

AGREEMENT FOR OPERATION OF OPEN SPACE EASEMENT AND COMMON AREA

Carlsbad Raceway Open Space Easement, City of Carlsbad

This Agreement for Operation of Open Space ("**Agreement**") is entered into and effective the 27 day of FEBRUARY, 2014, among FENTON RACEWAY BUSINESS PARK PROPERTY OWNERS' ASSOCIATION, a California nonprofit mutual benefit corporation ("**ASSOCIATION**"), and SAN DIEGO HABITAT CONSERVANCY, a California nonprofit public benefit corporation ("**SDHC**").

RECITALS

A. In accordance with City of Carlsbad Resolution No. 2001-351, Fenton Raceway, LLC ("**Fenton**") was required to place natural open space in a dedicated conservation open space easement ("**Carlsbad Raceway Open Space Easement**") to the City of Carlsbad ("**The City**"), and the conserved lands shall be operated by an entity experienced in natural lands management. In connection with its development of Carlsbad Raceway Business Park, Fenton executed its Conservation Easement in favor of the City of Carlsbad, California, and recorded such document August 7, 2008, at Document #2008-0423712 ("**Conservation Easement**").

B. The natural open space area, comprised of 46.25 acres, including approximately 20.64 acres of Diegan coastal sage scrub, 5.27 acres of non-native grassland, 5.22 acres of southern mixed chaparral, 5.03 acres of southern willow scrub, 1.07 acres of freshwater marsh, 1.03 acres of streambed, 0.42 acre of mule fat scrub, and 7.53 acres of disturbed open space is described in **Exhibit "A-1"** hereto and as shown on a map in **Exhibit "A-2"** hereto, both hereby incorporated by this reference. The natural open space area will be referred to herein as the "**Operated Property**."

C. In accordance with Resolution No. 2001-351, Fenton was required to construct, maintain and monitor mitigation areas in accordance with the Carlsbad Raceway Conceptual Coastal Sage Scrub Mitigation Plan dated October 1, 2002 and the Carlsbad Raceway Final Riparian Mitigation Plan dated September 10, 2004, prepared by Helix Environmental Planning, Inc. ("**HELIX EPI**") hereinafter referred to as "**Mitigation Plans**", a copy of which is attached hereto as **Exhibit "B"** and incorporated by reference.

D. Riparian and upland revegetation efforts were installed in 2006 by HELIX EPI. Success criteria for the revegetation efforts were met in 2012. HELIX EPI will continue to manage the Operated Property until January 2014 at which time SDHC will take over management of the Operated Property.

E. Fenton transferred ownership of the Operated Property to ASSOCIATION on October 13, 2011.

F. The Operated Property possesses 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 for the Operated Property, dated October 30, 2013, (the "**PAR**"), a copy of which is attached as **Exhibit "C"** and incorporated by reference. The PAR was based on the requirements in the Carlsbad Raceway Preserve Management Plan, October 30, 2013 and prepared by HELIX EPI ("**PMP**"), a copy of which is attached as **Exhibit "D"** and incorporated by reference.

I. ASSOCIATION 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 ASSOCIATION retaining certain responsibilities associated with manufactured slopes and improvements (e.g., swales, subdrains) in perpetuity, and to set forth certain other rights and obligations of the parties.

AGREEMENT

1. ASSOCIATION's Obligations.

1.1 SDHC acknowledges and agrees that the ASSOCIATION has satisfactorily completed all the following actions required for SDHC to initiate long-term habitat management: (i) removed all trash and debris within the Operated Property; (ii) staked the perimeter of the Operated Property at approximately 100 foot intervals; (iii) obtained and assigned to SDHC sufficient access rights to the Operated Property to allow SDHC to perform its tasks pursuant to this Agreement; (iv) removed weeds and invasive exotic species in accordance with the PMP; (v) provided SDHC with all biological resource vegetation maps, sensitive plant maps and digital files in the possession of ASSOCIATION or its contractors or consultants associated with biological resource surveys for the Operated Property; and (vi) installed fencing and gates in accordance with the PMP.

1.2. ASSOCIATION hereby grants to SDHC access for vehicle and pedestrian access over and across the Operated Property from Lionshead Road for the purposes of management of the Operated Property as provided herein.

1.3 ASSOCIATION shall be responsible for the integrity and stability of all manufactured slopes within the Operated Property, responsible for any hydrology or flood control deemed necessary within the Operated Property including substantial erosion impacts from major flood events, and responsible for the management and maintenance of all improvements within the Operated Property, including but not limited to drainage swales, subdrains, pipelines, vents, culverts, rip-rap and permanent fencing.

1.4 ASSOCIATION shall be responsible for responding to and resolving all ASSOCIATION member issues and concerns with respect to the Operated Property and will identify a single representative of ASSOCIATION to coordinate with SDHC for issue resolution.

2. SDHC's Obligations.

2.1 Subject to the conditions of Section 2.2 below, SDHC shall perform the Initial and Capital Tasks and Annual Tasks as defined and pursuant to the schedule set forth in the PAR and shall assume sole responsibility for long-term, perpetual monitoring and maintenance of the Operated Property, as set forth in the PAR.

2.2 The obligations of SDHC for long-term management of the Operated Property are conditioned upon: (i) execution of this Agreement by all parties and recordation of the Memorandum of this Agreement; (ii) SDHC's receipt of the Total Payments pursuant to Section 3; (iii) completion of ASSOCIATION's obligations pursuant to Section 1.1 above, and (iv) the Operated Property being received by SDHC in good condition as described in the PAR and PMP prepared for the Operated Property. Upon satisfaction of the conditions of this Section, ASSOCIATION shall have no further obligations or liability in connection with the monitoring, maintenance, and reporting requirements of the Operated Property, with the exception of warranties and indemnities herein which shall survive.

2.3 SDHC shall not violate any of the terms and conditions of this Agreement and, from the date the conditions of Section 2.2 have been satisfied, SDHC 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.

2.4 From and after the date when SDHC begins its long-term management of the Operated Property, SDHC shall maintain all insurance that is required by Section 6 herein and shall comply with the standards for the Management Funds set forth in sections 3.5 and 3.6 below.

2.5 The obligations of SDHC shall not include any material 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, unless such entry or activities were undertaken at the request of or on behalf of SDHC. 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, or taking any other action that impacts the Operated Property, unless such action was undertaken at the request of or on behalf of SDHC.

2.6 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 of Stewart Title of California, Inc., Order No. 01180-82885 dated January 21, 2014. SDHC shall not be responsible to adjust its duties and obligations as a result of any unrecorded conditions of title or rights to use the property not disclosed to SDHC by the date of such Title Report.

2.7. The obligations of SDHC hereunder shall at all times be conditioned upon reasonable access on and across the Operated Property. ASSOCIATION shall provide SDHC with keys to any locked gates at such access points.

