

**AGREEMENT FOR OPERATION OF OPEN SPACE LAND
(Quarry Creek Open Space Restrictive Covenant within City of Carlsbad)**

This AGREEMENT FOR OPERATION OF OPEN SPACE LAND ("Agreement") is made and entered into as of MAY 14, 2015, between Presidio Cornerstone QC, LLC ("Presidio"), a Delaware limited liability company and SAN DIEGO HABITAT CONSERVANCY, a California nonprofit mutual public benefit corporation ("SDHC").

RECITALS

A. In accordance with City of Carlsbad Resolution No. 6936, Presidio is required to place a restrictive covenant ("Quarry Creek Open Space Restrictive Covenant") over natural and/or restored and conserved land comprising a portion of Presidio's property (Presidio's overall property shall be referred to herein as the "Property"), and the conserved land shall be operated by an entity experienced in natural lands management. Once restored, the natural open space area will be comprised of 90.7 acres, including (following restoration) 33.38 acres of coastal sage scrub; 8.88 acres of coastal sage scrub revegetated; 4.94 acres of chaparral; 16.08 acres of riparian and streambed; 0.45 acre of marsh; 0.14 acre of native grassland; 11.49 acres of disturbed; 0.37 acre of developed land; and 0.04 acre of non-native vegetation, all as shown on Exhibit "A". The portion of the Property subject to the Quarry Creek Open Space Restrictive Covenant which will be operated by SDHC is shown on Exhibit "A" and will be referred to herein as the "Operated Property."

B. A copy of the executed Quarry Creek Open Space Restrictive Covenant dated March 5, 2015 between Presidio and the City of Carlsbad is attached hereto as Exhibit "B", and hereby incorporated by reference.

C. Presidio is required to implement compensatory wetland and coastal sage scrub mitigation within the open space easement by revegetating approximately 12.03 acres of Diegan coastal sage scrub, 0.32 acre of native grassland, 2.05 acres of riparian habitat (southern cottonwood-willow riparian forest, southern willow scrub, and freshwater marsh), and 10.11 acres of Buena Vista Creek and uplands habitat, in accordance with the requirements of the Quarry Creek Preserve Management Plan, February 4, 2015 (HELIX Environmental Planning, Inc. [HELIX]); the Quarry Creek, Wetland Mitigation Plan, June 10, 2014 (HELIX); the Quarry Creek Master Plan Project Upland Mitigation Plan, October 13, 2014 (HELIX); the Quarry Creek Reclamation Project, Upland Mitigation Plan, June 17, 2011 (HELIX); and the Quarry Creek Reclamation Project, Wetland Mitigation Plan, June 16, 2011 (HELIX), copies of which are attached as Exhibit "C". Such wetland and coastal sage scrub areas are referred to herein as the "Mitigation Areas."

D. Under the terms of the Quarry Creek Open Space Restrictive Covenant, Presidio is required to construct, maintain and monitor the Mitigation Areas, in accordance with the Preserve Management Plan and Mitigation Plans, until receipt of final approval of the success by (as applicable) the U.S. Army Corps of Engineers (USACE), U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Wildlife (CDFW) the San Diego Regional Water Quality Control Board (SDRWQCB) (collectively "Agencies", and the City of Carlsbad. "Final

approval” is defined as written verification by the applicable Agencies and/or City of Carlsbad that the Mitigation efforts are successfully completed and self-sustaining.

E. Presidio eventually intends to transfer ownership of the Operated Property to a homeowners’ association.

F. The Operated Property, including the retained or restored riparian and upland mitigation areas, possess wildlife and habitat values (collectively, "Conservation Values") of great importance to SDHC.

G. SDHC is a nonprofit corporation organized exclusively for charitable, educational, scientific, ecological, historical, recreational, and scenic purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code. The specific and primary purpose for which SDHC was formed is to preserve and protect lands and other natural resources for open space values and to ensure these resources are preserved for future generations and as such is a qualified organization within the meaning of Section 170(h) of the Internal Revenue Code of 1986, as amended.

