual Operating Expenses incurred by the Conservancy over the five immediately preceding full years of operation (inclusive of the current Budget Year, as projected though its conclusion) or such lesser number of full years that the Conservancy has been in operation.

6. **Priority of Conservancy Spending Sources; Emergency Assessments and Conservancy Borrowings.**

(1) Priority of Spending Sources. To the extent required to meet Operating Expenses, the Conservancy shall draw upon funds in the following order of

priority:

(1) First, the Conservancy shall fund Operating Expenses from all funds on hand previously provided by the Assessable Entities (exclusive of any portion thereof applied to establish, supplement and/or replenish the Conservancy Reserve Fund) until exhausted;

(2) Second, the Conservancy shall fund Operating Expenses from the Conservancy Reserve Fund until exhausted. Any draws upon the Conservancy Reserve Fund within a given Budget Year which are necessary to meet expenditures while awaiting receipt of further payments with respect to the Assessable Amount for that year shall be returned to the Conservancy Reserve Fund to the extent such further payments are not required to cover Operating Expenses for such Budget Year;

(3) Third, the Conservancy will seek the unanimous consent of its Directors to impose, if such consent is forthcoming, an emergency assessment upon The Club and the other Assessable Entities in proportion to their respective ratable shares (determined pursuant to Section 2), subject to any and all limitations imposed by Section 6(b) below; and

(4) Lastly, to the extent that further funding is required to meet Operating Expenses for such Budget Year, the Conservancy may borrow funds for such purposes from any source in accordance with Section 6(c) below.

(2) Limited Emergency Assessments by Unanimous Vote of Conservancy Directors. To the extent required from time to time to meet Operating Expenses in accordance with the priority of funding sources set forth in Section 6(a) above, the Conservancy may, provided the unanimous consent of its directors is first obtained, impose an emergency assessment upon The Club and the other Assessable Entities and the Residential Part of such assessment shall be due and payable by The Club as soon as practicable thereafter. The combined amount of any such emergency assessment shall be limited to an amount that would not, when apportioned among all of the Assessable Entities responsible for paying a ratable share of such assessment, result in a violation of any governing provision(s) affecting The Club or any other Assessable Entity.

(3) Conservancy Borrowings to Meet Otherwise Insufficiently Funded Operating Expenses. To the extent that the Conservancy finds it reasonable and necessary to incur Operating Expenses in excess of those which can be funded by means set forth in subsections (i) through (iii) of Section 6(a) above, the Conservancy may, from time to time, borrow funds from any source to meet such expenses. To the extent practicable and consistent with estimated future Operating Expenses (including all related debt service) and the Conservancy's ability to recover such Operating Expenses from future Required Contributions by The Club and similar payments by other Assessable Entities, the Conservancy should exercise its discretion in good faith so as to reasonably minimize the duration and costs of any such

borrowing(s) and year-to-year fluctuations in Operating Expenses. Any and all expenditures, outlays and debt-service obligations reasonably incurred in connection with any such borrowing, including, but not limited to, origination and documentation fees, interest and the repayment of principal, shall be allowable Operating Expenses for purposes of this Agreement. The Club's ongoing funding obligations pursuant to this Agreement may from time to time be assigned or pledged by the Conservancy for the purpose of securing any such required borrowing(s).

7. **Failure to Make Payments.** If The Club fails to make any payment due to Conservancy within fifteen (15) days after the due date, The Club shall pay Conservancy a late payment penalty equal to ten percent (10%) of the delinquent amount. In addition, any amount owed to Conservancy by The Club which is not paid on the due date, shall bear interest at the rate of ten percent (10%) per annum until paid.

8. **Records.** Conservancy shall maintain complete and accurate records of all costs, expenses and disbursements paid in connection with the Operating Expenses. The Club shall have the right to have The Club's financial officer or a certified public accountant review or audit Conservancy's books and records of the Operating Expenses. Following reasonable notice to Conservancy, such review or audit shall be conducted at a mutually agreeable time during normal business hours at the office of the Conservancy. If The Club's review or audit determines that the actual Operating Expenses have been overstated, Conservancy shall promptly reimburse The Club for such overstated expenses.

9. **Judicial Reference.**

(1) **Generally.** In the event of any controversy, dispute or claim ("controversy") under this Agreement which is not settled in writing within thirty (30) days after the "claim date" (defined as the date on which a party to this Agreement gives written notice to the other parties of the nature of the controversy), then such controversy shall be settled by a reference proceeding, in Los Angeles, California, in accordance with the provisions of Section 638 et seq. of the California Code of Civil Procedure ("CCP"), or their successor sections, which shall constitute the exclusive remedy for the settlement of any such controversy, including whether such controversy is subject to the reference proceeding, and the parties waive their rights to initiate any legal proceedings against each other in any court or jurisdiction other than the Superior Court of Los Angeles (the "court"). Any party may apply for a reference proceeding any time after thirty (30) days after the claim date by filing a motion for hearing and/or trial (the "Application").

The referee shall be a retired judge of the court selected by mutual agreement of the parties. If the parties cannot so agree within thirty (30) days after the date the Application is filed, the referee shall be selected by the presiding judge of the court (or his or her representatives). The referee shall be appointed to sit as a general referee, with all of the powers of a general referee, as authorized by law, and upon selection shall take and subscribe to the oath of office as provided for in Rule 244 of the California Rules of Court (or any subsequently enacted rule). Each party shall have one peremptory challenge pursuant to CCP section 170.6 (or

any successor thereto). The referee shall be requested to set the matter for hearing as soon as practicable after ninety (90) days from the date the Application is filed and to try any and all issues of law or fact and report a statement of decision upon them, if possible, within thirty (30) days after the conclusion of the hearing.

All discovery methods available under the Civil Discovery Act, CCP Section 2016 et seq. and all means of production under Section 1985 et seq. shall be available, subject to the following limits. No interrogatories shall be permitted except by order of the referee upon application by a party. All discovery shall be completed no later than fifteen (15) days before the first hearing date established by the referee. The referee may extend such period in the event of a party's refusal to provide requested discovery for any reason whatsoever, including, without limit, legal objections raised to such discovery or unavailability of a witness due to absence or illness. No party shall be entitled to priority in conducting discovery. Depositions may be taken by either party on seven (7) days' advance written notice. All discovery requests and requests for production requiring written responses or production of documents or things, including requests for production for deposition, shall be responded to within ten (10) days after service. All disputes relating to discovery which cannot be resolved by the parties shall be submitted to the referee, whose decision on such matter shall be final and binding upon the parties. Pending appointment of the referee as provided in this Agreement, the court is empowered to issue temporary and/or provisional remedies, as appropriate.

(2) **Hearing Procedure.** Except as otherwise expressly set forth in this Agreement, the referee shall determine the manner in which the reference proceeding is conducted, including the time and place of all hearings, the order of presentation of evidence, and all other questions that arise with respect to the course of the reference proceedings. Court reporters shall not be used at all proceedings and hearings conducted before the referee, except for trial, unless requested by a party. The party making the request must arrange for and pay the court reporter. The cost of the court reporter at the trial shall be borne equally by the parties.

(3) **Governing Law; Rules Of Evidence; Binding Effect.** The referee is required to determine all issues in accordance with then existing case law and statutory laws of the State of California. The rules of evidence then applicable to proceedings at law in the court shall be applicable to the reference proceeding. The referee shall be empowered to enter equitable as well as legal relief, to provide all temporary and/or provisional remedies, and to enter equitable order that will be binding upon the parties. The referee shall issue a written statement of decision at the close of the reference proceeding which shall set forth the referee's determination, state with reasonable detail the reasons for the determination, and dispose of all controversies which are the subject of the reference.

(4) **Arbitration of Disputes Alternative.** In the event that the enabling legislation which provides for appointment of a referee is repealed (and no successor statute is enacted), any dispute between the parties that would otherwise be determined by the reference procedure described in this Agreement will be resolved and determined by final, binding and non-appealable arbitration. Such arbitration shall be conducted by a retired judge of

the court, in accordance with CCP Sections 1280 through 1294.2, as may be amended from time to time (or any successor statutes). The time schedules and limitations with respect to discovery, hearings and rulings set forth above shall apply to any such arbitration proceeding.

