CONSERVATION BANK IMPLEMENTATION AGREEMENT
FOR THE
THE DALEY RANCH CONSERVATION BANK

This Daley Ranch Conservation Bank Implementation Agreement ("Agreement") is made this 23rd day of January, 1997 by and between the CITY OF ESCONDIDO, a municipal corporation (the "City"), the STATE OF CALIFORNIA DEPARTMENT OF FISH AND GAME ("CDFG"), and the UNITED STATES, acting by and through the FISH AND WILDLIFE SERVICE OF THE DEPARTMENT OF THE INTERIOR ("USFWS"). CDFG and USFWS are to be referred to jointly as the "Wildlife Agencies" and City, CDFG and USFWS are to be referred to jointly as the "Parties." The purpose of this Agreement is to establish the terms and conditions for establishing a conservation bank on certain real property to be owned by City and to be known as the "Daley Ranch Conservation Bank" or "Conservation Bank."

RECOLALS

A. City expects to acquire that certain real property located in the City and County of San Diego, California more particularly described in Exhibit A attached hereto (the "Property") and located regionally as shown on the map attached hereto as Exhibit B (the "Property Location and Cismontane San Diego County Credit Area Map" or "Credit Area").

B. The Property is currently owned by Shea Homes Limited Partnership, a California limited partnership ("Shea").

C. Under the California Endangered Species Act, California Fish and Game Code Section 2050 et seq. ("CESA"), California Fish and Game Code Section 1802, and other State laws, CDFG has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. CDFG is also the manager and trustee of fish and wildlife resources and their habitat pursuant to California Fish and Game Code Section 1802.


E. As illustrated in Exhibit C ("Biological Resource Map"), the Property is a large block of undeveloped land with substantial amounts of native habitat. The vegetation on the
site is predominately Southern Mixed Chaparral (1956.4 acres), and contains 384.1 acres of Diegan Coastal Sage Scrub, and approximately 250 acres of oak woodlands, including 84 ± acres of Englemann oak woodlands. (This represents a substantial stand of Englemann oak, a species largely confined to San Diego County.) The site also includes 41.3 acres of wetlands. The site supports two plant species regarded as regionally significant by the California Native Plant Society: ashy spike moss and Englemann oak. Among sensitive wildlife species, the site supports a large population of Harbinson’s dun skipper butterfly (previously recognized as a federal Category 2 Species). It also supports several amphibian and reptile species considered sensitive: western spadefoot toad, orange-throated whiptail, coastal western whiptail, San Diego horned lizard, two-striped garter snake, coastal rosy boa and northern red-diamond rattlesnake. Of the sensitive species of birds found during the surveys conducted in the Spring of 1991 by Michael Brandman Associates, biologists, the California gnatcatcher was observed twice, but may not be resident on the site. Other sensitive species of birds observed include: double-crested cormorant, great blue heron and Southern California rufous-crowned sparrow. In addition, seven species of raptorial birds were observed on the site.

F. Establishment of the Daley Ranch Conservation Bank represents an excellent opportunity to implement the ongoing regional biological resource planning efforts in San Diego County by conserving highly valuable resources within an area which is recognized as an essential part of a regional biological preserve system. More specifically, the Property is strategically located in a core biological area and regional preserve area of San Diego County’s proposed Multiple Habitat Conservation Program (“MHCP”).

G. In the context of regional native habitat distribution, the Property represents a critical core biological area for north-central inland San Diego County. The Property links the area north of Escondido to critical native habitats to the northwest, northeast and east. The large size and location of the Conservation Bank would substantially increase the viability of a functional Natural Community Conservation Plan (“NCCP”) /Habitat Conservation Plan in the City and the surrounding unincorporated area as a part of the MHCP.

H. It is anticipated that construction and development activity within the Cismontane San Diego County Credit Area as shown on Exhibit B will necessitate the mitigation of impacts caused thereby to endangered, threatened and sensitive species and biologically sensitive habitats through the preservation of off-site lands which possess similar or comparable habitat values. (See Exhibit C Biological Resources Map for habitat values associated with the Property.)