H. SDHC has prepared a Property Analysis Record (PAR) for the Quarry Creek Open Space dated August 28, 2014 (the "PAR"), a copy of which is attached as Exhibit "D". The PAR estimated the cost to manage a total of 95.91 acres, which includes the 90.7 acres subject to the Quarry Creek Open Space Restrictive Covenant as well as an additional 1.80 acres located owned by Presidio that are immediately adjacent to the Operated Property (the "Oceanside Parcel") and 3.41 acres immediately adjacent to the Oceanside Parcel that are owned by the State of California Department of Fish and Wildlife (the "CDFW Parcel"). Presidio and SDHC anticipate that the Oceanside Parcel and the CDFW Parcel will also be managed by SDHC in the future pursuant to an amendment to this Agreement.

I. Presidio and SDHC desire to enter into this Agreement to set forth the terms and conditions pursuant to which SDHC shall implement protection and management activities over the Operated Property, with Presidio retaining certain responsibilities associated with the Mitigation Areas (five years), management of brush management zones, manufactured slopes, and improvements (e.g., swales, subdrains) in perpetuity, and to set forth certain other rights and obligations of the parties.

J. SDHC is to maintain the Operated Property as provided herein, for the benefit of and with (as applicable) the approval of the Agencies and the City of Carlsbad.

AGREEMENT

1. PRESIDIO’S Obligations.

(a) Before SDHC shall be obligated to commence long-term habitat management, Presidio shall (i) remove all above- and below-grade structures not expressly permitted to remain per the Quarry Creek Open Space Restrictive Covenant (e.g., fuel tanks, sheds, etc.) and debris within the Operated Property; (ii) stake or fence the perimeter of the Operated Property boundary; (iii) expand and enhance existing on-site wetland and upland habitat; (iv) remove weeds and invasive exotics in the wetlands and uplands areas in accordance

with the requirements of the PMP so that these areas of the Operated Property shall be substantially free of highly invasive perennials and less than 10 percent of annual invasive species in the USACE and CDFW Mitigation Areas; (v) provide all digital files of site surveys, reports and mapping to SDHC in accordance with the PAR; (vi) secure or grant to SDHC rights of access from a public right of way to the Operated Property sufficient to allow SDHC to perform its tasks pursuant this Agreement and maintain such access; (vii) grant to the San Luis Rey Band of Luiseno Indians the rights of access to the Falls for limited ritual plant collection; and (viii) grant to SDHC rights of access sufficient to allow SDHC to perform its tasks pursuant to this Agreement.

(b) Before SDHC shall be obligated to commence long-term maintenance of the Mitigation Areas, Presidio shall construct, maintain and monitor the Mitigation Areas as required by the Mitigation Plans and Landscape Architectural Working Drawings, until Presidio receives (as applicable) Final Approval from the Agencies and/or the City of Carlsbad.

(c) Following completion of all obligations of Presidio pursuant to 1(a) and 1(b) above, receipt (as applicable) of the Final Approval from the Agencies and/or the City of Carlsbad, receipt by SDHC of Total Payments, as defined below, Presidio shall have no obligation, responsibility, or liability pursuant to this Agreement, or otherwise with respect to the Operated Property, excepting only Presidio's obligations and liabilities pursuant to 6(b) below. In no event shall SDHC be responsible for these activities nor liable for any damages resulting from failure of any party to conduct such activities.

(d) Presidio shall be responsible for brush management in perpetuity for all brush management zones abutting the Operated Property (except that the existing and ongoing brush management within Operated Property adjacent to the existing homes along Simsbury Court will remain the responsibility of the homeowners' association of that community), responsible for the integrity and stability of all manufactured slopes within the Operated Property, and responsible for the management and maintenance of all improvements within the Operated Property, including but not limited to manufactured slopes, drop structures, drainage swales, subdrains, pipelines, vents, culverts, rip-rap and fencing.

2. SDHC's Obligations.

(a) From the date of this Agreement, obligations completed as described in Section 1(a) above, and receipt by SDHC of Total Payments as per Section 3(d) below, SDHC shall perform the Initial & Capital Tasks and Annual Tasks pursuant to the PAR and assume sole responsibility for long-term, perpetual monitoring and maintenance of the Operated Property upon receipt of Total Payments with the exception of the Mitigation Areas. SDHC's responsibility for the Mitigation Areas will commence upon Cities and Agency Final Approval. Specifically, SDHC shall perform the on-going maintenance tasks identified in the PAR.