3. Funding.

3.1. Initial Costs. Upon execution of this Agreement by the parties and SDHC's assumption of responsibility for the long-term management of the Operated Property and, provided the representations and warranties of SDHC set forth in Section 4 below continue to be true and accurate, ASSOCIATION shall pay SDHC its Initial and Capital Costs (as defined in the PAR) of Thirty Three Thousand Eight Hundred Fifty Six Dollars and Sixty Nine Cents (\$33,856.69), to cover SDHC's expenses to perform the Initial and Capital Tasks described in the PAR ("**Initial Payment**"). Provided that all conditions to payment are satisfied, the Initial Payment shall be made not later than February 28, 2014. The amount of the Initial Costs is based on the PAR and includes a fee for initial and capital tasks in the amount of Thirty Two Thousand Five Hundred Fifty Four and Fifty One Cents (\$32,554.51) and a fee for the Emergency and Legal Defense Fund in the amount of One Thousand Three Hundred Two Dollars and Eighteen Cents (\$1,302.18). Should the costs actually exceed the amount stated herein, provided SDHC actually receives the Initial and Capital Costs, SDHC shall nevertheless complete the obligations of the PMP and PAR without additional compensation from ASSOCIATION.

3.2. Annual Fees for Perpetual Management. Upon execution of this Agreement and SDHC's assumption of responsibility for the long-term management of the Operated Property and, provided the representations and warranties of SDHC set forth in Section 4 below continue to be true and accurate, ASSOCIATION shall pay to SDHC, in advance annually, payments due no later than February 1 of each calendar for the management work to be accomplished in such year ("**Annualized Payments**"). Payment for the period from the effective date for SDHC management through December 31, 2014 is included in the Initial Payment, as set forth above. Payable on or before February 1, 2015, the Annualized Payment shall be Twenty Two Thousand Nine Hundred Forty Dollars and Sixty Seven Cents (\$22,940.67). Commencing February 1, 2016, and annually thereafter, the Annualized Payment shall be increased automatically by the annual average percentage increase of the Los Angeles-Riverside-Orange County, CA Consumer Price Index for all Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor ("**CPI Increase**"). Notwithstanding the published CPI Increase, the Annualized Payment increase shall be a minimum of two percent (2%) if the CPI Increase is lower or a maximum of five percent (5%) if the CPI Increase is higher. In the event the Bureau of Labor Statistics discontinues publishing the Los Angeles-Riverside-Orange County, CA Consumer Price Index, then the successor or next comparable index shall be used. Provided that all conditions to payment are satisfied, the parties expect the Annualized Payments to begin by February 1, 2015. The Annualized Payment for 2015 consist of a fee for annual tasks and costs in the amount of Twenty Two Thousand Fifty Eight Dollars and Thirty Four Cents (\$22,058.34) and a fee for the Emergency and Legal Defense Fund in the amount of Eight Hundred Eight Two Dollars and Thirty Three Cents (\$882.33). Each year the Annualized Payment shall be allocated in the same ratio as between annual tasks and costs (96%) and the Emergency and Legal Defense Fund (4%).

3.3 Emergency and Legal Defense Fund. The Emergency and Legal Defense Fund (“**Defense Fund**”) is calculated as four percent of the annual fee for annual tasks and costs portion of an Annualized Payment. 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.

3.4 The total of the Initial Payment and the Annualized Payments is referred to herein as the “**Management Funds**”.

3.5 Funds Management. SDHC shall prudently manage the Management Funds and use the same only for the purposes specified in this Agreement. SDHC shall expend the Management Funds only for tasks performed pursuant to this Agreement and reasonable administrative expenses incurred by SDHC in managing the Operated Property in accordance with this Agreement. SDHC shall defend, indemnify and hold ASSOCIATION harmless in connection with or related to any misuse, mismanagement, investment loss, or misappropriation of the Management Funds. Misuse of the Management Funds shall include, without limitation, any violation of Section 3.6.

3.6 Accounting. SDHC shall maintain an accounting of all funds received and expended for the management of the Operated Property, using generally accepted accounting methods. SDHC's accounting shall be audited annually by a qualified certified public accountant, at SDHC's expense. SDHC shall use the following principles of fiduciary duty in the management of funds:

(a) SDHC shall not commingle the management funds with general operating funds.

(b) SDHC shall have a duty of loyalty and shall not use the funds for other than PAR expenses, including administrative costs.

(c) SDHC shall not delegate the responsibility for control of the funds to a third party, but may employ a funds manager for investment purposes; provided however, SDHC may delegate the control of the funds to The San Diego Foundation for purposes of management and investment of any funds anticipated to be held more than one year.

3.7 Endowment Management. Should ASSOCIATION fund the long-term habitat management with a non-wasting endowment in lieu of annual fees, SDHC shall, in perpetuity, hold and manage the Endowment Fund in trust and use the same only for the purposes specified in this Agreement. SDHC shall invest the Endowment Fund in a prudent income-producing investment or account. SDHC shall expend the income from the Endowment Fund only for tasks performed pursuant to this Agreement and reasonable administrative expenses incurred by SDHC in managing the Operated Property in accordance with this Agreement. SDHC shall use the following principles of fiduciary duty in the managing the endowment funds:

(a) SDHC shall have a fiduciary duty to hold the endowment funds in trust for the Property.

(b) SDHC shall not commingle the endowment funds with other funds. Funds may be pooled for investment management purposes only.

(c) SDHC shall have a duty of loyalty and shall not use the endowment funds for its own personal benefit.

(d) SDHC shall act as a prudent investor of the endowment funds;

(e) SDHC shall not delegate the responsibility for managing the funds to a third party, but may delegate authority to invest the funds. SDHC shall act with prudence when delegating authority and in the selection of agents.

(f) SDHC shall have an annual audit of the endowment performed by a licensed CPA, and shall submit the auditor's written report to ASSOCIATION, ACOE or USFWS upon written request by such party.

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 ASSOCIATION. 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.

4.1. 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.

4.2. 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.

4.3. 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.

4.4. 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.

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

4.6. 501(c)(3) Status. SDHC is a 501(c)(3) corporation and a qualified organization, as stated in the Recitals to this Agreement.

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

4.8. Authority. 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;

4.9. Corporate 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;

4.10. Financial Condition. SDHC is financially able to perform its obligations under this Agreement and has not (i) made a general assignment for the benefit of creditors, (ii) filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by SDHC's creditors, (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of SDHC's assets, or (iv) suffered the attachment or other judicial seizure of all, or substantially all of SDHC's assets.

5. Full Compensation. SDHC acknowledges and agrees that ASSOCIATION's payment of the Initial Payment and the Annualized Payments for the upcoming year constitute SDHC's full compensation for undertaking its obligations under this Agreement for each upcoming year. SDHC acknowledges and agrees that it will perform all its obligations pursuant to this Agreement after payment of the Initial Payment and the Annualized Payments, even if any or all of the Management Funds, including without limitation, the Initial Payment and the Annualized Payments, are lost or diminished by SDHC's funds management pursuant to Section 3.5 or any other action or decision by SDHC regarding use or management of the Management Funds.