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW, YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING FROM THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

The Club _____ Conservancy _____

10. **Miscellaneous Provisions.**

(1) **Amendment.** Changes may be made only by a written amendment executed by all parties.

(2) **Assignment.** Except as otherwise provided in this Agreement, no right or duty of a party may be assigned or delegated without the prior consent of the other party.

(3) **Attorney Fees.** If an action is commenced to enforce or interpret any provision of this Agreement, the prevailing party as determined by a final court judgment shall be entitled to recover from the other party, reasonable attorney fees and expenses incurred in the action as the court may award.

(4) **Authority.** Individuals signing this Agreement each represent and warrant that the individual is duly authorized to execute this document and is personally bound, or if executing on behalf of another, is authorized to do so and that the other is bound.

(5) **Confidentiality.** All aspects of this transaction are

confidential. No party shall make public announcement or disclosure of any information about this transaction without the consent of the other party unless the disclosure is required by law.

(6) **Consents.** Whenever a party is asked to provide consent or give its approval, such party shall not unreasonably withhold or delay giving the consent or approval requested. All consents must be in writing.

(7) **Disclaimers.** Nothing in this Agreement creates any right or remedy for the benefit of any person not a party hereto or creates a fiduciary relationship, an agency, or partnership.

(8) **Interpretation.** The provisions of this Agreement shall be interpreted to give effect to their fair meaning and shall be construed as though prepared by both parties. The entire agreement of the parties is set forth in this Agreement, and all prior negotiations, documents and discussions are superseded. The parties acknowledge there are no applicable representations, warranties or terms which are not stated in this Agreement. The invalidity of any provision shall not affect the validity of any other provision. Section headings are for convenience only and may not be used in interpretations.

(9) **Notices.** All notices and consents required or allowed shall be in writing and shall be sent to the addresses shown beside the signatures of the parties. A party may change its address for notices and consents by giving notice to the other party. Notice may be delivered by personal delivery, facsimile transmission during normal business hours of the recipient, an overnight delivery service, or U.S. Mail sent certified with return receipt requested. Notices and consents are effective on the earlier of the date received, the date of the delivery receipt, or the third day after postmark, as applicable.

(10) **References.** All references to this document include references to all its amendments. References to the Habitat Areas include references to all or part of the Habitat Areas. References to a party include, bind, and inure to the benefit of that party's officers, agents, employees, successors in interest and assignees. Reference to days means consecutive calendar days including weekends and holidays.

(11) **Time.** Time is of the essence of all provisions of this Agreement where time is a factor.

(12) **Waiver.** No right or remedy will be waived unless the waiver is in writing and signed by the party claimed to have made the waiver. One waiver will not be interpreted as a continuing waiver.

(13) **Waiver of Jury Trial.** Each party voluntarily waives all rights to trial by jury in all proceedings for which a trial by jury would be available or required and which involve any matter arising out of or connected with rights or duties under, or enforcement, or interpretation of, this Agreement.

This Agreement is entered into as of December 14, 2000 ("Commencement Date").

Address: 12555 W. Jefferson
Suite 300
Los Angeles, CA
90066

THE CLUB AT PLAYA VISTA, a California nonprofit public benefit corporation

By: Alan J. Booker

Name: Alan J. Booker

Title: President

By: Richard K. Tamura

Name: Richard K. Tamura

Title: Secretary

"The Club"

Address: 12555 W. Jefferson
Suite 300
Los Angeles CA
90066

BALLONA WETLANDS CONSERVANCY, a California nonprofit public benefit corporation

By: Catherine Tyrrell

Name: CATHERINE TYRRELL

Title: President

By: Alan J. Booker

Name: Alan J. Booker

Title: Secretary

"Conservancy"

FIRST AMENDMENT TO
MUTUAL BENEFIT AGREEMENT
(Playa Vista Community Services)

THIS FIRST AMENDMENT TO MUTUAL BENEFIT AGREEMENT (this "Amendment") is entered into as of January 1, 2004 among PLAYA VISTA COMMUNITY SERVICES, a California non-profit public benefit corporation ("PVCS"), BALLONA WETLANDS CONSERVANCY, a California non-profit public benefit corporation (the "Conservancy"), and the CITY OF LOS ANGELES, acting through its Department of Planning (the "City").

RECITALS:

A. On December 14, 2000, PVCS and the Conservancy entered into a Mutual Benefit Agreement (the "Agreement") pursuant to which the Conservancy assumed an obligation to maintain a Freshwater System being constructed by Playa Capital Company, LLC ("PCC") in conjunction with the First Phase Playa Vista Project, and PVCS agreed to pay to the Conservancy a portion of the costs to be incurred by the Conservancy in connection with the performance of such maintenance obligations.

B. Condition of Approval No. 77 to Vesting Tentative Tract No. 49104 and Condition of Approval No. 22 to Tentative Tract No. 52092 require that a funding mechanism satisfactory to the City be established to provide for the future operation and maintenance of the Freshwater Wetland System.

C. In partial satisfaction of the above-referenced Conditions of Approval, PCC has caused the Conservancy and PVCS to enter into this Amendment with the City to extend to the City certain rights under the Agreement, as set forth below.

AGREEMENT:

1. Defined Terms. Except as otherwise expressly provided in this Amendment, all initial capitalized terms shall have the meaning prescribed for such terms in the Agreement.

2. Extension of Enforcement Rights to City. In the event of the failure of either PVCS or the Conservancy to perform its obligations under the Agreement relating, in the case of the Conservancy, to the maintenance of the Freshwater System or, in the case of PVCS, to the payment when due of the Residential Part of the Assessable Amount (such non-performing party being hereinafter referred to as the "Non-Performing Party" and the other party being hereinafter referred to as the "Non-Defaulting Party"), the City shall, subject to the conditions set forth in Section 3 of this Amendment, have the right to initiate a proceeding under Section 9 of the Agreement to enforce the performance of such obligations by the Non-Performing Party. In addition, in the event of a proceeding under Section 9 of the Agreement initiated by PVCS or the Conservancy, the City may at any time seek a determination from the referee or arbitrator in such proceeding that the initiating party is not diligently prosecuting such proceeding, and, in the event of such a determination, shall be entitled to intervene and fully participate in such

proceeding until it has been concluded. Any decision by a referee or arbitrator in such a proceeding shall be final and binding on all parties to such proceeding.

3. Conditions on Exercise by City of Its Enforcement Rights. If the City should determine to seek to enforce the provisions of the Agreement against a Non-Performing Party, the City shall first provide both PVCS and the Conservancy with written notice of its intent to enforce the Agreement, including a description of the obligation of the Non-Performing Party which the City seeks to enforce (the "Enforcement Notice"). The Non-Defaulting Party shall have the right by written notice to the City given within ten (10) days of its receipt of the City's Enforcement Notice to seek to enforce performance by the Non-Performing Party of the obligations covered by the City's Enforcement Notice. In such event, the City shall stand aside and the Non-Defaulting Party shall promptly initiate a reference or arbitration proceeding, as applicable, in accordance with the provisions of Section 9 of the Agreement and thereafter diligently prosecute such proceeding to completion. In such event, PVCS and the Conservancy shall provide the City with copies of all written communications delivered to one another or filed with the referee or arbitrator in connection with such proceeding, and the City shall be entitled to receive a copy of all communications from the referee or arbitrator to PVCS and the Conservancy in connection with such proceeding.

4. City Consent to Successor Entity to Conservancy. The Conservancy and PVCS shall not implement the provisions of Section 3(d) [3(4)] of the Agreement unless the City has consented to the successor entity and approved the form and content of the documentation entered into by the Conservancy, PVCS and such successor entity to implement the conditions of Section 3(d) of the Agreement, including an assignment to such successor entity of the Conservancy's rights under that certain Guaranty of Payment Under Mutual Benefit Agreement dated December 14, 2000 between the Conservancy and Playa Vista Parks and Landscape Corporation, which consent and approval shall not be unreasonably withheld or delayed.