(b) The obligations of SDHC for long-term management of the Operated Property are conditioned upon: (i) execution of this Agreement by all parties; (ii) receipt of Total Payments pursuant to Section 3; (iii) recordation of the Quarry Creek Open Space Restrictive Covenant as approved by SDHC; (iv) granted access from the public roads or pathways to the

Operated Property; (v) approval of the PMP by the City of Carlsbad; and (vi) completion of Presidio's obligations pursuant to Section 1.

(c) SDHC shall not violate any of the terms and conditions of this Agreement and the Quarry Creek Open Space Restrictive Covenant and, from the date of this Agreement and receipt of Total Payments from Presidio, shall be deemed to have assumed all the duties and obligations with respect to conservation, protection, monitoring and management of the Conservation Values of the Operated Property, with the exception of the Mitigation Areas. SDHC will assume all obligations for the Mitigation Area in accordance with Section 1(c) above.

(d) From and after the date of when SDHC begins its long-term management of the Operated Property pursuant to this Agreement, SDHC shall maintain all insurance that is required by Section 6 herein and shall comply with the standards for the Endowment Fund set forth in Sections 3(c) and 3(d), below.

(e) The obligations of SDHC shall not include any maintenance or repair resulting from the action or inaction of any other entity with rights or obligations to enter and/or undertake activities on the Operated Property. SDHC is not responsible to repair any damages to habitat or resources within the Operated Property caused by any person or agency constructing or maintaining facilities, performing maintenance of any sort not specifically provided in the PMP.

(f) The obligations of SDHC are undertaken in light of the conditions of title of the Operated Property as set forth in the Preliminary Title Report dated February 15, 2015 (order number NHSC-4768557(06)). Any condition of title or use of the Operated Property or unrecorded condition impacting the obligations of SDHC and not shown in such report shall be the grounds for equitable adjustment of the obligation of SDHC in light of the funds available from the Endowment.

(g) SCHC will not be responsible for maintenance of or damage due to lack of maintenance of all improvements within the Operated Property, including but not limited to manufactured slopes, drop structures, drainage swales, subdrains, pipelines, vents, culverts, rip-rap, and fencing.

3. Funding.

(a) Initial Costs. Before SDHC is obligated to start any long-term management tasks and upon execution of this Agreement by the parties, Presidio shall pay SDHC its initial costs (the first year "**Initial Costs**" and two additional years of management) of One Hundred Two Thousand One Hundred Fifty Nine Dollars and Eighteen Cents (\$102,159.18), to cover SDHC's expenses to perform the Initial Tasks described in the PAR. The amount of the Initial Costs is based on the PAR. Should the costs actually exceed the amount stated herein, SDHC shall nevertheless complete the obligations of the PMP and PAR.

(b) Endowment Fund for Perpetual Maintenance. Before SDHC is obligated to start any long-term management tasks and upon execution of this Agreement and provided that the representations and warranties of SDHC set forth in Section 4 below continue to be true and accurate, Presidio shall pay to SDHC the amount of Eight Hundred Six Thousand Four Hundred Ninety Six Dollars (\$806,496.00) (the "**Endowment Fund**") which is based on the PAR for the

endowment to provide an annual income of Thirty Four Thousand Two Hundred Seventy Six Dollars and Eight Cents (\$34,276.08). Should the costs actually exceed the amount stated herein, SDHC shall nevertheless complete the obligations of the PMP and PAR, except as otherwise provided herein.

(c) Emergency and Legal Defense Fund. Before SDHC is obligated to start any long-term management tasks and upon execution of this Agreement, Presidio shall pay SDHC the amount of Thirty Two Thousand Two Hundred Fifty Nine Dollars and Eighty Four Cents (\$32,259.84) for the Emergency and Legal Defense Fund (the "**Defense Fund**"). The Defense Fund is a percentage of the Endowment Fund and will be adjusted with any recalculations of the Endowment Fund. SDHC shall invest the Defense Fund in a prudent income-producing investment or account with professional money managers. The Defense Fund may be pooled with other SDHC Emergency and Legal Defense Funds and considered a "wasting" fund.