6. Indemnity and Insurance.

6.1. Subject to the limitations set forth in Section 7.6, below, SDHC shall indemnify, defend, and hold ASSOCIATION and Fenton Raceway, LLC, and their respective successors and assigns and their officers, directors, shareholders, employees and agents harmless from and against any and all costs, penalties, damages, liabilities and claims of any nature whatsoever, including but not limited 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 by SDHC, its directors, agents, officers or employees; (ii) claims for additional payments to cover the costs of performing the obligations of SDHC or its successor under this Agreement; and (iii) failure of any representation or warranty of SDHC given herein. Any indemnity obligation provided herein shall be limited by provisions in Section 7.6.

6.2. ASSOCIATION shall indemnify, defend and hold harmless SDHC, its successors and assigns, and their officers, directors, shareholders, employees, attorneys and agents, from and against any and all costs, penalties, damages, liabilities and claims arising from : (i) liability for bodily injury, sickness, disease or death, property damage or violation of law, caused by or arising out or relating to any negligent act, error, omission or failure to perform ASSOCIATION's obligations under this Agreement by ASSOCIATION directors, agents, officers or employees; and (ii) failure of any representation or warranty of ASSOCIATION or given herein.

6.3. Prior to commencing management of the Operated Property, or any part of it, SDHC shall establish, and maintain a commercial general liability insurance policy, with a minimum coverage of Two Million Dollars (\$2,000,000.00) per incident, for personal injury, death and property damage and a deductible not in excess of Ten Thousand Dollars (\$10,000). Such coverage may be increased by SDHC or the City, not more frequently than once every five years, upon the reasonable determination of SDHC, the ASSOCIATION or the City that the minimum coverage for like conservancies on similar properties in San Diego County has increased. The insurance shall be for legal liability arising out of death, bodily injury and property damage. The policy shall include an endorsement naming City, as Easement grantee, as well as ASSOCIATION and Meissner Jacqué Investment Management Services, Inc., as additional insureds, which policy shall provide primary coverage in the event of any claims resulting from the action or inaction of SDHC.

6.4. No Hazardous Materials Knowledge. ASSOCIATION represents and warrants that, as of the date of this Agreement, it has no actual and current knowledge of any release or threatened release of Hazardous Materials (defined below) in, on, under, about or affecting the Operated Property.

6.5. 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 City or SDHC any of the following:

(a) 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

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

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

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

(e) Any control over the ability of the owner of any lot that includes the Operated Property to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated within such lot.

6.6. As used in this Agreement, the term "**Hazardous Materials**" includes, without limitation, (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, 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.

6.7. As used in 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. ASSOCIATION represents, warrants and covenants to SDHC that ASSOCIATION's activities upon and use of the Operated Property will comply with all Environmental Laws.

7. Remedies.

7.1 Violation of the Agreement.

(a) The term "party" means the ASSOCIATION and/or SDHC, as applicable.

(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 (including time necessary to contest a non-party governmental requirement), 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. In the event of a life and safety or dangerous condition which is the result of a violation, the violating party shall commence to cure and remedy such condition within seventy-two (72) hours of notice of said violation.

(d) If the violating party fails to cure the violation within the time period(s) described in the paragraph above or Section 7.2(a) below, and the non-violating party determines that legal monetary damages are adequate, the non-violating party and/or agency may commence arbitration proceedings as provided in this Section to recover any damages at law 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. Without limiting the liability of the violating party therefor, the non-violating party may apply any damages recovered to the cost of undertaking any corrective action on the Operated Property. Any action at law to recover damages arising from, out of or in connection with this Agreement, or any breach or alleged breach of this Agreement resulting in a claim at law for damages, shall be settled by arbitration in the City of San Diego, California, in accordance with the Commercial Arbitration Rules ("Rules") of the American Arbitration Association ("AAA") where not

inconsistent with the further provisions hereof, and the judgment upon the award rendered by the arbitrator may be entered into any Court having jurisdiction thereof. The parties submit to the jurisdiction of the Superior Court of the State of California, San Diego, California, for purposes of confirming any such award and entering judgment thereon. The parties hereto further agree that, notwithstanding anything to the contrary which may now or hereafter be contained in the Rules of the AAA, the following provisions shall control: (i) The arbitration shall be conducted before a single impartial arbitrator appointed and compensated in accordance with the Rules of the AAA. (ii) The expenses of the arbitration shall be borne equally by the parties to the arbitration; provided, however, that except to the extent (if any) expressly provided elsewhere in this Agreement, each party shall pay for and bear the costs of its own experts, evidence and attorneys' fees; and provided further, that in the discretion of the arbitrator, any award may include the costs, fees and expenses of a party's attorneys if the arbitrator expressly determines that the party against whom such award is entered caused the dispute, controversy or claim to be submitted to arbitration as a dilatory tactic. Except where such an express determination of dilatory tactics has been made, the arbitrator shall not have the power or competence to allocate between the parties in the award any such costs, expenses, fees or share of the arbitrator's compensation. (iii) The arbitrator shall, upon the request of either party, issue a written opinion of findings of fact and conclusions or law. Upon receipt by the requesting party of the written opinion, such party shall have the right to file with the arbitrator a motion to reconsider, and the arbitrator thereupon shall reconsider the issues raised by said motion and either confirm or change the decision which shall be final and conclusive upon the parties thereto. (iv) It is specifically contemplated and agreed by the parties hereto that the provisions of California Code of Civil Procedure section 1283.05, as they may be amended from time to time, shall be incorporated into, made a part of, and made applicable to the arbitration agreement contained in this Section. (v) For purposes of the application of the statute of limitations, the filing of an arbitration pursuant to this Section is the equivalent of the filing of a lawsuit, and any claim at law which may be arbitrated under this Section is subject to any applicable statute of limitations. The arbitrator shall have the authority to decide whether any such claim or controversy is barred by the statute of limitations and, if so, to dismiss the arbitration on that basis.

(e) Notwithstanding Section 7.1(d), 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 equitable 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. Such injunctive relief may include enjoining any violation, ex parte as necessary, by temporary or permanent injunction, 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. 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. The parties' legal relief, if any, shall be obtained pursuant to section 7.1(d) and the parties' equitable relief shall be obtained pursuant to this section 7.1(e).

7.2 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. In the event of a life and safety or dangerous condition which is the result of a violation, the violating party shall not be excused from commencing the cure of the dangerous condition within seventy-two (72) hours.

(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. In the event that the non-violating party and/or agency determines that a dangerous condition has resulted from a violation, the violating party shall have seventy-two (72) hours to commence the cure of such condition. If the parties disagree on whether a violation has occurred, the provisions of Section 7.1(d) or Section 7.1(e) shall apply.