5. Further Amendment. No further amendment or modification of the Agreement which diminishes the Conservancy's obligation to maintain the Freshwater System or which reduces PVCS's obligation to pay the Residential Part of the Assessable Amount shall be effective unless consented to by the City, which consent shall not be unreasonably withheld or delayed.

6. Effect of Amendment. Except as expressly modified by this Amendment, the Agreement shall remain in full force and effect.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE TO
FIRST AMENDMENT TO MUTUAL BENEFIT AGREEMENT
(PLAYA VISTA COMMUNITY SERVICES)

Address: "PVCS"
c/o Merit Property Services
25910 Arcero, Suite 200
Mission Viejo, CA 92691

PLAYA VISTA COMMUNITY SERVICES, a California nonprofit public benefit corporation

By: _____
David Nelson
Its: President

By: _____
Jenny Martin
Its: Chief Financial Officer

Address: 5510 Lincoln Blvd.
Suite 100
Playa Vista, CA 90094

BALLONA WETLANDS CONSERVANCY, a California nonprofit public benefit corporation

By: _____
Catherine Tyrrell
Its: President

By: _____
Thomas A. Jones
Its: Chief Financial Officer

Address: _____
_____
_____

THE CITY OF LOS ANGELES

By: Department of City Planning of the City of Los Angeles

By: _____

Its: DEPUTY DIRECTOR

Case No.: VTTM 49104 and Tract 52092

EXHIBIT N

RECORDING REQUESTED BY:

WHEN RECORDED MAIL TO:

JACKSON, DEMARCO
& PECKENPAUGH (FSJ)
2030 Main Street, Suite 1200
Irvine, California 92614
Attn: Andrew P. Bernstein, Esq.

(Space Above For Recorder's Use)

COMMUNITY ENHANCEMENT FEE AGREEMENT

(Playa Vista)

This Community Enhancement Fee Agreement is made between **Playa Vista Community Services, a California nonprofit public benefit corporation** (formerly known as the Club at Playa Vista), and _____, a _____. The capitalized terms used in the Recitals are defined in Section 1.

RECITALS

A. The Builder owns the Property. The Property is located in Playa Vista. If and when fully developed, Playa Vista is planned to include several thousand single-family residences and apartments, along with retail, business, commercial areas and recreational areas serving the Playa Vista community.

B. The Builder intends to develop the Property as a residential community containing single-family Lots or Condominiums.

C. PVCS has been organized to provide community services for the Covered Property within Playa Vista, promote social welfare, foster a unique sense of community in the Covered Property, support environmental mitigation, sponsor the restoration and conservation of native habitat and promote wildlife management for the benefit of the Ballona Freshwater Wetlands Systems and Salt Marsh Restoration areas, directly or through financial support of the Conservancy and other entities and organizations engaging in such activities within Playa Vista and its immediate adjacencies. PVCS intends to accomplish this by coordinating and sponsoring various community and neighborhood activities and programs. All Owners in the Covered Property will benefit directly or indirectly from these services and programs.

D. PVCS expects to receive the funds it needs to operate from a variety of sources, including Community Enhancement Fees.

E. The Builder believes the services and activities PVCS will provide will benefit all of the Lots and Condominiums in the Property and enhance their enjoyment and value. The Builder and PVCS have agreed that some of the funds PVCS requires will be provided by committing contributions of Community Enhancement Fees to PVCS in connection with Transfers of Lots or Condominiums in the Property.

THEREFORE, the parties agree as follows:

1. **Definitions.** When the following words and phrases are used in this Agreement, they will have the meanings given in this Section and be subject to the limits described in this Section.

1.1 *Agreement.* This Community Enhancement Fee Agreement.

1.2 *Beneficiary.* A beneficiary under a Mortgage and the assignees of such beneficiary.

1.3 *Builder.* _____, a _____.

1.4 *Community Enhancement Fee.* The fee to be paid to PVCS in connection with each Transfer. The Community Enhancement Fee shall be equal to three quarters of one percent (0.75%) of the Purchase Price in each transaction resulting in a Transfer.

1.5 *Condominium.* An estate in real property as defined in California Civil Code Sections 783 and 1351(f), including any condominium which is a volume of real property that is not located entirely within a building (a "site" condominium).

1.6 *Conservancy.* Ballona Wetlands Conservancy, a California nonprofit corporation.

1.7 *Covered Property.* The Property and all other real property within Playa Vista subject to an agreement similar to this Agreement pursuant to which community enhancement fees will be paid to PVCS which are similar to the Community Enhancement Fees to be paid as provided in this Agreement.

1.8 *Dispute.* Any dispute between the parties concerning the amount, obligation to pay or other issue concerning the Community Enhancement Fees under this Agreement or concerning any other dispute arising under this Agreement. A *"Covered Dispute"* is any Dispute where the amount awarded by the court to the prevailing party is an amount less than Ten Thousand Dollars ($10,000), and a *"Noncovered Dispute"* is any other Dispute.

1.9 *Lot.* Any lot or parcel of land shown on any Recorded subdivision map or Recorded parcel map of any portion of the Property, except any real property which is owned by an association (defined in Section 1351(a) of the California Civil Code) as common area (defined in Section 1351(b) of the California Civil Code).

1.10 *Master Developer.* Playa Capital Company, LLC, a Delaware limited liability company, and its successors and assigns.

1.11 *Mortgage.* Any Recorded mortgage or deed of trust or other conveyance of one or more Lots, Condominiums or other portions of the Covered Property to secure performance of an obligation, which will be reconveyed upon completion of such performance. A *"First Mortgage"* is any Mortgage with lien priority over any other Mortgage.

1.12 *Official Records.* The official records of the Los Angeles County, California, Recorder.

1.13 *Owner.* The Person or Persons, including the Master Developer and the Participating Builders, holding fee simple interest of record to any Lot or Condominium. The term "Owner" includes a seller under an executory contract of sale but excludes Beneficiaries.

1.14 *Participating Builder.* The Builder and each other Person designated by Master Developer as a Participating Builder in a document Recorded against the Lots and Condominiums in Playa Vista.

1.15 *Person.* A natural individual or any entity with the legal right to hold title to real property.

1.16 *Playa Vista.* The portion of the unincorporated area of Los Angeles County, California and the City of Los Angeles, California, known as Playa Vista.

1.17 *Property.* That certain real property described on Exhibit A.

1.18 *Purchase Price.* The total purchase price or other consideration given by the transferee to the transferor in a transaction resulting in a Transfer, including any portion of the purchase price represented by a loan or loans, exchange property, or other forms of non-cash consideration, but excluding any third-party cost or charge incurred by the transferor or the transferee in connection with the transaction.

1.19 *PVCS.* Playa Vista Community Services, a California nonprofit public benefit corporation.

1.20 *Recorded.* The recordation, filing or entry of a document in the Official Records.

1.21 *Transfer.* The sale or exchange of a Lot or Condominium by an Owner (other than the Master Developer or a Participating Builder) to a transferee. None of the following transactions shall constitute a "Transfer" under this Agreement:

(1) The transfer of an interest in a Lot or Condominium to secure the performance of an obligation, such as a Mortgage or a lien, which will be reconveyed upon the completion of such performance.

(2) A transfer resulting from a foreclosure (by judicial foreclosure or trustee's sale) by the Beneficiary of a First Mortgage or a transfer in lieu thereof.

(3) A transfer of a Lot or Condominium by a transferor or the transferor's spouse into a revocable intervivos trust which is an exempt transfer under California Revenue and Taxation Code Section 62(d).

(4) Any interspousal transfer (as defined in California Revenue and Taxation Code Section 63) or transfer between parents and any of their children (as defined in California Revenue and Taxation Code Section 63.1).

2. **Acknowledgment of Benefit.** PVCS represents that it will use the Community Enhancement Fees for the purposes described in Paragraph C of the Recitals. Decisions regarding all aspects of events and activities to be provided shall be made by PVCS in its sole discretion. Builder believes, nonetheless, that the services and activities to be provided by PVCS will enhance the value of and benefit each Lot and Condominium in the Property. Each Owner who acquires a Lot or Condominium in the Property by such acquisition agrees to and acknowledges the statements made in this Section.

Community Enhancement Fee.