(d) Total Payments. The Initial Costs plus the Endowment Fund plus the Emergency and Legal Defense Fund are referred to herein as the "**Total Payments.**" SDHC hereby acknowledges that the Total Payments amount is based on the PAR, which included the anticipated cost to manage the Oceanside Parcel and the CDFW Parcel in addition to the 90.7 acres subject to the Quarry Creek Open Space Restrictive Covenant. SDHC and Presidio anticipate SDHC managing the Oceanside Parcel and the CDFW Parcel in the future without requiring additional funding (unless required by the USACE to reflect a lower than 4.25% cap rate for the acreage serving as USACE mitigation) but subject to terms and conditions that will be determined pursuant to an amendment of this Agreement.

(e) Endowment Management. Initially, the "Endowment Manager" shall be The San Diego Foundation. The Endowment Fund will be included in Total Payments to SDHC who will immediately establish the Endowment Fund for Perpetual Management with the Endowment Manager. The Endowment Manager shall, in perpetuity, hold and manage the Endowment Fund in trust under the terms of a separate agreement with SDHC and shall make distributions therefrom to SDHC to be used only for the purposes specified in this Agreement, which distributions shall be made twice a year.

(f) Expenditures of Distributions from Endowment Fund. SDHC shall hold and expend such distributions only in compliance with this Agreement, the PMP, the PAR, and for tasks and reasonable administrative expenses incurred by SDHC in managing the Operated Property as provided in these documents. The Endowment Fund is a non-wasting fund.

(g) Accounting. SDHC shall maintain an accounting of all funds received and expended for the management of the Operated Property, using generally accepted accounting methods ("GAAP"). SDHC's accounting and financial statements shall be audited annually by a qualified certified public accountant, at SDHC's expense. A copy of the annual audit shall be provided upon request by the Presidio, any of the Agencies and/or the City of Carlsbad.

4. SDHC's Representations and Warranties. In addition to any express agreements of SDHC contained herein, the following constitute representations and warranties of SDHC to Presidio:

(a) Power. SDHC has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby.

(b) Requisite Action. All requisite action (corporate, trust, partnership or otherwise) has been taken by SDHC in connection with entering into this Agreement and the instruments referenced herein, and the consummation of the transactions contemplated hereby.

(c) Authority. The individuals executing this Agreement and the instruments referenced herein on behalf of SDHC have the legal power, right and actual authority to bind SDHC to the terms and conditions hereof and thereof.

(d) Validity. This Agreement and all documents required hereby to be executed by SDHC are and shall be valid, legally binding obligations of and enforceable against SDHC in accordance with their terms.

(e) Good Standing. SDHC is a nonprofit mutual public benefit corporation organized and in good standing under the laws of the State of California.

(f) 501(c)(3) Status. SDHC is a 501(c)(3) corporation and a qualified organization, as stated in the Recitals to this Agreement.

(g) Licenses. SDHC has and will maintain all licenses and permits necessary to execute, deliver, and perform this Agreement.

SDHC's representations and warranties made in this Section 4 shall be continuing and shall be true and correct as of the date that SDHC executes this Agreement.

5. Full Compensation.

Presidio and SDHC acknowledge and agree that Presidio's payment of the Total Payments constitutes SDHC's full compensation for undertaking its obligations under this Agreement. Upon completion of all obligations of Presidio as provided herein, SDHC shall forever release Presidio and its successors and assigns from any and all claims that SDHC may have for: (a) any payments or claims for compensation in excess of the Total Payments; or, (b) any cost of work, labor or materials to be performed by SDHC at the Operated Property after the Final Approval (as applicable) by the Agencies and/or the City of Carlsbad; except for indemnities that survive this Agreement.