I. On the terms and conditions hereinafter provided, the Parties desire to establish a Conservation Bank with respect to portions of the Property (shown as Area III on the "Area Map" attached hereto as Exhibit D) in order to provide for the conservation in perpetuity of such portions of the Property, the use of such land as mitigation, as provided in Recital H above, and the sale of Conservation Bank credits ("Credits") initially by City as provided in
Section 3 below to third party purchasers ("Credit Purchasers") in need of such mitigation.

J. The Parties desire to enter into this Agreement to set forth the terms and conditions pursuant to which the Conservation Bank will be established and implemented.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:


(a) Under this Agreement, the Daley Ranch Conservation Bank shall be dedicated for conservation purposes as follows: (i) the portions of the Property identified on the Area Map as Area III, shall be preserved and managed by City for such uses as are permitted under Area III of the "Land Use Compatibility Matrix" or "Matrix" attached as Exhibit E; (ii) the portions of the Property identified on the Area Map as Area II, shall be preserved and managed by City for such uses as permitted under Area II of the Matrix; and (iii) the portions of the Property identified on the Area Map as Area I shall be preserved and managed for such uses as permitted under Area I of the Matrix. In exchange for permanent protection and management of the biological resources, this Agreement will allow the sale of Credits associated with Area III, (as described in Recital I) to mitigate development impacts and compensate for the loss of sensitive biological resources within the Credit Area.

(b) On the "Effective Date" hereof, as defined in Section 21, City shall convey to The Trust for Public Land, a California nonprofit public benefit corporation ("TPL"), a conservation easement covering the Property in the form attached hereto as Exhibit F (the "Conservation Easement," with its Exhibit A legal description and Exhibit C "Assignment of Conservation Easement Grant and Agreement" or "Assignment" attached). Within one (1) week of the Effective Date, TPL shall cause a conformed copy, as recorded, of the Conservation Easement and original Assignment, executed by TPL, to be delivered to CDFG, with copies to USFWS. City has delivered to CDFG and USFWS a copy of Title Commitment No. 997745-C 50, dated December 12, 1996, issued by Chicago Title Company (the "Title Commitment"). Within one (1) week of TPL's receipt of the title insurance policy obtained by-TPL for its acquisition of the Conservation Easement, TPL shall deliver a copy thereof to the Wildlife Agencies. To the best of its knowledge, City has disclosed to CDFG and USFWS all the title exceptions, including any existing record and off-record rights of way, easements, and encumbrances affecting the Property. The Wildlife Agencies shall review and approve the condition of title to the Property prior to the Effective Date hereof. Notwithstanding the Wildlife Agencies' execution of this Agreement prior to the Effective Date, this Agreement shall not be binding upon the Wildlife Agencies until the Wildlife Agencies approve the condition of title. Subject to said approval of title and the
approval of the California Fish and Game Commission of the acquisition of the Conservation Easement through the Assignment by TPL, CDFG shall record the Assignment with the San Diego County Recorder’s Office within three (3) months of the Effective Date. If the Assignment is not accepted by CDFG and recorded within said three (3) month period, any other assignment and conveyance of the Conservation Easement by TPL shall be subject to the prior written consent of City and the Wildlife Agencies. From the Effective Date hereof, the City shall own, use and manage the Property in accordance with the terms and conditions of this Agreement and the Conservation Easement. The Conservation Easement is intended to conserve the Property’s biological values in perpetuity in a manner consistent with this Agreement.


(a) Representatives of the Wildlife Agencies have inspected and evaluated the Property for purposes of determining its biological values in connection with the sale of Credits. As a result of the benefits accruing to wildlife resources, including sensitive, endangered and threatened species and their habitat, upon the establishment and dedication of the Conservation Bank for conservation purposes and the recordation of the Conservation Easement, the Wildlife Agencies acknowledge and agree that, as described in Recitals E., F. and G., the Property as a whole possesses biological values which support Credits acknowledged in Section 2(b) and is acceptable to serve as either in-kind or out-of-kind mitigation, subject to the terms and conditions of this Agreement, on a one acre for one credit basis, for adverse biological impacts to land within the Credit Area possessing similar or comparable habitat values. The eligibility of individual development projects to use Credits will be determined by the Wildlife Agencies on a case by case basis during the environmental review process for each project. Out-of-kind or generic mitigation may be approved by the Wildlife Agencies on a case by case basis.