3.1 *When Due and Paid.* A Community Enhancement Fee in the amount determined as provided in Section 1.4 shall be paid to PVCS from sale proceeds due a transferor each time a Lot or Condominium is Transferred (subject to the exchange transfer limit specified in Section 3.2), on or before the closing or effective date of the Transfer.

3.2 *Exchange Transfer.* If a particular transaction involves more than one Transfer solely because the Lot or Condominium is held for an interim period (not to exceed 24 hours) by an accommodation party as a part of a tax-deferred exchange under the Internal Revenue Code, and provided there is no increase in consideration given, then for the purposes of this Agreement, only one Transfer shall be deemed to have occurred and only one Community Enhancement Fee must be paid in connection therewith.

3.3 *Escrow Demand.* PVCS is authorized to place a demand for payment of the Community Enhancement Fee in the escrow for each Transfer; provided that a failure by PVCS to place such demand into escrow shall not affect the obligation of the parties to cause such payment to be made to PVCS or operate as a waiver of the right of PVCS to receive such fee. Any demand shall state (a) either the amount of the Community Enhancement Fee that is due or the formula for calculating the amount of the Community Enhancement Fee that is due, and (b) that the Community Enhancement Fee is due on or before close of the escrow.

3.4 *Fee Payor.* Liability for payment of the Community Enhancement Fee in connection with each Transfer is primarily an obligation of the transferor; provided, however, that it shall be the responsibility of a transferee to deduct, or cause the escrow to deduct, and pay over to PVCS the Community Enhancement Fee from proceeds due transferor. The failure of a transferee to cause the Community Enhancement Fee to be deducted from the sales proceeds payable to the transferor shall result in the payment of the Community Enhancement Fee

constituting a joint and several obligation of the transferor and transferee. The transferor and transferee in each transaction may, as a matter between themselves, allocate the obligation differently than contemplated under this Section 3.4; provided that any such other allocation shall not in any way affect the joint and several nature of the obligation owed to PVCS. If the transferor and transferee fail to pay the Community Enhancement Fee, PVCS may take all actions authorized under law and this Agreement to collect the Community Enhancement Fee from either or both of the transferor and transferee. In no case shall payment of the Community Enhancement Fee constitute an obligation of any other Owner of a Lot or Condominium subject to this Agreement.

4. **Binding Effect.** Builder and PVCS declare that the Property will be held, leased, transferred, encumbered, used, occupied and improved subject to the reservations, rights, covenants, conditions and equitable servitudes contained in this Agreement, all of which are for the purpose of enhancing the attractiveness and desirability of the Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property. The reservations, rights, covenants, conditions and equitable servitudes set forth in this Agreement will (1) run with and burden the Property and will be binding upon all Persons having or acquiring any interest in the Property or any part thereof, their heirs, successors and assigns; (2) inure to the benefit of every portion of the Property and any interest therein; (3) inure to the benefit of and be binding upon Builder and PVCS, and their respective successors-in-interest, each Owner and each Owner's successors in interest; and (4) may be enforced by Builder, PVCS and each Owner.

5. **Mortgages.**

5.1 *Rights of Beneficiaries.* Nothing in this Agreement nor any amendment to or breach of this Agreement defeats or renders invalid, the rights of the Beneficiary under any Recorded Mortgage encumbering any Lot or Condominium made in good faith and for value, provided that after the foreclosure or a transfer in lieu of foreclosure of any such Mortgage, such Lot or Condominium will remain subject to this Agreement.

5.2 *Subordination to First Mortgages.* Subject to Section 5.1, the rights and obligations of the parties hereunder concerning any Lot or Condominium shall be subject and subordinate to the lien of any Recorded First Mortgage encumbering that Lot or Condominium.

5.3 *Effect of Foreclosure.* No foreclosure of a Mortgage on a Lot or Condominium or a transfer in lieu of foreclosure shall impair or otherwise affect PVCS's right to pursue payment of any Community Enhancement Fee due in connection with the Transfer of that Lot or Condominium from the transferor or a transferee obligated to pay it.

6. **Enforcement.**

6.1 *Small Claims Court.* Any Dispute which is within the jurisdiction of a small claims court shall be resolved by a small claims court proceeding. Either party may submit the Dispute to such court.

6.2 *Attorney Fees.* The prevailing party in any Covered Dispute shall be entitled to recover its attorney fees and court costs from the other party. Each party in a Noncovered Dispute shall bear its own attorney fees and court costs.

6.3 *Suspension of Privileges.* Until a Dispute is resolved, PVCS may, by written notice to the Owner who is the other party in the Dispute, exclude the Owner from all activities and events PVCS sponsors.

7. **Miscellaneous.**

7.1 *Amendment.* PVCS has the right to unilaterally amend this Agreement for the following reasons: (i) correct typographical errors, (ii) conform this Agreement to law, lender guidelines or California Department of Real Estate requirements, (iii) reduce the Community Enhancement Fee, or (iv) terminate this Agreement, provided, however, that PVCS must obtain the prior written consent of the Conservancy before PVCS terminates this Agreement or reduces the Community Enhancement Fee to an amount that prevents PVCS from meeting its obligation to contribute to the funding of the Conservancy. PVCS and at least fifty one percent (51%) of the Owners of Lots or Condominiums in the Property may amend this Agreement as it applies to all of the Property. PVCS and the Owner of an individual Lot or Condominium may amend this Agreement as it applies to a particular Lot or Condominium in the Property.

7.2 *Authority.* Each individual signatory hereto represents and warrants that he or she is duly authorized to sign this Agreement and is personally bound, or if signing on behalf of another, is authorized to do so and that the other is bound.

7.3 *Assignment.* PVCS may, by written assignment, assign its rights and delegate its duties under this Agreement to (a) any entity that is exempt from federal taxation pursuant to Internal Revenue Code Section 501(c)(3) or 501(c)(4) that assumes all of PVCS's obligations, or (b) the Playa Vista Parks and Landscape Corporation, a California nonprofit corporation.

7.4 *Disclaimers.* Nothing herein (a) creates any right or remedy for the benefit of any Person not a party hereto, or (b) creates a fiduciary relationship, an agency, or partnership.

7.5 *Interpretation.* The invalidity of any provision shall not affect the validity of any other provision. Except for the definitions in Section 1 where the heading in each subsection is the word being defined, section headings are for convenience only and may not be used in interpretations.

7.6 *Notices.* All notices required or allowed shall be in writing and shall be sent to the addresses shown beside the signatures of the parties. A party may change its address for notice by giving notice to the other party. Notice may be delivered by personal delivery, facsimile transmission during normal business hours of the recipient, an overnight delivery service, or U.S. Mail sent certified with return receipt requested. Notices are effective on the earlier of the date received, the date of the delivery receipt, or the third day after postmarked, as applicable. Each Owner who transfers a Lot or Condominium shall send the name and mailing address of the transferee to PVCS.

7.7 *Time.* Time is of the essence of all provisions hereof where time is a factor.

7.8 *Waiver.* No right or remedy will be waived unless the waiver is in writing and signed by the party claimed to have made the waiver. One waiver will not be interpreted as a continuing waiver.

7.9 *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7.10 *Judicial Reference.* Any Dispute which is beyond the jurisdiction of a small claims court shall be submitted to general judicial reference pursuant to California Code of Civil Procedure Sections 638(1) and 641 through 645 or any successor statutes thereto. The parties shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the judicial reference proceeding.

The general referee shall have the authority to try all issues, whether of fact or law, and to report a statement of decision to the court. The Parties shall use the procedures adopted by Judicial Arbitration and Mediation Services/Endispute ("JAMS") for judicial reference (or any other entity offering judicial reference dispute resolution procedures as may be mutually acceptable to the parties), provided that the following rules and procedures shall apply in all cases unless the parties agree otherwise:

(1) The proceedings shall be heard in Los Angeles County, California;

(2) The referee must be a retired judge or a licensed attorney with substantial experience in relevant real estate matters;

(3) Any dispute regarding the selection of the referee shall be resolved by JAMS or the entity providing the reference services, or, if no entity is involved, by the court with appropriate jurisdiction;

(4) The referee may require one or more pre-hearing conferences;

(5) The parties shall be entitled to discovery, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge;

(6) A stenographic record of the trial shall be made, provided that the record shall remain confidential except as may be necessary for post-hearing motions and any appeals;

(7) The referee's statement of decision shall contain findings of fact and conclusions of law to the extent applicable; and

(8) The referee shall have the authority to rule on all post-hearing motions in the same manner as a trial judge.