6. Indemnity and Insurance.

(a) Subject to the provisions of Section 10.6, SDHC shall indemnify, defend, and hold Presidio² and its successors and assigns and the officers, directors, shareholders, employees and agents harmless from and against any and all costs, penalties, damages, liabilities and claims arising out of or relating to: (i) liability for bodily injury, sickness, disease or death, property damage or violation of law, caused by or arising out of or relating to any act, error, omission or failure to perform SDHC's obligations under this Agreement in accordance with the Conservation Easement by SDHC, its directors, agents, officers or employees; (ii) failure of any

representation or warranty of SDHC given herein. Notwithstanding the foregoing, nothing in this subsection 6(a) shall operate to relieve Presidio or its successors and assigns, and their officers, directors, shareholders, employees, attorneys, and agents from any liability, claim, cause of action, damage, loss, cost, penalties, or demand to the extent caused by the gross negligence or intentional misconduct of Presidio or its successors and assigns, and its officers, directors, shareholders, employees, attorneys, and agents. Notwithstanding the foregoing, nothing in this subsection 6(a) shall operate to relieve Presidio or its successors and assigns, and their officers, directors, shareholders, employees, attorneys, and agents from any liability, claim, cause of action, damage, loss, cost, penalties, or demand to the extent caused by the gross negligence or intentional misconduct of Presidio of its successors and assigns, and its officers, directors, shareholders, employees, attorneys, and agents. The obligations of SDHC for indemnity express or implied pursuant to this Agreement shall be subject to the provisions of Section 10.6.

(b) Presidio shall indemnify, defend and hold harmless SDHC, its successors and assigns, and their officers, directors, shareholders, employees, attorneys and agents, harmless from and against any and all costs, penalties, damages, liabilities and claims arising out of or relating to: (i) liability for bodily injury, sickness, disease or death, property damage or violation of law, caused by or arising out of or relating to any act, error, omission or failure to perform that indemnifying party's obligations under this Agreement by that indemnifying party's directors, agents, officers or employees; (ii) claims for events or conditions of the Operated Property that predate the date possession of the Operated Property is relinquished to SDHC solely; and (iii) failure of any representation or warranty of that indemnifying party given herein. Notwithstanding the foregoing, nothing in this subsection 6(b) shall operate to relieve SDHC or its successors and assigns, and their officers, directors, shareholders, employees, attorneys, and agents from any liability, claim, cause of action, damage, loss, cost, penalties, or demand to the extent caused by the gross negligence or intentional misconduct of SDHC or its successors and assigns, and its officers, directors, shareholders, employees, attorneys, and agents.

(c) Each party shall maintain liability insurance in amounts that are sufficient to cover its potential liability with respect to its obligations pursuant to this Agreement.

(d) No Hazardous Materials Liability. Presidio represents and warrants that other than the matters discussed in Exhibit "E" attached hereto and incorporated herein by this reference, to the best of its knowledge there has not been any release or threatened release of Hazardous Materials (defined below) in, on, under, about or affecting the Operated Property during Presidio's and/or Presidio's immediate two predecessor's ownership of the Operated Property. Without limiting the obligations of Presidio under this Section 6, Presidio agrees to indemnify, protect and hold harmless SDHC against any and all claims arising from or connected with any Hazardous Materials present, alleged to be present, or otherwise associated with the Operated Property at any time during Presidio ownership of the Operated Property, except that this indemnification shall be inapplicable to SDHC with respect to any Hazardous Materials placed, disposed or released by SDHC. If any action or proceeding is brought against SDHC by reason of any such claim, Presidio shall, at the election of and upon written notice from SDHC, defend such action or proceeding by counsel reasonably acceptable to SDHC or reimburse SDHC for attorneys fees for all charges incurred in defending the action or proceeding.

(e) Despite any contrary provision of this Agreement, the parties do not intend this Agreement to be, and this Agreement shall not be, construed such that it creates in or gives to SDHC any of the following:

(1) The obligations or liabilities of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 *et seq.*; hereinafter, "**CERCLA**"); or

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

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

(4) The right to investigate and remediate any Hazardous Materials associated with the Property; or

(5) Any control over Presidio's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

(f) The term "**Hazardous Materials**" includes, without limitation, (1) material that is flammable, explosive or radioactive; (2) petroleum products, including by-products and fractions thereof; and (3) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Hazardous Materials Transportation Act (49 U.S.C. Section 6901 *et seq.*); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 *et seq.*); the Hazardous Substance Account Act (California Health & Safety Code Section 25300 *et seq.*), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state or local laws, ordinances, rules, regulations or orders now in effect or enacted after the date of this Agreement.