7.3 Costs of Enforcement. Subject to the limitations to the provisions of 7.6 below, 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.

7.4 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 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.

7.5 Acts Beyond Control of ASSOCIATION and SDHC. Nothing contained in this Agreement shall be construed to entitle any party, person, entity or agency to bring any action against ASSOCIATION, their successor's and assigns, or SDHC (collectively, Responsible Parties"), nor shall SDHC be deemed in violation of its obligations herein, in the event there is 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 City or any other governmental agencies and their employees, directors, officers, agents, contractors, or representatives. Neither ASSOCIATION nor SDHC shall have any obligation to anticipate or attempt to prevent any of the events described in this paragraph except as specifically set forth herein.

7.6 SDHC Violation. Any liability of SDHC resulting from a violation of this agreement or acts of omission of SDHC on or about the Operated Property shall be determined as follows:

(a) Liability for acts or omissions of its employees, agents or contractors shall be limited to the coverage limit of the Insurance Policy obtained by SDHC as provided herein, except as described in Section 7.6(c);

(b) If a violation arises from an intentional act by or the gross negligence of 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, ASSOCIATION 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 successor, non-profit entities, if any, and shall not be interpreted to apply to an assignee of SDHC without the prior approval of the City.

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

8. Warranties and Representations of ASSOCIATION.

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

(a) To the current and actual knowledge of ASSOCIATION, from the date of ownership by ASSOCIATION to the execution date of this Agreement, neither ASSOCIATION nor any principal of ASSOCIATION has deposited, spilled, disposed of or accumulated on or under the Operated Property, any material amount of Hazardous Materials;

(b) To the current and actual knowledge of ASSOCIATION, it is not aware of any Hazardous Materials upon the Operated Property;

(c) To the current and actual knowledge of ASSOCIATION, it is not aware 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 ASSOCIATION 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) To the current and actual knowledge of ASSOCIATION, it is not aware of any monitoring program required by the Environmental Protection Agency (EPA) or any similar state agency concerning the Operated Property;

(e) Neither ASSOCIATION nor the principals of ASSOCIATION have ever used the Operated Property as a dump or landfill, and to the current and actual knowledge of ASSOCIATION, the Operated Property has not been used, as a dump or landfill;

(f) To the current and actual knowledge of ASSOCIATION, it has disclosed to SDHC all information, records, and studies maintained by ASSOCIATION in connection with the Operated Property concerning any possible violation of law and presence of Hazardous Materials;

(g) To the current and actual knowledge of ASSOCIATION, it is not aware 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) To the current and actual knowledge of ASSOCIATION, except as disclosed to SDHC in the Preliminary Title Reports (listed in Section 2.6, or otherwise in writing, there are no leases, licenses, or other agreements allowing any third party rights to use the Operated Property;

(i) To the current and actual knowledge of ASSOCIATION, it is not aware of any pending or threatened litigation, administrative proceeding, or other legal or governmental action with respect to the Operated Property;

(j) To the current and actual knowledge of ASSOCIATION, any information that ASSOCIATION has delivered to SDHC, either directly or through ASSOCIATION's agents, is materially accurate and ASSOCIATION has disclosed all information in ASSOCIATION's possession that materially and directly impact SDHS's obligations under this Agreement with respect to the Operated Property;

(k) ASSOCIATION is a California corporation organized under the laws of the State of California and is in good standing or authorized to do business under the laws of the State of California;

(l) ASSOCIATION has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby;

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

(n) The individuals executing this Agreement and the instruments referenced herein have the legal power, right and actual authority to bind the respective Parties to the terms and conditions hereof and thereof; and.

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

9. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and be served personally, by email if such email notice is acknowledged by the recipient, or sent by first class mail, postage prepaid or sent by facsimile, as follows:

To SDHC: San Diego Habitat Conservancy
2770 Historic Decatur Road, Suite 205
San Diego, CA 92106
Attention: Don Scoles
Telephone: (619) 365-4839
Facsimile: (619) 810-0552

With a copy to: William L. Fischbeck
Fischbeck & Oberndorfer, APC
5464 Grossmont Center Drive, Third Floor
La Mesa, CA 91942
Telephone: (619) 464-1200
Facsimile: (619) 464-6471

To ASSOCIATION: Fenton Raceway Business Park Property Owners'
Association
c/o Meissner Jacquét Investment Management Services
5330 Carroll Canyon Road, Suite 200
San Diego, CA 92121
Attention: Rhonda Vicker
Telephone: (858) 373-1234
Facsimile: (858) 373-1222

With a copy to: Kari Prevost
c/o H. G. Fenton Company
7577 Mission Valley Rd, Suite 200
San Diego, CA 92108
Telephone: (619) 400-0120
Facsimile: (619) 400-0111

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, or in the case of overnight delivery, one day after deposit with an overnight delivery service.

10. Miscellaneous.

10.1. 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 effect 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.

10.2. 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 ASSOCIATION; such consent shall not be unreasonably withheld.

10.3. 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 of the parties in order for the same to be binding upon the parties.

10.4. 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.

10.5. 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.

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

10.7. Subsequent Transfers. From and after the execution of this Agreement, the fee title interest in the Operated Property shall not be transferred, voluntarily or by operation of law, other than to an entity that is approved by the City. SDHC reserves the right to terminate this Agreement and enter into a new agreement should the property transfer.

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

10.9. Modification. This Agreement may not be modified except by a written amendment, executed by all the parties to this Agreement, or their successors.

11. Term

11.1 The term of this Agreement shall be ten (10) years from the Effective Date; provided however that the term shall automatically be extended for ten (10) year additional terms, each to follow immediately after the then current term, unless written notice of election not to extend is provided to the other part at least six (6) months prior to the end of the then current ten year term.

11.2 ASSOCIATION shall have the right to terminate this Agreement at any time and for any reason (or for no reason at all), without cause, on thirty (30) days' prior written notice to SDHC, in which case ASSOCIATION shall pay to SDHC the portion of any outstanding Management Funds, if any, which shall cover the obligations to be performed by SDHC to the specified date of termination. Payment of any Management Funds owned to SDHC and not in dispute shall be made within fifteen (15) working days thereafter.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:

ATTEST:

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

By: Sarah Krejca
Name: Sarah Krejca
Title: Assistant Program Coord, SDHC

By: [Signature]
Eric Mondero
Date: 2/25/14

By: Sarah Krejca
Name: Sarah Krejca
Title: Assistant Program Coord, SDHC

By: [Signature]
Donald E. Scyles
Date: 2/25/14

ATTEST:

FENTON RACEWAY BUSINESS PARK
PROPERTY OWNER'S ASSOCIATION

By: [Signature]
Name: Denise Courtois
Title: Senior Accountant

By: MEISSNER JACQUÉT INVESTMENT
MANAGEMENT SERVICES, INC., a California
corporation, its Agent

By: [Signature]
RICHARD VICKER
Date: 2/27/2014

AGREEMENT FOR OPERATION OF OPEN SPACE EASEMENT

Taylor Estates, City of Oceanside

This Agreement for Operation of Open Space ("**Agreement**") is entered into and effective the 4th day of March, 2014, among KB HOME COASTAL INC., a California corporation ("**KB HOME**"), MONTELENA HOMEOWNERS ASSOCIATION, INC., a California nonprofit mutual benefit corporation ("**ASSOCIATION**"), and SAN DIEGO HABITAT CONSERVANCY, a California nonprofit public benefit corporation ("**SDHC**").