(b) The Credits will be deemed acknowledged and approved by the Wildlife Agencies upon the Effective Date of this Agreement. The Parties acknowledge that the Agreement may be amended in the future as provided for in Section 11 by the Wildlife Agencies and City to reflect a mutually agreed upon process to increase the number of Credits by inclusion of additional lands.

(c) The Wildlife Agencies have determined that the Conservation Bank is generally suitable to mitigate for impacts to certain sensitive and declining vegetation types, habitat for certain species designated endangered or threatened under CESA or ESA, certain rare or sensitive species and multi-species habitat values within the Credit Area. Highly sensitive habitats that are unrepresented at the Bank site, coastal obligate species, and certain rare endemic and/or listed species, as specifically determined by the Wildlife Agencies, including but not limited to California gnatcatcher inhabited lands, may not have similar or comparable habitat values and, therefore, may not be appropriately mitigated at the Conservation Bank. Upon the request of a project proponent or a lead agency, the Conservation Bank’s suitability for mitigation of potential adverse environmental impacts of
specific proposed projects, and the necessary number and type of Credits to mitigate such impacts, shall be determined by the Wildlife Agencies during environmental review of the project pursuant to the California Environmental Quality Act, Public Resources Code section 21000, et seq., the National Environmental Policy Act, 42 U.S.C. section 4321 et seq, or the Endangered Species Act and, as appropriate, under the Clean Water Act.

(d) The Parties acknowledge that various Natural Community Conservation Planning Act, Fish and Game Code section 2800, et seq., plans ("NCCP’s") and Endangered Species Act §10(a)(2)(A) habitat conservation plans ("HCP’s") covering all or part of the Credit Area (collectively or individually referred to hereinafter as "NCCP/HCP") may be adopted or approved by the applicable Wildlife Agency. Once an NCCP/HCP is approved, and for so long as it is in effect, the NCCP/HCP shall, for projects within its ambit that are within the Credit Area, govern the number and type of Credits necessary to mitigate biological impacts to endangered, threatened or sensitive species and habitats covered by the NCCP/HCP. As used herein, the term "NCCP/HCP" specifically includes the proposed MHCP Subregional Plan, the proposed Escondido Subarea Plan and other subarea plans now or hereafter proposed. The Parties intend that Credits may also be used to satisfy mitigation requirements in accordance with other habitat conservation plans approved by the Wildlife Agencies.

(e) It is agreed that one Credit represents one acre of suitable mitigation land for biological impacts within the Credit Area, subject to the following requirements:

(i) For development projects located outside the ambit of an approved NCCP/HCP, the Wildlife Agencies, consistent with their legal authority, shall, subject to Section 2(c), establish the number and type of Credits required to mitigate biological impacts.

(ii) For development projects located within the ambit of an approved NCCP/HCP, the NCCP/HCP mitigation requirements will control the appropriate number and type of Credits required to mitigate biological impacts to endangered, threatened or sensitive species and habitats; and

(iii) Development projects impacting wetland areas shall be subject to permitting as described in Section 3(f) below.

(f) Nothing in this Agreement shall be construed to restrict or limit any member of the public affected by the MHCP Subregional Plan and the Escondido Subarea Plan in giving input or commenting upon the adoption of the MHCP Subregional Plan and the Escondido Subarea Plan.

3. Credits.

(a) Subject to Sections 5(c), 5(f)(A) and 11, the Conservation Bank shall have
a total of 2,842 Credits associated with Area III, as identified on the Area Map.

(b) City shall have the right to use and/or sell its Credits. Credits shall each be distributed amongst the different habitat components in the distribution described in Exhibit G ("Initial Distribution of Credits").

(c) City shall have the exclusive right to independently determine the price for any and all of its Credits offered for sale or conveyance.