The term "**Environmental Laws**" includes, without limitation, any 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. Presidio represents, warrants and covenants to SDHC that Presidio's activities upon and use of the Operated Property will comply with all Environmental Laws.

7. Warranties and Representations of Presidio.

MCMILLIN represents and warrants to SDHC that, as of the date of this Agreement, the following are and shall be true and correct:

(a) From the date of ownership by Presidio to the execution date of this Agreement, neither Presidio nor any principal of Presidio has deposited, spilled, disposed of or accumulated on or under the Operated Property, any material amount of Hazardous Materials.

(b) Presidio does not have knowledge of any Hazardous Materials located on or below the surface of the Operated Property except as disclosed in Exhibit "E".

(c) Presidio does not have knowledge of any outstanding or enforceable notice, warning, notice of violation (except those disclosed to SDHC, if any), administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Operated Property are or have been in violation of any law, or informing Presidio that the Operated Property is subject to investigation or inquiry regarding any violation of law or release of Hazardous Materials on the Operated Property or the potential violation of any law.

(d) Except as disclosed in Exhibit "E", Presidio does not have knowledge of any monitoring program required by the Environmental Protection Agency (EPA) or any similar state agency concerning the Operated Property.

(e) Neither Presidio nor the principals of Presidio have ever used the Operated Property, and to the best of Presidio's knowledge and belief, the Operated Property has not been used, as a dump or landfill.

(f) Presidio has disclosed to SDHC all known information, records, and studies in its possession in connection with the Operated Property concerning any possible violation of law and presence of Hazardous Materials.

(g) Presidio does not have knowledge of any condition on the Operated Property which violates any health, safety, fire, environmental, sewage, building, or other federal, state, or local law, code, ordinance, or regulation.

(h) Except as disclosed to SDHC in the Quarry Creek Open Space Restrictive Covenant, attached hereto as Exhibit "B", and the Title Report therein, or otherwise in writing, there are no leases, licenses, or other agreements allowing any third party rights to use the Operated Property.

(i) Presidio does not have knowledge of any pending or threatened litigation, administrative proceeding, or other legal or governmental action with respect to the Operated Property.

(j) Presidio does not have knowledge of any natural or artificial conditions upon the Operated Property or any part of the Operated Property that could result in a material and adverse change in the condition of the Operated Property.

(k) To Presidio's knowledge, any information that QC2 has delivered to SDHC, either directly or through Presidio's agents, is accurate and Presidio has disclosed all material facts with respect to the Operated Property.

(l) Presidio is a Delaware limited liability corporation, in good standing or authorized to do business under the laws of the State of California.

To QC2:

Presidio Cornerstone QC, LLC
4365 Executive Drive, Suite 600
San Diego, CA 92121
Attention: Ure Kretowicz
Telephone: (858) 458-9700
Facsimile: (858) 452-3600

or to such other address as either party shall designate by written notice to the other. Notice shall be deemed effective upon delivery in the case of personal delivery or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail, or, in the case of delivery by facsimile, upon receipt of the facsimile.

10. Remedies.

10.1 Violation of this Agreement

(a) The term “party” means Presidio and SDHC.

(b) In the event that any party or its employees, agents, contractors or invitees is in violation of the terms of this Agreement, a non-violating party and/or agency shall give written notice to the violating party (hereinafter “**Notice of Violation**”) informing the violating party of the actual or threatened violations and demanding in writing the cure of such violation. A copy of the Notice of Violation shall be sent to all of the parties listed under Section 9 of this Agreement.

(c) The violating party shall cure the noticed violation within thirty (30) days of receipt of said written Notice of Violation. If said cure reasonably requires more than thirty (30) days, the violating party shall begin cure within the thirty (30) day period and work diligently to complete such cure. If the violating party disputes the Notice of Violation, it shall issue a written notice of such dispute (hereinafter “**Notice of Dispute**” and as further provided for below) to the appropriate party and/or agency within thirty (30) days of receipt of written Notice of Violation.