The statement of decision of the referee upon all of the issues considered by the referee is binding upon the parties, and upon filing of the statement of decision with the clerk of the court, or with the judge where there is no clerk, judgment may be entered thereon. The decision of the referee shall be appealable as if rendered by the court. This provision shall in no way be construed to limit any valid cause of action which may be brought by any of the parties.

BY INITIALING BELOW, THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE FOREGOING AND ACCEPT THAT THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL.

_____ _____

Builder's Initials *PVCS's Initials*

The parties have signed this Agreement to be effective upon recordation.

Dated:_____

PLAYA VISTA COMMUNITY SERVICES, a California nonprofit public benefit corporation

Address:

Playa Vista Community Services
c/o Merit Property Mgmt, Inc.
1 Polaris Way, Suite 100
Aliso Viejo, CA 92656-5356
Attn: Amaya Genero

By: _____

Name:_____

Title:_____

By: _____

Name:_____

Title:_____

"PVCS"

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

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

WITNESS my hand and official seal.

_____

Notary Public in and for said State

(SEAL)

[ADDITIONAL SIGNATURE PAGE TO COMMUNITY ENHANCEMENT FEE AGREEMENT]

Dated: _____

Address:

_____
_____
_____
_____

_____,
a _____

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

"Builder"

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On _____, _____, before me, _____, personally appeared _____ and _____, personally known to me (or 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.

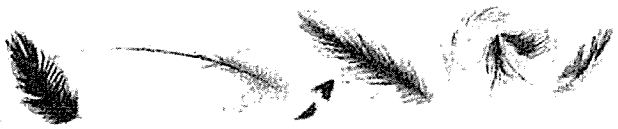
WITNESS my hand and official seal.

_____
Notary Public in and for said State

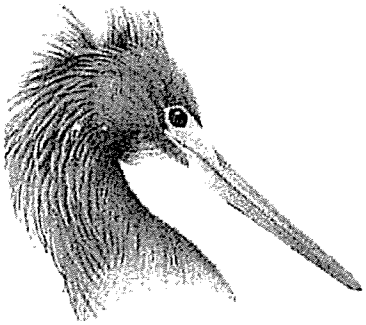
(SEAL)

EXHIBIT I

What is the Spring Island Trust
Conservation and Management
Landscaping
Nature Center
Arts and Culture
Maps and Publications



What is the Spring Island Trust?



tri-colored heron

Board Members

Staff

At the very outset of purchasing Spring Island, developers Jim Chaffin, Jim Light and Peter LaMotte created the Spring Island Trust, a non profit organization, to insure the preservation and protection of the Island's environmental and cultural history. Articles of Incorporation were filed with the state of South Carolina in January of 1990. Property owners contribute to the Trust through a mandatory assessment fee whereby 1.5% of all homesites and 1% of all improved properties are funded to the Spring Island Trust. The Trust owns 1,000 acres of nature preserves on Spring Island, which are protected by deed restrictions, the Mobley Nature Center and the Art Barn, its classroom facility.

During the development phase of Spring Island (1990 to 1999), the Spring Island Trust worked closely with the developers to ensure sound development plans and land management practices, thereby safeguarding the original environmental integrity and cultural heritage of the Island. In 2000 the developers turned governance of Spring Island over to the Spring Island Property Owners' Association (SIPOA). The Spring Island Trust Board and the SIPOA Board work in partnership together ensure that all of Spring Island's 3,000 acres is maintained as a residential community within a nature preserve.

The Trust continues to have three major functions:

(1) to manage the Nature Preserves and other open spaces,

(2) to help members and their guests understand how to be effective environmental stewards through its educational programs and

(3) to work with SIPOA committees that are involved with land use and other habitat related issues.

The Trust also promotes effective stewardship by inviting scientists, historians, and artists to the Island for consultation, study and inspiration.

By bringing the ideals of the environmentalist, the developer and the homeowners together in a successful working relationship, the Trust is a model of land stewardship for others to use, and works to keep the environmental integrity of the Island intact for future generations.

For information about living on Spring Island, please see the **member website.**

EXHIBIT J

Recorded at the request of and
when recorded return to:
1841/4-A
San Francisco Bay Area Rapid
Transit District
P. O. Box 12688
San Francisco, CA 94604-2688
Attn: Office of the General Counsel

RECORDED: 3/15/06
SERIES # 2006098194

NOTICE TO ESCROW HOLDERS:
THIS AGREEMENT REQUIRES YOU
TO PAY A TRANSIT BENEFIT FEE TO BART
FROM THE PROCEEDS OF SALES OF CONDOMINIUMS

TRANSIT BENEFIT FEE AGREEMENT
(WEST DUBLIN CONDOMINIUMS)

This TRANSIT BENEFIT FEE AGREEMENT (this "Agreement") is made and entered into as of March 10, 2006 (the "Effective Date"), by and between CREA/WINDSTAR DUBLIN 3.65 ACRES, LLC, a Delaware limited liability company ("Landowner"), and the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established under California Public Utilities Code Section 28500, et. seq. ("BART"), with reference to the following recitals:

RECITALS

A. Landowner is the owner of that certain real property, consisting of approximately 3.65 acres, located in the Town of Dublin, County of Alameda, California, described on Exhibit A attached hereto (the "Covered Property").

B. BART is the owner of certain real property located in the Town of Dublin, County of Alameda, California, more particularly described on Exhibit B attached hereto (the "BART Property"), which BART Property is in close proximity to the Covered Property.

C. BART owns and operates a rapid transit train system that serves parts of the San Francisco Bay Area. As mandated in Measure B, a ballot measure approved in November 1986, BART constructed a rail transit extension (the "Extension") from the BART Bay Fair station to the Castro Valley Station, and now intends to construct the West Dublin/Pleasanton Station along the Extension in the median of Interstate 580.

D. The Covered Property is a portion of a proposed transit-oriented development project planned by BART located along the Extension adjacent to the West Dublin/Pleasanton Station.

E. Landowner purchased the Covered Property from BART pursuant to a Purchase Agreement dated as of March 10, 2006 (the "Purchase Agreement"), between BART and Landowner, and Landowner plans to develop a residential condominium project upon the Covered Property (the "Project") as part of the transit-oriented development.

F. The existence of the Extension and the construction and operation of the West Dublin/Pleasanton Station will benefit the condominiums in the Project and enhance their enjoyment and value. In recognition of this, and as additional consideration to BART for the Covered Property, a percentage of the purchase price from the sale or re-sale of Condominiums on the Covered Property will be paid to BART pursuant to the provisions of this Agreement.

G. Capitalized terms used in this Agreement are defined in Section 16 below unless otherwise defined herein.

AGREEMENT

NOW THEREFORE, for mutual and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landowner and BART hereby agree as follows:

1. Benefit Fee.

(a) Upon each Transfer, BART shall be paid a fee equal to the Transit Benefit Fee Amount (each such fee a "Benefit Fee") by Owner on or before the closing or effective date of the Transfer. Each Owner, by acceptance of a deed or other conveyance creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay a Benefit Fee to BART on account of the Transfer of the Condominium owned by the Owner. The Benefit Fee, together with late charges, interest, attorneys' fees, court costs, and other costs and expenses of collection, shall be a lien and charge upon the Condominium being Transferred.