(d) Credit Purchasers shall include those third party purchasers who acquire their Credits from City and from successive Credit Purchasers. Credit Purchasers shall be entitled to sell Credits to other Credit Purchasers and shall have the exclusive right to independently determine the price for any and all of their respective Credits offered for sale or conveyance. The City and each initial Credit Purchaser purchasing from it, and all successor Credit sellers and Credit Purchasers shall execute a Conservation Credit purchase agreement and acknowledgment (i) which shall evidence the transfer of the applicable Credits and the development project to which the Credits apply, if any is then known, and (ii) which shall recite that the subject transaction and that any subsequent transaction shall be reported by the Credit Purchaser to City in the form set forth in Section 4(a) below within two (2) weeks of the transaction, so that it may be entered in the "Ledger" described in Section 4(a) below.

(e) The Credits shall be used for mitigation of similar or comparable habitat values on a one credit per acre basis as provided in Section 2 of this Agreement. The Credits are divided into five categories (as described in Exhibit G) based on corresponding and comparable habitat values, as follows:

(i) Englemann Oak Woodland;

(ii) Coast Live Oak Woodland;

(iii) Chaparral and Coastal Sage Scrub;

(iv) Non-native Grassland, Disturbed Habitat; and

(v) Freshwater Marsh, Pond, Wet Meadow, Riparian Scrub, Willow Scrub (each constituting wetland habitat associated with "wetland credits" as referred to below).

(f) The use of any of the "wetland credits" within the Conservation Bank will be subject to permitting and mitigation requirements of Section 404 of the federal Clean Water Act and Section 1600 of the Fish and Game Code (Stream bed Alteration Agreement), and shall be "in-kind" mitigation resulting in no net loss of wetland acres, function and values.
(g) If the Wildlife Agencies approve an MHCP or similar subregional plan covering all or any part of the Credit Area, and that plan uses habitat categories different than those set forth herein, then, at the request of City, the Credits held by City will be reallocated in accordance with such different habitat categories.

4. Conservation Bank Transactions. The sale or conveyance of Credits shall be monitored and accounted for in the following manner:

(a) City shall establish and maintain a database for purposes of tracking the conveyance of Credits to Credit Purchasers and the application of Credits to development projects (the "Ledger"). City's Ledger maintenance obligation shall continue until the issuance of the final annual report to the Wildlife Agencies described in Section 4(e). City and the Wildlife Agencies shall not be required to recognize the ownership or authenticity of any Credits unless the Credit Purchasers have registered their acquisition of Credits with the City, which registration shall consist of providing City with a signed and notarized statement of the Credit transaction parties indicating: (i) the name of the person/entity receiving the Credits; (ii) the number of Credits sold; (iii) the effective date of the transfer; and, in the event the Credits have been or will be applied to a development project as set forth in Section 4(d), (iv) the name of the development project, if known; and (v) the date of application of the Credits to the project, if known. If the specific development project to which the Credits are to be applied is not known at the time the Credit Purchaser files the statement with City set forth above, the Credit Purchaser shall notify City and the Wildlife Agencies in writing when the Credit Purchaser identifies the development project to which it intends to apply its Credits. City shall not make any changes in the Ledger with respect to ownership or application of Credits, without having first received the aforesaid statement(s).