RECITALS

A. In accordance with Resolution No. 2003-P22 for Map No. 15334 (T-2-01) (Resolution/Conditions of Approval), KB HOME has been required to place natural open space in a dedicated conservation open space easement to the City, and the conserved lands are to be managed by an entity experienced in natural lands management. In connection with its development of Map No. 15334, also known as "**Taylor Estates**", KB Home executed its Conservation Easement in favor of the City of Oceanside, California, ("**City**") and recorded such document December 20, 2006, as Document #2006-0900929 ("**Conservation Easement**"). The City assigned its rights and obligations under the Conservation Easement to SDHC pursuant to an Assignment of Rights and Obligations Under Conservation Easement dated May 1, 2013 and recorded on May 21, 2013 as Document #2013-0317947

B. The natural open space area at Taylor Estates, comprising 16.39 acres, is described in **Exhibit "A-1"** hereto and as shown on a map in **Exhibit "A-2"** hereto, both hereby incorporated by this reference. The natural open space area at Taylor Estates will be referred to herein as the "**Operated Property**".

C. ASSOCIATION holds fee title to the majority of the Operated Property. The owners of Lots 11 and 12 and 15 through 20 of Taylor Estates hold title to the remainder of the Operated Property.

D. In accordance with Resolution No. 2003-P22 for Map No. 15334 (T-2-01), KB HOME is required to implement compensatory wetlands, coastal sage scrub, thread-leaved brodiaea and native grasslands mitigation within the Operated Property in accordance with the requirements of the Habitat Restoration Plan for the Taylor Property dated November 10, 2004 and prepared by Helix EPI, hereinafter referred to as "**Mitigation Plan**", a copy of which is attached hereto as **Exhibit "B"** and incorporated by this reference. The portion of the Operated Property on which such mitigation is required to be implemented is referred to herein as the "**Mitigation Area**".

E. Under the terms of the Conservation Easement, KB HOME is required to implement, maintain and monitor the Mitigation Area, in accordance with the Mitigation Plan, until receipt of final approval of the success of the mitigation from California Department of Fish and Wildlife ("**CDFW**") (formerly California Department of Fish and Game), U.S. Fish & Wildlife Service ("**USFWS**") and the City, each such agency to be deemed a third party beneficiary of this Agreement ("**Final Approval**").

F. The Operated Property, including the Mitigation Area, possesses 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 for the Operated Property, dated January 6, 2012, (the "**PAR**"), a copy of which is attached as **Exhibit "C"** and incorporated by reference. The PAR was based on the requirements in the Long-term Biological Management Program, October 26, 2005 ("**LTMP**"), a copy of which is attached as **Exhibit "D"** and incorporated by reference.

I. KB HOME, ASSOCIATION 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, and to set forth certain other rights and obligations of the parties.

J. On or about March 30, 2005, an escrow was opened with First American Title Company located at 411 Ivy Street, San Diego, CA 92101 (Escrow Number 1735084) wherein KB HOME's predecessor in interest to Taylor Estates, Oceanstar LLC, a California limited liability company ("**Oceanstar**"), pursuant to its contractual obligations to KB HOME, deposited the sum of \$681,501 in favor of CDFW ("**Escrowed Funds**"). The Escrowed Funds were intended to secure KB HOME's obligation to fund an endowment for the permanent maintenance of the Operated Property as required by the LTMP.

K. It is intended that the obligations of the parties hereto shall be conditioned on the release to SDHC of the Total Payments (defined below) from the Escrowed Funds as more particularly provided below.

AGREEMENT

1. KB HOME's and ASSOCIATION's Obligations.

1.1 Before SDHC initiates the long-term habitat management, KB HOME shall (i) remove all trash and debris within the Operated Property; (ii) stake the perimeter of the Operated Property at approximately 100 foot intervals; (iii) obtain and assign to SDHC sufficient access rights to the Operated Property to allow SDHC to perform its tasks pursuant to this Agreement, as depicted in **Exhibit "E"** and incorporated by this reference; (iv) remove weeds and invasive exotic species in accordance with the LTMP; (v) provide all biological resource vegetation maps, sensitive plant maps and wetland improvement plans and maps to SDHC; (vi) install fencing in accordance with the LTMP; and (vii) complete an amendment to the Conservation Easement to correct the legal description of the area so as to include the open space designated over Lots 11 and 12 and 15 through 20 as shown on Sheets 5 and 6 (Note 19) of Map No. 15334 and obtain

access easements from the owners of said lots and Lot 21 in favor of and in a form reasonably acceptable to SDHC. In addition, KB HOME shall complete the construction, maintenance and monitoring the Mitigation Area as required by the Mitigation Plan. When the CDFW, USFWS and the City have given Final Approval of completion of the Mitigation Area work under the Mitigation Plan, KB HOME shall provide at least 30 day notice to SDHC after which SDHC shall assume responsibility for long-term habitat management of the Mitigation Area. Upon written request and completion of all obligations by KB HOME, SDHC's shall provide written acknowledgment that is has assumed responsibility for the long-term management of the Mitigation Area and that KB HOME has satisfied all obligations set forth in this Section 1.1 and, thereafter, KB HOME shall have no further obligations or liability in connection therewith, with the exception of the warranties and indemnities herein which shall survive. In the event that any of the foregoing obligations are not completed notwithstanding the commercially reasonable efforts of KB, SDHC's sole recourse shall be to refrain from initiating the long term habitat management of the Operated Property and SDHC expressly waives the right to any damages and other rights and remedies against KB. Further, in the event that such obligations are not completed within two (2) years of the effective date of this Agreement, SDHC may terminate this Agreement, in which case SDHC shall return any amounts received by it hereunder but not yet used to CDFW and the parties hereto shall have no further rights, obligations or liabilities under this Agreement.

1.2. ASSOCIATION hereby grants to SDHC access for vehicle and pedestrian access over and across the Operated Property from access points as used for the existing sewer easements and for the purposes of management of the Operated Property as provided herein. Upon execution of this Agreement, ASSOCIATION shall execute and cause to be recorded a Memorandum of this Agreement in a form reasonably acceptable to SDHC which document shall make reference to the Conservation Easement of record and this Operating Agreement and the rights of access of SDHC.