(b) Notwithstanding Section 1(a) above, if (i) the Covered Property has not been converted to for-sale residential condominiums, or (ii) the Covered Property is being used as for-sale condominiums but fewer than ten percent (10%) of the individual condominium units constructed on the Covered Property have been Transferred to an Owner other than Landowner by the fifth (5^{th}) anniversary of the Effective Date, then Landowner shall pay to BART a fee equal to two percent (2%) of the appraised value of the Covered Property within thirty (30) days after the expiration of such five (5) year

anniversary, and every five (5) years thereafter (i.e., on the tenth (10th), fifteenth (15th), twentieth (20th), etc. anniversaries of the Effective Date), until ten percent (10%) or more of the individual condominium units constructed on the Covered Property have been Transferred to an Owner other than Landowner. The appraisal shall be performed by an appraiser selected by BART and reasonably approved by Landowner; provided, however, that such appraiser shall have a minimum of ten (10) years experience conducting appraisals of properties similar to the Covered Property in Alameda County, California, and shall not have been engaged by BART to perform appraisals for BART during the five (5) year period immediately preceding such engagement (except, if applicable, for prior engagements performing the appraisal referenced in this Section 1(b)).

(c) BART and Landowner acknowledge and agree that Landowner (but no other Owner) may be entitled to a credit against amounts payable by Landowner to BART under Sections 1(a) and 1(b) hereof pursuant to the terms of Section 2.1 of the Purchase Agreement.

2. Obligation for Payment. The transferor and transferee in each Transfer are obligated to pay to BART the Benefit Fee on or before the closing or effective date of the Transfer. The obligation to pay the Benefit Fee for each Transfer is a joint and several obligation of the transferor and the transferee in each transaction and is not an obligation of any other Owner of a Condominium subject to this Agreement or any homeowners association for such Condominiums. The transferor and transferee in each transaction may, as a matter between themselves, allocate the obligation to pay the Benefit Fee in any manner they so choose.

3. Payment by Escrow Holder. The transferor and transferee shall, and hereby do, irrevocably instruct any Escrow Holder holding funds for a Transfer to pay the Benefit Fee to BART, at such place and in such manner as BART may instruct from time to time, from the proceeds of the Transfer at the close of escrow; provided, however, the failure of the Escrow Holder to do so shall not relieve the transferor or transferee of the obligation to pay the Benefit Fee. The transferor and transferee shall execute all documents reasonably requested by the Escrow Holder to confirm this instruction and effectuate such payment on or before the close of escrow. In addition, Landowner shall place in escrow, with any agreement by which it Transfers a Condominium, escrow instructions which specifically state, among other things, that the Escrow Holder shall pay the Benefit Fee to BART out of the proceeds of the sale at the closing. BART is hereby authorized as a third party beneficiary of any such escrow to submit a demand into escrow for payment of the Benefit Fee, which demand shall include (i) the amount of the Benefit Fee that is due or the formula for calculating the Benefit Fee, and (ii) a statement that the Benefit Fee is due on or before close of escrow for the Transfer.

BY ACQUIRING TITLE TO A CONDOMINIUM, EACH OWNER OF A CONDOMIUM HEREBY IRREVOCABLY INSTRUCTS ANY ESCROW HOLDER HOLDING FUNDS FOR THE TRANSFER OF THE CONDOMINIUM TO PAY THE BENEFIT FEE TO BART FROM THE PROCEEDS OF SALE AS SET FORTH HEREIN

4. Information to Be Provided to BART. The transferor, transferee or Escrow Holder, whichever party transmits the Benefit Fee to BART, shall provide with the payment adequate information to enable BART to confirm that the amount of the Benefit Fee has been correctly calculated, which information shall include: (i) the name and address of the transferor; (ii) the name and address of the transferee; (iii) an identification of the Condominium being Transferred; (iv) the Purchase Price; (v) the amount of the Benefit Fee that is due and the formula for calculating same; (vi) the closing or effective date of the Transfer; (vii) the name, address and phone number of the Escrow Holder for the Transfer; and (viii) the name of the escrow officer.

5. Late Charges and Interest. The Benefit Fee shall be deemed delinquent if not paid within ten (10) days after the closing or effective date of the Transfer. If the Benefit Fee is not paid within ten (10) days after the closing or effective date of the Transfer, a late charge equal to five percent (5%) of the Benefit Fee shall be payable to BART in addition to the Benefit Fee and any other sums provided for herein. The late charge represents a fair and reasonable estimate of processing, accounting and other costs and expenses that BART will incur by reason of late payment of the Benefit Fee, the exact amount of which is extremely difficult and impracticable to ascertain. In addition to the late charge, a Benefit Fee not paid within thirty (30) days after the closing or effective date of the Transfer shall bear interest from such closing or effective date until paid at the lesser of ten percent (10%) per annum or the maximum rate allowed by law.

6. Remedies. BART shall be entitled to any and all rights and remedies available at law or equity in order to collect Benefit Fees and all other sums due to BART hereunder, including but not limited to specific performance and rights of lien.

7. Enforcement by Lien.

(a) Creation of Lien. Without limiting any other right or remedy, there is hereby created a claim of lien, with power of sale, on each and every Condominium to secure prompt and faithful performance of each Owner's obligations under this Agreement for the payment to BART of the Benefit Fees, together with late charges, interest, attorneys' fees, court costs and other costs and expenses of collection which may be paid or incurred by BART in connection therewith.

(b) Recordation of Lien. At any time after the delinquency, BART may file and record in the Office of the Alameda County Recorder a notice of default and claim of lien against the Condominium of a defaulting Owner. Such notice of default and claim of lien shall be executed and acknowledged by any officer of BART and shall contain substantially the following information: (1) the name of the defaulting Owner; (2) a legal description of the Condominium; (3) the total amount of the delinquency, including late charges, interest, attorneys' fees, court costs and other costs and expenses of collection; (4) a statement that the notice of default and claim of lien is made by BART pursuant to this Agreement; and (5) a statement that a lien is claimed and will be foreclosed against the Condominium. BART shall mail a copy of the notice of default and claim of lien to the

Owner of the Condominium at the address of the Condominium. Upon such recordation of a duly executed notice of default and claim of lien and mailing a copy thereof to the Owner, the lien claimed therein shall immediately attach and become effective.

(c) Foreclosure of Lien. Any such lien may be foreclosed by appropriate action in court or in the manner provided by law for the foreclosure of a deed of trust by exercise of a power of sale contained therein or in the manner provided by law for the enforcement of a judgment. If the lien if foreclosed in the manner provided by law for the foreclosure of a deed of trust by power of sale, the trustee for all purposes related thereto (including, but not limited to, the taking of all actions which would ordinarily be required of a trustee under a foreclosure of a deed of trust) shall be a title company or other neutral third party with prior trustee experience appointed by BART. BART shall have the power to bid at any foreclosure sale, trustee's sale or judgment sale, and to purchase, acquire, lease, hold, mortgage and convey any Condominium acquired at such sale subject to the provisions of this Agreement.

(d) Proceeds of Sale. The proceeds of any foreclosure, trustee's or judgment sale provided for in this Agreement shall first be paid to discharge costs of sale and other recoverable fees, costs and expenses and then the unpaid Benefit Fees and all late charges and interest thereon, and the balance, subject to the rights of any Mortgagee, shall be paid to the defaulting Owner. The purchaser at any such sale shall obtain title to the Condominium free from the sums or performance claimed but otherwise subject to the provisions of this Agreement; provided, no such sale or transfer shall relieve such Condominium or the purchaser thereof from liability for Benefit Fees or other payments or performance thereafter becoming due. All sums due and owing hereunder but still unpaid following any such sale or transfer shall remain the obligation of the transferor and transferee obligated to pay them.

(e) Cure of Default. Upon the timely curing of any default for which a notice of default and claim of lien was filed by BART, BART shall record an appropriate release of such lien in the Office of the County Recorder of Alameda County.

8. Binding Effect. Landowner and BART hereby declare that the Covered Property will be owned, held, and transferred subject to the reservations, rights, covenants, conditions and equitable servitudes contained in this Agreement. This Agreement is made pursuant to Section 1468 of the California Civil Code and is intended by the parties hereto to contain covenants running with the land and/or equitable servitudes binding on the Covered Property and the BART Property. The reservations, rights, covenants, conditions and equitable servitudes set forth in this Agreement shall (i) run with and burden the Covered Property and run with and benefit the BART Property in perpetuity or until such earlier time as the West Dublin/Pleasanton Station has been permanently closed; (ii) be binding upon all Owners and other Persons having or acquiring any interest in the Covered Property or any part thereof and their heirs, successors and assigns; (iii) inure to the benefit of and be binding upon Landowner and BART, and their respective successors and assigns, the Covered Property and the BART Property; and (iv) may be enforced by Landowner, BART and each Owner and their respective heirs, successors and assigns.