City agrees to accurately account in the Ledger for its own transactions, and third party transactions and Credit applications for which it receives notice in the form required herein, provided however, City shall have no liability for damages for errors in the Ledger. Neither City nor Wildlife Agencies shall have liability or responsibility for the accuracy or completeness of any information provided to City by third parties and entered into the Ledger. City may rely on any statement or notice as aforesaid provided to City with respect to the Credits and shall have no duty or obligation to confirm or inquire as to the accuracy of same. Wildlife Agencies may rely on the information contained in the Ledger and notices provided to it by City and shall have no duty or obligation to confirm or inquire as to the accuracy of same. A record of the ownership of the Credits shall be evidenced by entries in the Ledger, which entries shall include, to the extent City receives written notice thereof in the form required-herein, the number of Credits sold, effective date of the transfer, the name of the person/entity receiving the Credits and, in the event the Credits are applied to a development project as set forth in Section 4(d) and the City has received written notice thereof from the Credit Purchaser, the Ledger entry shall contain the name of the development project and the date of application of the Credits to the specific project. City shall make the Ledger available to the Wildlife Agencies upon written request and shall make annual reports to the Wildlife Agencies with respect thereto as set forth in Section 4(c).
(b) Each Credit Purchaser shall be solely responsible for verifying both the ownership of the Credits it is purchasing, and the status of the Credits, with respect to application to a development project and, except with respect to City’s sale of their own Credits to Credit Purchasers, City shall not be liable to the Wildlife Agencies, to any Credit Purchaser or to any other person or entity with respect to the accuracy of Credit ownership or other matters contained in, or evidenced by the Ledger, nor shall the Wildlife Agencies be liable to City or any Credit Purchaser or to any other person or entity with respect to the accuracy of Credit ownership or other matters contained in or evidenced by the Ledger. Except with respect to City’s sale of their own Credits to Credit Purchasers, City shall have no liability in connection with any disputes regarding the validity or priority of a sale of Credits, nor shall the Wildlife Agencies have any liability or responsibility in connection with any disputes regarding the validity or priority of a sale of Credits.

(c) City shall provide the Wildlife Agencies with a record upon receipt of notice of each transaction, including, to the extent the City has received written notice thereof, the name of the purchaser, the number of Credits purchased by habitat type, and, as applicable, the specific development project to which the Credits are intended to be applied, and the endowment received, if any, (as described in Section 6). However, a failure by City to provide a record to the Wildlife Agencies upon completion of each transaction shall not affect City’s, or any subsequent Credit Purchaser’s ability to sell their Credits, provided the City or such Credit Purchaser have not exceeded the Credits owned by such party. An annual report will be provided to the Wildlife Agencies which shall include a summary of the year’s transactions and a table indicating, with respect to Credits for which City received notice, the number and type of Credits sold to date, the number and type of Credits applied to development projects, the names of the development projects, the balance of the Credits remaining to be sold, if any, and the total amounts paid to the "Endowment Fund" and the "Restoration Fund," as defined in Sections 6 and 7, respectively, if any, during the prior calendar year and the balance of said Funds. The report, covering a calendar year, shall be provided by March 1 following the close of each year. The Wildlife Agencies shall have forty-five (45) days to review and approve or comment on the report. If no comment on the report is received by City within said forty-five (45) day period, the report shall be deemed approved by the Wildlife Agencies.

(d) The Credits may be "applied" to a specific development project for mitigation purposes, only upon: (i) the transfer of such Credits to the user of same; (ii) the application and use of the Credits for a development project for mitigation in compliance with Sections 2(c) and 2(e); and (iii) notice to City and the Wildlife Agencies as set forth in Section 4(a). Unless the Wildlife Agencies otherwise consent, after application of the Credits to a specific project as evidenced in the Ledger, the Credits may not be sold or transferred, except as an integral part of the development project to which the Credits were actually applied and used.

(e) The Ledger shall be maintained until the annual report following the application to a development project of the last outstanding Credit and confirmation of same
by the Wildlife Agencies.


(a) City, or its successors or assigns, shall oversee, manage, and maintain Conservation Bank lands in perpetuity, in accordance with the terms and obligations, and subject to the limitations, of this Agreement and the Conservation Easement. City’s management obligations shall include using reasonable efforts to prevent third party use of the Property in a manner not permitted under this Agreement or the Conservation Easement.

(b) Within one (1) year of the Effective Date of this Agreement, City shall complete a long-term management plan ("Management Plan") for the Conservation Bank lands including the components identified in Exhibit H ("Required Components of the Long-term Management Plan"). The Management Plan shall be consistent with the Land Use Compatibility Matrix. Upon completion, the Management Plan shall be submitted to the Wildlife Agencies for approval, which approval shall not be unreasonably withheld. Within one (1) month of receiving the Management Plan, CDFG and USFWS shall each notify City in writing that the Management Plan is approved or arrange a meeting with the City to discuss any deficiencies in the Management Plan and to identify potential remedies.