(d) If the violating party fails to cure the violation within the time period(s) described in the paragraph above or Section 10.2(a) below, the non-violating party and/or agency may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by the violating party with the terms of this Agreement, to recover any damages to which the non-violating party may be entitled for violation by the violating party of the terms of this Agreement or for any injury to the Conservation Values of the Operated Property, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Operated Property to the condition in which it existed prior to any such violation or injury. Without limiting the liability

of the violating party therefore, the non-violating party may apply any damages recovered to the cost of undertaking any corrective action on the Operated Property.

(e) The violating party agrees that the non-violating party's remedies at law for any violation of the terms of this Agreement are inadequate and that the non-violating party shall be entitled to the injunctive relief described in this Section, both prohibitive and mandatory, in addition to such other relief to which the non-violating party may be entitled, including specific performance of the terms of this Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies of the non-violating party described in this Section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code Section 815, *et seq.*, inclusive. The failure of the non-violating party to discover a violation or to take immediate legal action shall not bar such party from taking such action at a later time.

10.2 Notice of Dispute

(a) If the violating party provides the non-violating party and/or agency with a Notice of Dispute, as provided herein, the non-violating party and/or agency shall meet and confer with the violating party at a mutually agreeable place and time, not to exceed thirty (30) days from the date that the non-violating party and/or agency receive the Notice of Dispute. The non-violating party and/or agency shall consider all relevant information concerning the disputed violation provided by the violating party and shall determine whether a violation has in fact occurred and, if so, whether the Notice of Violation and demand for cure issued by the non-violating party and/or agency is appropriate in light of the violation.

(b) If, after reviewing the violating party's Notice of Dispute, conferring with the violating party, and considering all relevant information related to the violation, the non-violating party and/or agency determine that a violation has occurred, the non-violating party and/or agency shall give the violating party notice of such determination in writing. Upon receipt of such determination, the violating party shall have fifteen (15) days to cure the violation. If said cure reasonably requires more than fifteen (15) days, the violating party shall begin cure within the fifteen (15) day period and work diligently to complete such cure.

10.3 Costs of Enforcement.

Subject to the provisions below for SDHC Violation, any out of pocket expenses incurred by a party or agency, where it is the prevailing party, in enforcing the terms of this Agreement against another party, including, but not limited to, costs of suit and attorneys' and experts' fees, and any out of pocket cost of restoration necessitated by the other party's negligence or breach of this Agreement shall be borne by the non-prevailing party.

10.4 Discretion.

Enforcement of the terms of this Agreement by the parties shall be at its discretion, and any forbearance by a party to exercise its rights under this Agreement in the event of any breach of any term of this Management Agreement by another party shall not be deemed or construed to be a waiver by the non-breaching party of such term or of any subsequent breach of the same or any

other term of this Agreement or of any of the rights of the non-breaching party under this Agreement. No delay or omission by the non-breaching party in the exercise of any right or remedy upon any breach by another party shall impair such right or remedy or be construed as a waiver.

10.5 Acts Beyond Presidio's Control.

Nothing contained in this Agreement shall be construed to entitle any party, person, entity or agency to bring any action against Presidio, its successor's and assigns, or SDHC (collectively, "Responsible Parties"), for any injury to or change in the Operated Property resulting from (i) any natural cause beyond Responsible Parties' control, including, without limitation, fire not caused by Responsible Parties, flood, storm, and earth movement, or any prudent action taken by Responsible Parties under emergency conditions to prevent, abate, or mitigate significant injury to the Operated Property resulting from such causes; or (ii) acts by the Cities or any agencies and their employees, directors, officers, agents, contractors, or representatives.