1.3 KB HOME's and ASSOCIATION's obligations under this Agreement shall be conditioned upon (i) SDHC being approved by CDFW and/or any other applicable governmental agencies to hold endowment funds if such approval is required by applicable laws and regulations and (ii) the release to SDHC of the Escrowed Funds by CDFW.

2. SDHC's Obligations.

2.1 Subject to the conditions of section 2.2 below, SDHC shall perform the Initial and Capital Tasks and Annual Tasks as defined in the PAR, a copy of which is attached hereto as **Exhibit "C"** and incorporated by this reference and shall assume sole responsibility for long-term, perpetual monitoring and maintenance of the Operated Property, as set forth in the PAR, with the exception of the Mitigation Area. SDHC's responsibility for the Mitigation Area will commence upon Final Approval by the CDFW, USFWS and City of the compensatory Mitigation Area implemented by KB HOME, and final notice to SDHC, projected to occur in 2013.

2.2 The obligations of SDHC for long-term management of the Operated Property are conditioned upon: (i) execution of this Agreement by all parties and recordation of the Memorandum of this Agreement; (ii) SDHC being approved by CDFW and/or any other

applicable governmental agencies to hold endowment funds if such approval is required by applicable laws and regulations, (iii) SDHC's receipt of the Total Payments pursuant to Section 3; (iv) completion of KB HOME's obligations pursuant to Section 1.1 above, and (v) the Operated Property will be received by SDHC in good condition as described in the PAR and LTMP prepared for the Operated Property. Upon SDHC's written acknowledgement of assumption of responsibility for the long-term management of the Operated Property as provided above, KB HOME shall be deemed to have satisfied all obligations set forth in this Section 2.2 and, thereafter, KB shall have no further obligations or liability in connection therewith, with the exception of warranties and indemnities herein which shall survive.

2.3 SDHC shall not violate any of the terms and conditions of this Agreement and, from the date SDHC provides written acknowledgement per Section 1.1, above, 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 Area. SDHC will assume all obligations for the Mitigation Area in accordance with section 2.1 above.

2.4 From and after the date when SDHC begins its long-term management of the open space easement, SDHC shall maintain all insurance that is required by Section 7 herein and shall comply with the standards for the Endowment Funds set forth in sections 3.5 and 3.6 below.

2.5 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, or taking any other action that impacts the Operated Property.

2.6 The obligations of SDHC are undertaken in light of the conditions of title of the Operated Property as set forth in the Preliminary Title Reports of First American Title Company, Order No. 754234 dated November 18, 2013, subject to the anticipated Conservation Easement Amendment. Any condition of title or use of the 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. Further, in the event access is denied to SDHC to enter, cross or perform maintenance or monitoring to any of the private lots 11 and 12 and 15 through 20 or for access across lot 21 of Map 15334, SDHC shall not be obligated to perform the work contemplated herein on such lot or any lots situated south or west of such lot until and unless access has been restored.

2.7. The obligations of SDHC hereunder shall at all times be conditioned upon reasonable access on to and across the Operated Property including the right to drive vehicles and equipment on to and across the sewer easement roads from the access points in place for such roads. ASSOCIATION shall provide SDHC with keys to any locked gates at such access points.

3. Funding.

3.1. Initial Costs. Upon execution of this Agreement by the parties and SDHC's assumption of responsibility for the long-term management of the Operated Property and, provided the representations and warranties of SDHC set forth in Section 4 below continue to be true and accurate, the parties will cooperate to obtain release to SDHC from the Escrowed Funds for Initial Tasks (first year costs plus years two and three of management) of Fifty Six Thousand Three Hundred Sixty Three Dollars and Fifty Two Cents (\$56,363.52), to cover SDHC's expenses to perform the Initial Tasks and Management Tasks described in the PAR ("**Initial Tasks and Management Fund**"). The amount of the Initial Costs is based on the PAR. Should the costs actually exceed the amount stated herein, provided SDHC actually receives the Initial Tasks and Management Fund, SDHC shall nevertheless complete the obligations of the LTMP and PAR without additional compensation from KB HOME or ASSOCIATION.

3.2. Endowment Funds for Perpetual Management. Upon execution of this Agreement and SDHC's assumption of responsibility for the long-term management of the Operated Property and, provided the representations and warranties of SDHC set forth in Section 4 below continue to be true and accurate, SDHC shall be entitled to the disbursement (subject to the approval of CDFW) of the amount of Four Hundred Three Thousand One Hundred Seventy eight Dollars and No Cents (\$403,178.00) (the "**Endowment Fund**") which is based on the PAR and which is currently held by First American Title Company for CDFW as part of the Escrowed Funds. The parties shall cooperate to obtain the transfer of the Endowment Fund from the Escrowed Funds to SDHC. Provided KB HOME completes its obligations hereunder, KB HOME shall not be obligated to pay any amount in excess of this sum. Should the costs actually exceed the amount stated herein, SDHC shall nevertheless complete the obligations of the LTMP and PAR without further compensation by KB HOME or ASSOCIATION, except as otherwise provided herein.

3.3. Emergency and Legal Defense Fund. Upon execution of this Agreement, and SDHC's assumption of responsibility for the long-term management of the Operated Property and, provided the representations and warranties of SDHC set forth in Section 4 below continue to be true and accurate, the parties will cooperate to obtain the release to SDHC from the Escrowed Funds for the Emergency and Legal Defense Fund in the amount of Sixteen Thousand One Hundred Twenty Seven Dollars and Twelve Cents (\$16,127.12) (the "**Defense 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.

3.4. The total of the Initial Tasks and Management Fund, the Endowment Fund and the Defense Fund are referred to herein as "**Total Payments**".

3.5. Endowment Management. SDHC shall, in perpetuity, hold and manage the Endowment Fund in trust for the purposes specified in this Agreement. SDHC shall invest the Endowment Fund in a prudent income producing investment or account. SDHC shall expend the income from the Endowment Fund only for tasks performed pursuant to this Agreement and

reasonable administrative expenses incurred by SDHC in managing the Operated Property in accordance with this Agreement. SDHC shall defend, indemnify and hold KB HOME harmless in connection with any misuse of the Endowment Fund.

3.6. Accounting. SDHC shall maintain an accounting of all funds received and expended for the management of the Operated Property, using generally accepted accounting methods in a form approved by CDFW. SDHC's accounting 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 City or CDFW.

3.7 Excess Escrowed Funds. The parties hereto acknowledge that the amount of the Escrowed Funds exceeds the Total Payments to be made hereunder to SDHC. The parties hereto further acknowledge and agree that they have no claim to such excess and that such excess shall be allocated and disbursed by First American Title Company, as agreed upon by CDFW and Oceanstar.

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 KB HOME. 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.

4.1. 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.

4.2. 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.

4.3. 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.

4.4. 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.

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

4.6. 501(c)(3) Status. SDHC is a 501(c)(3) corporation and a qualified organization, as stated in the Recitals to this Agreement.