Landowner and BART hereby acknowledge and agree that (a) the obligation to pay a Benefit Fee upon the Transfer of any Condominium in which Landowner is not the transferor in such Transfer is not a personal covenant or obligation of Landowner, and (b) every act restrained or required by any covenant contained in this Agreement relates to the use, repair, maintenance or improvement of the Covered Property and/or the BART Property within the meaning of Section 1468 of the California Civil Code.

9. Acknowledgment of Benefit. Each Owner who acquires a Condominium, by such acquisition, agrees to and acknowledges that the existence of the Extension and the construction and operation of the West Dublin/Pleasanton Station in close proximity to the Project will benefit the Condominiums and enhance their enjoyment and value.

10. Mortgages.

(a) Rights of Beneficiaries. Nothing in this Agreement nor any amendment to or breach of this Agreement defeats or renders invalid the rights of the beneficiary under any Mortgage recorded in the Official Records of Alameda County encumbering any Condominium made in good faith and for value, provided that after the foreclosure or a transfer in lieu of foreclosure of any such Mortgage, such Condominium will remain subject to this Agreement.

(b) Effect of Foreclosure. No foreclosure of a Mortgage on a Condominium or a transfer in lieu of foreclosure shall impair or otherwise affect BART's right to pursue payment of any Benefit Fee due in connection with the Transfer of such Condominium from the transferor or a transferee obligated to pay it. No foreclosure or transfer in lieu thereof shall relieve such Condominium or the purchaser thereof from liability for any Benefit Fee thereafter becoming due or from the lien therefor.

11. Jurisdiction and Venue. Any Dispute under this Agreement shall be resolved by the Superior Court, subject to the rights of BART to non-judicially foreclose a lien. Venue for any action shall be Alameda County, California.

12. Amendment. BART has the right to unilaterally amend this Agreement for the following reasons: (i) correct typographical errors, (ii) conform this Agreement to law, lender guidelines or California Department of Real Estate requirements, (iii) reduce the Benefit Fee, or (iv) terminate this Agreement. Landowner has the right, after notice to and consultation with BART, to unilaterally amend this Agreement to conform this Agreement to law or California Department of Real Estate requirements. In addition, BART and at least fifty-one percent (51%) of the Owners of Condominiums in the Covered Property may amend this Agreement and such amendment shall apply to all of the Covered Property.

13. Notices. All notices required or allowed to BART and Landowner shall be in writing and shall be sent to the addresses shown beside the signatures of BART and Landowner below. All notices required or allowed to an Owner shall be in writing and shall be send to the address of the Condominium owned by the Owner. BART and/or

Landowner may change its address for notice by giving notice to the other party. Notice may be delivered by personal delivery, a reputable overnight delivery service, or U.S. Mail sent certified with return receipt requested. Notices are effective on the earlier of the date received, the date of the delivery receipt, or the third day after postmarked, as applicable.

14. Assignment. BART may not assign all or any portion of its rights or delegate all or any portion of its duties and obligations under this Agreement except to another governmental entity which is the legal successor to BART.

15. Attorneys' Fees. The prevailing party in any Dispute shall be entitled to recover its reasonable attorneys' fees and court costs from the other party.

16. Definitions. As used herein, the following terms shall have the following meanings:

(a) "Affiliate" means any entity described by California Corporations Code section 150.

(b) "Agreement" means this Transit Benefit Fee Agreement.

(c) "Condominium" means a residential structure constituting an estate in real property as defined in California Civil Code Sections 783 and 1351(1), including any condominium which is a volume of real property that is not located entirely within a building (i.e., a "site" condominium).

(d) "Dispute" means any dispute arising under or related to this Agreement, including the amount, obligation to pay and any other issue concerning a Benefit Fee under this Agreement.

(e) "Escrow Holder" means any title company, trust company, or other Person serving as an escrow holder or agent for the Transfer of a Condominium.

(f) "First Mortgage" means a Mortgage with lien priority over all other Mortgages for such Condominium or other portion of the Covered Property.

(g) "Mortgage" means any mortgage or deed of trust or other conveyance of one or more Condominiums or other portions of the Covered Property to secure performance of an obligation, which will be reconveyed upon completion of such performance.

(h) "Owner" means the Person or Persons, including Landowner, holding record title to any Condominium or portion of the Covered Property, but excludes a mortgagee or beneficiary of a Mortgage.

(i) "Person" means a natural individual or any entity with the legal right to hold title to real property.

(j) "Purchase Price" means the total purchase price or other consideration given by the transferee to the transferor in a transaction resulting in a Transfer, including, but not limited to, the sum of actual cash paid, the fair market value of services performed or real and personal property delivered or conveyed in exchange for the Transfer, and the amount of any lien, mortgage, contract indebtedness, or other encumbrance or debt, either given to secure the purchase price, or remaining unpaid on the property at the time of the Transfer, but excluding any third-party cost or charge incurred by the transferor or the transferee in connection with the transaction.

(k) "Transfer" and "Transferred" means the sale, transfer, conveyance or exchange of a Condominium by an Owner to a transferee; provided, however, none of the following transactions shall constitute a "Transfer" under this Agreement:

(1) A transfer of an interest in a Condominium to secure the performance of an obligation, such as a Mortgage or a lien, which interest will be reconveyed upon the completion of such performance.

(2) A transfer of a Condominium resulting from a foreclosure (by judicial foreclosure or trustee's sale) by the beneficiary of a First Mortgage, or by an association (as defined in Civil Code section 1351(a)), or by an association described in a Public Report issued by the California Department of Real Estate for the Covered Property or any part thereof, or a transfer in lieu thereof.

(3) A transfer of a Condominium by an Owner to a revocable intervivos trust that is not a change of ownership under California Revenue and Taxation Code Section 62(d).

(4) Any interspousal transfer (as defined in California Revenue and Taxation Section Code 63) or transfer between parents and any of their children (as defined in California Revenue and Taxation Code Section 63.1).

(5) Any other transfer that is not a change of ownership under the California Revenue and Taxation Code or is otherwise exempt from reassessment for real property tax purposes.

(6) Any transfer of real property to a public agency, entity or district, or a utility service provider.

(7) Any transfer of real property to an association (defined in Section 1351(a) of the California Civil Code) as common area (defined in Section 1351(b) of the California Civil Code).

(8) The rental or lease of a Condominium.

(9) Any transfer by an accommodation party as a part of a tax-deferred exchange under the Internal Revenue Code, if the transaction involves more than one Transfer solely because the Condominium is held/owned for an interim period (not to exceed 180 days) by the accommodation party (such that only one Transfer shall be deemed to have occurred and only one Benefit Fee shall be payable in connection therewith, and the accommodation party shall not have any liability for payment of such Benefit Fee).

(l) "Transit Benefit Fee Amount" shall mean the amount equal to two percent (2%) of the Purchase Price of the initial Transfer of each Condominium (the initial sale of a Condominium to an Owner other than Landowner) and one and one-half percent (1.5%) of the Purchase Price in each subsequent Transfer.

17. Miscellaneous. This Agreement: (i) shall be construed in accordance with the laws of the State of California; (ii) may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument; and (iii) shall bind and inure to the benefit of Landowner and BART and their successors and assigns. The Recitals set forth above and the exhibit attached hereto are incorporated herein by this reference. Except for the definitions in Section 16, the headings and captions of the paragraphs of this Agreement are for convenience and reference only and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof. If any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provision or any remaining provision of this Agreement. No right or remedy will be waived unless the waiver is in writing and signed by the party claimed to have made the waiver. One waiver will not be interpreted as a continuing waiver. The parties hereto agree that the rule of contract construction that ambiguities are to be construed against the drafter shall not apply to this Agreement and that this Agreement shall be interpreted as though prepared by both parties. Each individual signing this Agreement on behalf of a party hereto represents and warrants that he or she is duly authorized to sign this Agreement on behalf of such party and that such party is bound by his or her signature.