10.6 SDHC Violation.

From the date when SDHC commences the long-term management of the Operated Property, if a court of competent jurisdiction determines that SDHC has violated any term of this Agreement or is liable to indemnify any party as provided herein:

(a) Liability for damages shall be limited to acts or omissions covered by the Insurance Policy obtained by SDHC pursuant to the PAR to the coverage limits of the policy, except as described in Section 10.6(c);

(b) If a violation arises from an intentional act by SDHC, it shall be liable for the full extent of damages resulting from the violation, even if beyond the limits of any insurance policy;

(c) In lieu of monetary damages, the Cities may direct management responsibility to a new conservator, which shall be a public agency or non-profit corporation eligible to hold Conservation Easements under Civil Code Section 815.3.

(d) This Section shall be applicable only to SDHC, its agents, contractors, employees and its successors, non-profit entities, if any, and shall not be interpreted to apply to an assignee of SDHC without the prior approval of the Cities.

(e) Nothing in this Section shall be interpreted to impose any liability on MCMILLIN.

11. Miscellaneous.

(a) Severability. In the event any provision or portion of this Agreement is held by any court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been a part hereof.

(b) Successors and Assigns. This Agreement shall be binding on, and shall inure to the benefit of the parties and their respective successors and assigns. SDHC shall not assign this Agreement without the prior written consent of Presidio, the Agencies and the City of Carlsbad.

(c) Entire Agreement. This Agreement constitutes the entire Agreement between the parties and shall become a binding and enforceable Agreement among the parties hereto upon the full and complete execution and unconditional delivery of this Agreement by all parties hereto. No prior verbal or written agreement shall survive the execution of this Agreement. In the event of an alteration of this Agreement, the alteration shall be in writing and shall be signed by all the parties in order for the same to be binding upon the parties.

(d) Litigation. In the event of any litigation in relation to this Agreement, the unsuccessful party, in addition to all other sums that the unsuccessful party may be required to pay, shall be required to pay a reasonable sum for the successful party's attorneys' fees at the trial court level and on appeal.

(e) Counterparts. This Agreement may be executed in counterpart originals, each of which when duly executed and delivered shall be deemed an original and all of which when taken together shall constitute one instrument.

(f) Waiver of Terms and Conditions. The failure of any party in any one or more instances to enforce one or more of the terms or conditions of this Agreement or to exercise any right or privilege in the Agreement or the waiver by any party of any breach of the terms or conditions of this Agreement shall not be construed as thereafter waiving any such terms, conditions, rights, privileges, and the same shall continue and remain in force and effect as if no such failure to enforce has occurred.

(g) Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

(h) Termination for Default. If SDHC materially fails to perform its obligations pursuant to this Agreement, Presidio, and the Cities may terminate this Agreement and enter into a management agreement with a different qualified organization (the "Successor Manager"). Upon any termination pursuant to this Section 10(h), SDHC shall return to the owner of Operated Property/or Cities the Total Payments, less SDHC's actual, reasonable expenditures in accordance with this Agreement. Such refunded Total Payments shall be used solely for funding the activities of the Successor Manager in managing the Conservation Easements.

(i) No Partnership. This Agreement shall not be deemed to make any party to this Agreement the agent or partner of any other party.

(j) Modification. This Agreement may not be modified except by a written amendment, executed by the parties to this Agreement and consented to by the Agencies and the City of Carlsbad.

(k) The City of Carlsbad and the Agencies. The City of Carlsbad and the Agencies are third-party beneficiaries of this Agreement and is entitled to enforce the terms hereof.

(l) Quarry Creek Open Space Restrictive Covenant. This Agreement is intended to effectuate and supplement the terms of the Quarry Creek Open Space Restrictive Covenant. Nothing herein is intended to limit the rights of the grantee under the Conservation Easement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the day and year first above written.


ATTEST:


By: _____
Name: _____
Title: _____

ATTEST:

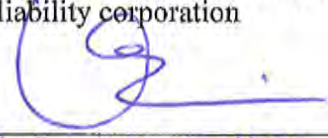
By: _____
Name: _____
Title: _____

SAN DIEGO HABITAT CONSERVANCY,
a California nonprofit mutual public benefit corporation

By: 
Eric Mondero, President

By: 
Don Scates, Executive Director

PRESIDIO CORNERSTONE QC, LLC, a Delaware limited liability corporation

By: 
Name: LIRE KRETOWICZ
Title: 