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

4.8. Authority. 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;

4.9. Corporate 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;

4.10. Power to Execute. The individuals executing this Agreement and the instruments referenced herein have the legal power, right and actual authority to bind the respective Parties to the terms and conditions hereof and thereof.

4.11 Qualified to Hold Endowment. SDHC has received all requisite approvals from governmental agencies and is duly qualified to hold and manage the Endowment Funds.

5. Full Compensation. KB HOME, ASSOCIATION, and SDHC acknowledge and agree that receipt of Total Payments by SDHC constitutes SDHC's full compensation for undertaking its obligations under this Agreement. SDHC hereby forever releases KB HOMES and its successors and assigns from any and all claims that SDHC may have for: (i) any payments or claims for compensation in excess of the Total Payments and (ii) any cost of work, labor or materials to be performed by SDHC at the Operated Property, including the Mitigation Area, after SDHC has acknowledged responsibility in accordance with Section 1.1, but excluding any warranties and indemnities that are expressly intended herein to survive this Agreement.

6. Role of the City. The City, as a third party beneficiary to this Agreement, shall be entitled to enforce the provisions of this Agreement against KB HOME, ASSOCIATION, SDHC, and their successors in interest. The City shall have no responsibility or liability for any act, or omission to act, by KB HOME, ASSOCIATION, SDHC, or any of their successors in interest.

7. Indemnity and Insurance.

7.1. Subject to the limitations set forth in Section 8.6, below, SDHC shall indemnify, defend, and hold KB HOME and ASSOCIATION and its successors and assigns and their officers, directors, shareholders, employees and agents harmless from and against any and all costs, penalties, damages, liabilities and claims of any nature whatsoever, including but not limited 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 or the Conservation Easement Deed by SDHC, its directors, agents, officers or employees; (ii) claims for additional payments to cover the costs of performing the obligations of SDHC or its successor under this Agreement; and (iii) failure of any representation or warranty of SDHC given herein. Any indemnity obligation provided herein shall be limited by provisions in Section 8.6.

7.2. KB HOME shall indemnify, defend and hold harmless SDHC, its successors and assigns, and their officers, directors, shareholders, employees, attorneys and

agents, from and against any and all costs, penalties, damages, liabilities and claims arising from : (i) liability for bodily injury, sickness, disease or death, property damage or violation of law, caused by or arising out or relating to any negligent act, error, omission or failure to perform KB HOME's obligations under this Agreement by KB HOME its 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 ASSOCIATION; and (iii) failure of any representation or warranty of KB HOME or given herein.

7.3. ASSOCIATION shall indemnify, defend and hold harmless SDHC, its successors and assigns, and their officers, directors, shareholders, employees, attorneys and agents, from and against any and all costs, penalties, damages, liabilities and claims arising from : (i) liability for bodily injury, sickness, disease or death, property damage or violation of law, caused by or arising out or relating to any negligent act, error, omission or failure to perform ASSOCIATION's obligations under this Agreement by ASSOCIATION its directors, agents, officers or employees; and (ii) claims for events or conditions of the Operated Property that occurred during the ownership by ASSOCIATION and predate the date possession of the Operated Property is relinquished to SDHC solely.

7.4. Prior to commencing the management of the Operated Property, or any part of it, SDHC shall establish, and maintain a commercial general liability insurance policy, with a minimum coverage of Two Million Dollars (\$2,000,000.00) per incident, for personal injury, death and property damage and a deductible not in excess of Ten Thousand Dollars (\$10,000). Such coverage may be increased by SDHC or the City, not more frequently than once every five years, upon the reasonable determination of SDHC or the City that the minimum coverage for like conservancies on similar properties in San Diego County has increased. The insurance shall be for legal liability arising out of death, bodily injury and property damage. The policy shall include an endorsement naming City, as Easement grantee, as well as ASSOCIATION or KB HOME (whichever then has fee ownership of the Operated Property) as additional insureds, which policy shall provide primary coverage in the event of any claims resulting from the action or inaction of SDHC

7.5. No Hazardous Materials Knowledge. KB HOME, and ASSOCIATION each independently represent and warrant that, as of the date of this Agreement, it has no knowledge of any release or threatened release of Hazardous Materials (defined below) in, on, under, about or affecting the Operated Property

7.6. 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 City or 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 the ability of the owner of any lot that includes the Operated Property to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated within such lot.

7.7. As used in this Agreement, the term "**Hazardous Materials**" includes, without limitation, (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, 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.

7.8. As used in 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. KB HOME and ASSOCIATION represent, warrant and covenant to City and SDHC that KB HOME's and ASSOCIATION's activities upon and use of the Operated Property will comply with all Environmental Laws.

8. Remedies.

8.1 Violation of the Agreement.

(a) The term "party" means the City, KB HOME, ASSOCIATION and/or SDHC, as applicable.

(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 11 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 (including time necessary to contest a non-party governmental requirement), 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. In the event of a life and safety or dangerous condition which is the result of a violation, the violating party shall commence to cure and remedy such condition within seventy-two (72) hours of notice of said violation.

(d) If the violating party fails to cure the violation within the time period(s) described in the paragraph above or Section 8.2(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 therefor, 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.

8.2 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. In the event of a life and safety or dangerous condition which is the result of a violation, the violating party shall not be excused from commencing the cure of the dangerous condition within seventy-two (72) hours.

(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. In the event that the non-violating party and/or agency determines that a dangerous condition has resulted from a violation, the violating party shall have seventy-two (72) hours to commence the cure of such condition.

8.3 Costs of Enforcement. Subject to the limitations to the provisions of 8.6 below, 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.

8.4 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 Management Agreement in the event of any breach of any term of this 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.

8.5 Acts Beyond Control of KB HOME, ASSOCIATION and SDHC. Nothing contained in this Agreement shall be construed to entitle any party, person, entity or agency to bring any action against KB HOME, ASSOCIATION, their successor's and assigns, or SDHC (collectively, Responsible Parties"), nor shall SDHC be deemed in violation of its obligations herein, in the event there is 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 City or any other governmental agencies and their employees, directors, officers, agents, contractors, or representatives. Neither KB HOME, ASSOCIATION nor SDHC shall have any obligation to anticipate or attempt to prevent any of the events described in this paragraph except as specifically set forth herein.

8.6 SDHC Violation. Any liability of SDHC resulting from a violation of this agreement or acts of omission of SDHC on or about the Operated Property shall be limited as follows:

- (a) Liability for damages shall be limited to acts or omissions covered by the Insurance Policy obtained by SDHC to the coverage limits of the policy, except as described in Section 8.6(c);

(b) If a violation arises from an intentional act by or the gross negligence of 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 City 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 successor, non-profit entities, if any, and shall not be interpreted to apply to an assignee of SDHC without the prior approval of the City.

(e) Nothing in this Section shall be interpreted to impose any liability on KB HOME or ASSOCIATION.