IN WITNESS WHEREOF, the parties have executed this Transit Benefit Fee Agreement effective as of the date first set forth above.

"LANDOWNER"

CREA/WINDSTAR DUBLIN 3.65 ACRES, LLC,
a Delaware limited liability company

By: CREA/WINDSTAR DUBLIN-PLEASANTON, LLC,
a Delaware limited liability company,
its Managing Member

By: MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY,
a Massachusetts corporation,
its Managing Member

By: CORNERSTONE REAL ESTATE ADVISERS LLC,
a Delaware limited liability company,
its Authorized Agent

By: _____
Name: _____
Title: _____

Address: c/o Cornerstone Real Estate Advisers LLC
100 Wilshire Blvd., Suite 700
Santa Monica, CA 90401
Attn: Jim Gallagher, Vice President

"BART"

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT,
a rapid transit district

By: _____
Name: _____
Title: _____

Address: P. O. Box 12688
San Francisco, CA 94604-2688
Attn: Office of the General Counsel

IN WITNESS WHEREOF, the parties have executed this Transit Benefit Fee Agreement effective as of the date first set forth above.

"LANDOWNER"

CREA/WINDSTAR DUBLIN 3.65 ACRES, LLC,
a Delaware limited liability company

By: CREA/WINDSTAR DUBLIN-PLEASANTON, LLC,
a Delaware limited liability company,
its Managing Member

By: MASSACHUSETTS MUTUAL LIFE INSURANCE COMPANY,
a Massachusetts corporation,
its Managing Member

By: CORNERSTONE REAL ESTATE ADVISERS LLC,
a Delaware limited liability company,
its Authorized Agent

By: _____
Name: JAMES R HOWARD
Title: V.P.

Address: c/o Cornerstone Real Estate Advisers LLC
100 Wilshire Blvd., Suite 700
Santa Monica, CA 90401
Attn: Jim Gallagher, Vice President

"BART"

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT,
a rapid transit district

By: _____
Name: _____
Title: _____

Address: P. O. Box 12688
San Francisco, CA 94604-2688
Attn: Office of the General Counsel

STATE OF CALIFORNIA)
) ss:
COUNTY OF Los Angeles)

On March 10, 2004 before me, the undersigned, a Notary Public in and for said County and State, personally appeared James Howard, personally known to me (or 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.

WITNESS my hand and official seal.

Carolyn Zacharski
Notary Public

CAROLYN ZACHARSKI
Commission # 1475001
Notary Public - California
Los Angeles County
My Comm. Expires Apr 3, 2008

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 200__ before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, personally known to me (or 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.

WITNESS my hand and official seal.

_____
Notary Public

STATE OF CALIFORNIA)
) ss:
COUNTY OF Alameda)

On March 13, 2006 before me, the undersigned, a Notary Public in and for said County and State, personally appeared Jeffrey P. Ordway, personally known to me (~~or 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.

WITNESS my hand and official seal.

Debra A. Faniel
Notary Public

DEBORA A. FANIEL
Commission # 1514514
Notary Public - California
Alameda County
My Comm. Expires Sep 20, 2008

STATE OF CALIFORNIA)
) ss:
COUNTY OF _____)

On _____, 200__ before me, the undersigned, a Notary Public in and for said County and State, personally appeared _____, personally known to me (or 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.

WITNESS my hand and official seal.

_____
Notary Public

EXHIBIT A

DESCRIPTION OF COVERED PROPERTY

REAL PROPERTY DESCRIPTION
(3.65 acres)

Real property in the City of Dublin, County of Alameda, State of California, described as follows:

Being a portion of Lot D as said lot is shown on that certain map entitled "Parcel Map, P.M. 4224", filed February 6, 1983 in Book 143 of Final Maps at Pages 6 and 7, in the Office of the Recorder of Alameda County, said portion being more particularly described as follows:

Beginning at the Northerly corner of said Lot D on the Westerly right of way line of Golden Gate Drive as shown on said map (143 M 6); thence Southerly along said Westerly right of way line South 20° 51' 45" West 310.00 feet to the general Northerly line of said Lot D; thence Easterly along said Northerly line the following three (3) courses: 1) North 69° 08' 16" East 15.00 feet; 2) North 24° 08' 15" East 63.64 feet; 3) North 69° 08' 15" East 380.00 feet to the point of beginning.

APN: 941-1500-046 (a portion)

EXHIBIT B

DESCRIPTION OF BART PROPERTY

ENGINEERS
SURVEYORS
PLANNERS

March 8, 2006
BKF Job. No.: 20005039-40

PROPERTY DESCRIPTION

DUBLIN PARCEL:

All that certain real property situate in the City of Dublin, County of Alameda, State of California, and described as follows:

BEING all of Parcel A as said parcel is shown on that certain map entitled "Parcel Map 2621", filed December 20, 1978, in Book 107 of Parcel Maps at Page 50, in the Office of the Recorder of Alameda County, and a portion of Lot D as said lot is shown on that certain map entitled "Parcel Map, P.M. 4224", filed February 6, 1983, in Book 143 of Final Maps at Pages 6 and 7, in the Office of the Recorder of Alameda County, being more particularly described as follows:

BEGINNING at the northwesterly corner of said Parcel A on the westerly right of way line of Golden Gate Drive (right of way varies) as shown on said map (107 PM 50) at a point on a curve, concave northerly, having a radius of 50.00 feet, from which the center bears North 69°08'15" East; THENCE easterly, southerly, and westerly along the northerly, easterly, and southerly line of said Parcel A the following seven (7) courses: 1) easterly along said curve through a central angle of 143°56'25", an arc distance of 125.61 feet; 2) leaving said curve on a non-tangent line North 72°10'41" East 380.69 feet; 3) South 21°05'30" East 220.51 feet; 4) South 76°42'44" West 8.35 feet; 5) South 49°45'36" West 27.56 feet; 6) South 71°24'00" West 125.00 feet; 7) South 72°30'01" West 302.00 feet; THENCE continuing along said southerly line of Parcel A and the southerly line of said Lot D South 83°33'19" West 61.96 feet; THENCE continuing along said southerly line of Lot D South 52°02'34" West 30.97 feet; THENCE leaving said southerly line North 16°09'21" West 72.00 feet; THENCE North 73°50'39" East 73.15 feet to the westerly line of said Parcel A; THENCE northerly along said westerly line North 20°51'45" West 183.45 feet to the POINT OF BEGINNING.

Containing an area of 2.578 acres, more or less.

PLEASANTON PARCEL:

All that certain real property situate in the City of Pleasanton, County of Alameda, State of California, and described as follows:

BEING a portion of the lands described in the Partnership Grant Deed to the San Francisco Bay Area Rapid Transit District, recorded April 14, 1987, as Series Number 87-101735, Official Records of Alameda County, said portion being more particularly described as follows:

March 8, 2006
BKF Job No.: 20005039-40

COMMENCING at the most southerly corner of said lands on the northeasterly right of way line of Stoneridge Mall Road (63 foot wide right of way) as shown on that certain map entitled "Parcel Map 4184", filed March 27, 1985, in Book 152 of Parcel Maps at Page 69, Alameda County Records, at a point on a curve, concave southwesterly, having a radius of 810.00 feet, from which the center bears South 41°33'46" West; THENCE northwesterly along said northeasterly right of way line and along said curve through a central angle of 15°44'52", an arc distance of 222.63 feet to the POINT OF BEGINNING;

THENCE continuing along said northeasterly right of way and along said curve having a radius of 810.00 feet through a central angle of 12°35'14", an arc distance of 177.95 feet to the westerly line of said lands (87-101735 O.R.); THENCE leaving said northeasterly right of way line along said westerly line North 11°18'10" West 268.68 feet; THENCE leaving said westerly line North 78°41'50" East 174.11 feet; THENCE South 11°18'10" East 331.13 feet; THENCE South 25°48'54" West 35.80 feet to the POINT OF BEGINNING.

Containing an area of 1.258 acres, more or less.

This description was prepared for BKF Engineers.

By: _____
Barry T. Williams, P.L.S. No. 6711
License Expires: 06/30/06

Dated: 3/8/06

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