(c) City shall implement the Wildlife Agencies-approved Management Plan in accordance with the terms of the Conservation Easement and this Agreement. The Wildlife Agencies acknowledge and agree that all uses of, and modifications to, the Property required by law or regulation, and all easements, rights of way and other use rights affecting the Property, and in existence as of the Effective Date consisting of the following: (i) as identified in the Title Commitment; (ii) those certain off-record rights or claims disclosed by City to the Wildlife Agencies (being all of said rights outstanding to the best of City’s knowledge); (iii) that certain "Right of First Offer Agreement" between City and Shea, dated January 23, 1997 and recorded immediately after the Conservation Easement; and (iv) those certain access easements provided by City to the Wildlife Agencies for review and approval prior to the Effective Date; (collectively, the "Existing Rights"), shall be permitted notwithstanding the fact that they are not specifically referred to in the Matrix. In the event that the lawful use of Existing Rights causes a significant, detrimental impact on the habitat value of the mitigation lands within the Conservation Bank, the Credits still owned by City corresponding to the impacted acreage at the time of impact, may be reduced by the Wildlife Agencies in accordance with Section 5(f) below. In consultation with the Wildlife Agencies, City, to the extent of its discretionary authority over Existing Rights, will use reasonable efforts to minimize adverse effects of Existing Rights to the natural habitat and biological values of the Property.

(d) Prior to the development of the Management Plan, the Property shall be managed in accordance with the interim management plan attached as Exhibit I ("Interim Management Plan") and the Conservation Easement. The Matrix, the Interim Management Plan, Required Components of the Long-Term Management Plan and the Management Plan...
may be collectively referred to herein as the "Management Plans".

(e) Public recreational uses shall be permitted to the extent that the uses are compatible with the goals of the Conservation Bank and the Conservation Easement but, in any event, as permitted in the Management Plans.

(f) The Wildlife Agencies shall have the right to inspect the Property, upon 48 hour notice to City, to confirm that the Property is being managed in accordance with this Agreement and the Conservation Easement. If the Wildlife Agencies determine that City is in material breach of the land management obligations of this Agreement (including the Management Plans) and/or the Conservation Easement, both of the Wildlife Agencies shall give written notice to City of such breach and request corrective action sufficient to cure the breach and, where the breach involves substantial damage to the Property, subject to the limitation on City's financial obligation, as set forth below in this Section 5(f) and in Section 7, to restore the portion of the Property so injured.

If City fails to cure the breach within a reasonable time after receipt of notice thereof from the Wildlife Agencies, or fails to begin curing such breach within one (1) month of the notice, or fails to continue diligently to cure such breach until finally cured or, in lieu of the foregoing, fails to provide the Wildlife Agencies with satisfactory assurance that the breach will be cured and the habitat value restored, subject to the limitation on City’s financial obligation, as set forth below in this Section 5(f) and in Section 7, and the effect of such breach has been to eliminate or substantially degrade or (with respect to obtaining a temporary or permanent injunction as provided in subparagraph (B) below) threatens to imminently eliminate or substantially degrade the habitat values of Areas II and/or III as described in the document titled "Draft Resources Assessment for Daley Ranch, Escondido," dated October 1995, and prepared by Michael Brandman Associates for the Property, subject to subsection (h) below, then the Wildlife Agencies may elect, in their sole discretion, to pursue any one or a combination of the following remedies (which, if in combination, shall be in a reasonable apportionment, so as not to cause duplicative remedies) by commencing an action in law or in equity in a court of competent jurisdiction:

(A) to obtain a judgment authorizing an appropriate reduction of the number of unsold City Credits allocated to the Conservation Bank for the damaged area within Area III, provided, however, that in no event shall such reduction exceed the number of Credits allocable to the aggregate acreage of such damaged area; and/or