9. Warranties and Representations of KB HOME and ASSOCIATION.

9.1. KB HOME 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 KB HOME to the execution date of this Agreement, neither KB HOME nor any principal of KB HOME has deposited, spilled, disposed of or accumulated on or under the Operated Property, any material amount of Hazardous Materials;

(b) To the actual knowledge of KB HOME, it is not aware of any Hazardous Materials upon the Operated Property;

(c) To the actual knowledge of KB HOME, it is not aware 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 KB HOME 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) To the actual knowledge of KB HOME, it is not aware of any monitoring program required by the Environmental Protection Agency (EPA) or any similar state agency concerning the Operated Property;

(e) Neither KB HOME nor the principals of KB HOME have ever used the Operated Property as a dump or landfill, and to the actual knowledge of KB HOME, the Operated Property has not been used, as a dump or landfill;

(f) To the actual knowledge of KB HOME, it has disclosed to SDHC all information, records, and studies maintained by KB HOME in connection with the Operated Property concerning any possible violation of law and presence of Hazardous Materials;

(g) To the actual knowledge of KB HOME, it is not aware 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) To the actual knowledge of KB HOME, except as disclosed to SDHC in the Title Reports (listed in Section 2.6, or otherwise in writing, there are no leases, licenses, or other agreements allowing any third party rights to use the Operated Property;

(i) To the actual knowledge of KB HOME, it is not aware of any pending or threatened litigation, administrative proceeding, or other legal or governmental action with respect to the Operated Property;

(j) To the actual knowledge of KB HOME, it is not aware 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 the actual knowledge of KB HOME, any information that KB HOME has delivered to SDHC, either directly or through KB HOME's agents, is accurate and KB HOME has disclosed all material facts with respect to the Operated Property;

(l) KB HOME is a California corporation organized under the laws of the State of California and is in good standing or authorized to do business under the laws of the State of California;

(m) KB HOME has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby;

(n) All requisite action (corporate, trust, partnership or otherwise) has been taken by KB HOME in connection with entering into this Agreement and the instruments referenced herein, and the consummation of the transactions contemplated hereby;

(o) The individuals executing this Agreement and the instruments referenced herein have the legal power, right and actual authority to bind the respective Parties to the terms and conditions hereof and thereof; and.

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

For the purposes of this Section 10.1, the "actual knowledge of KB HOME shall mean the actual cognizant knowledge of Michael Freeman, Vice President of Forward Planning and Land, without investigation or duty to investigate.

9.2. ASSOCIATION 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 ASSOCIATION to the execution date of this Agreement, neither ASSOCIATION nor any officer or director of ASSOCIATION has deposited, spilled, disposed of or accumulated on or under the Operated Property, any material amount of Hazardous Materials;

(b) It is not aware of any Hazardous Materials upon the Operated Property;

(c) It is not aware 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 ASSOCIATION 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) It is not aware of any monitoring program required by the Environmental Protection Agency (EPA) or any similar state agency concerning the Operated Property;

(e) Neither ASSOCIATION nor its officers or directors have ever used the Operated Property as a dump or landfill, and to the best of ASSOCIATION's knowledge and belief, the Operated Property has not been used, as a dump or landfill;

(f) It has disclosed to SDHC all known information, records, and studies maintained by ASSOCIATION in connection with the Operated Property concerning any possible violation of law and presence of Hazardous Materials;

(g) It is not aware 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 Title Reports (listed in Section 2(f)), or otherwise in writing, there are no leases, licenses, or other agreements allowing any third party rights to use the Operated Property;

(i) It is not aware of any pending or threatened litigation, administrative proceeding, or other legal or governmental action with respect to the Operated Property;

(j) It is not aware 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) ASSOCIATION is a California corporation organized under the laws of the State of California and is in good standing or authorized to do business under the laws of the State of California;

(l) ASSOCIATION has the legal power, right and authority to enter into this Agreement and the instruments referenced herein, and to consummate the transactions contemplated hereby;

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

9.3. The individuals executing this Agreement and the instruments referenced herein have the legal power, right and actual authority to bind the respective Parties to the terms and conditions hereof and thereof. This Agreement and all documents required hereby to be executed by the respective Parties are and shall be valid, legally binding obligations of and enforceable against the respective Parties in accordance with their terms.

10. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and be served personally, by email if such email notice is acknowledged by the recipient, or sent by first class mail, postage prepaid or sent by facsimile, as follows:

To SDHC: San Diego Habitat Conservancy
2770 Historic Decatur Road, Suite 205
San Diego, CA 92106
Attention: Don Scoles
Telephone: (619) 365-4839
Facsimile: (619) 810-0552

With a copy to: William L. Fischbeck
Fischbeck & Oberndorfer, apc
5464 Grossmont Center Drive, Third Floor
La Mesa, CA 91942
Telephone: (619) 464-1200
Facsimile: (619) 464-6471

To KB HOME: KB HOME COASTAL Inc.
36310 Inland Valley Drive
Wildomar, CA 92595
Attention: Division President
Telephone: (951) 691-5300
Facsimile: (951) 600-0136

With copy to: KB Home
Attn: Stan Koyanagi, Esq.
10990 Wilshire Blvd
Los Angeles, CA 90024
Telephone: (310) 231-4000
Facsimile: (310) 231-4280

To ASSOCIATION: Montelena Owners Association
c/o Balacent
PO Box 5117
Oceanside, CA 92052 Attention: Charane
Kummelehne
Telephone: 760/271-9668
Facsimile: 760/479-5913

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.

12. Miscellaneous.

12.1. 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 effect 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.

12.2. 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 KB HOME and the City; such consent shall not be unreasonably withheld.

12.3. 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 of the parties in order for the same to be binding upon the parties.

12.4. 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.

12.5. 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.

12.6. 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.

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

12.8. Subsequent Transfers. From and after the execution of this Agreement, the fee title interest in the Operated Property shall not be transferred, voluntarily or by operation of law, other than to an entity that is approved by the City. SDHC reserves the right to terminate this Agreement and enter into a new agreement should the property transfer.

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

12.10. Modification. This Agreement may not be modified except by a written amendment, executed by all the parties to this Agreement, or their successors.

12.11. City. The City is a third-party beneficiary of this Agreement and is entitled to enforce the terms hereof.


SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties hereto have executed this Agreement:


ATTEST:

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

By: _____
Name: _____
Title: _____

By:  _____
Date: 3/20/14


By: _____
Name: _____
Title: _____

By:  _____
Date: 3/20/14

ATTEST:

MONTELENA HOMEOWNER'S ASSN.

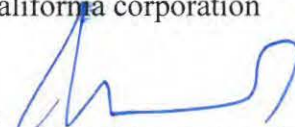
By: _____
Name: _____
Title: _____

By:  _____
Date: 3-5-2014

ATTEST:

KB HOME COASTAL INC.,
a California corporation

By: _____
Name: _____
Title: _____

By:  _____
Date: _____