(B) to enforce the terms of this Agreement and/or the Conservation Easement, to enjoin the breach, by temporary or permanent injunction, and/or to require the restoration of the Property, provided that, in no event shall City be required to expend funds in excess of the limitation on City’s financial obligation, as set forth below in this Section 5(f) and in Section 7, to comply with any order requiring restoration or to comply with any other order directly or indirectly requiring the expenditure of funds by City in connection with enjoining a breach under, or
otherwise enforcing the terms of this Agreement and/or the Conservation Easement; and/or

(C) require City to offset the negative impacts of such uses or activities through off-site mitigation or on-site restoration, provided that, in no event shall City be required to expend funds in excess of the limitation on City’s financial obligation, as set forth below in this Section 5(f) and in Section 7.

Except as otherwise provided by law for criminal acts, the Wildlife Agencies agree that the provisions of this Section 5(f), and Section 5 of the Conservation Easement shall constitute their sole remedies in the event of breach of this Agreement or the Conservation Easement by City. It is the intent and agreement of the Parties that City’s liability for any costs or expenses required to be incurred or expended by City hereunder and under the Conservation Easement or in connection with the enforcement hereof and the Conservation Easement, shall not extend beyond the loss of Credits, expenditure of the interest earned on the "Endowment Fund," as set forth in Section 6 and the expenditure of the "Restoration Fund," as set forth in Section 7, for restoration and/or for off-site mitigation set forth in Section 5(f)(C) (subject to the financial limitations therein).

(g) Subject to Section 5(f), above, enforcement of the terms of this Agreement and the Conservation Easement may be pursued against City jointly or individually by the CDFG and the USFWS and shall be at the discretion of the Wildlife Agencies, and any forbearance by the Wildlife Agencies to exercise their rights under this Agreement and/or the Conservation Easement in the event of any breach by City shall not be deemed or construed to be a waiver by the Wildlife Agencies of such term or of any subsequent breach of the same or any other term of this Agreement or the Conservation Easement.

(h) Nothing contained in this Agreement or in the Conservation Easement shall be construed to entitle the Wildlife Agencies to bring an action against City, for any injury to or change in the Property resulting from any cause beyond City’s reasonable control, including, without limitation, strikes, riots, shortages of labor, governmental laws or regulations, acts of God, including fire, flood, storm, insect infestation, disease and earth movement, or from any reasonable action taken by City to prevent, abate, or mitigate significant injury to the Property resulting from such causes, provided that, promptly after the cessation of any of the aforesaid force majeure events, City uses reasonable efforts to restore any damage to the Property resulting therefrom, subject to the limitation on City’s financial obligation respecting use of the "Restoration Fund" described in Section 7 below. In the event City fails to apply the funds from the Restoration Fund to carry out its restoration obligation, the Wildlife Agencies shall have the right to use the remedies set forth above, in Section 5(f)(A), (B) and (C). Notwithstanding the foregoing, when the force majeure event constitutes an act of God (e.g. fire from any cause, flood, storm, earth movement or insect infestation), restoration of the Property shall not be required, nor Credits canceled or reduced, unless the Wildlife Agencies, in their reasonable discretion, have
determined that restoration is biologically necessary, and City shall have failed to use reasonable efforts to promptly restore the Property, subject to the limitation on City’s financial obligation respecting use of the Restoration Fund. In the aforesaid circumstances, if City fails to apply available monies from the Restoration Fund to carry out its restoration obligation, the Wildlife Agencies shall have the right to use the remedies set forth above, in Section 5(f) (A), (B) and (C).

(i) It is understood by the Wildlife Agencies that no enhancement, such as habitat restoration of the Conservation Bank lands, is required by this Agreement except as set forth in Sections 5(f) and 5(h) hereof and in Section 5 of the Conservation Easement, with respect to certain damage to the Property and protected habitat. Habitat enhancement and restoration to increase Credits is permissible under this Agreement. All habitat enhancement and/or restoration required or permitted under this Agreement and/or the Conservation Easement shall be coordinated between City and the Wildlife Agencies.

6. Endowment Fund. Long-term management efforts shall be funded by City through interest earned on an endowment established incrementally through the sale of City’s Credits (the "Endowment Fund"). The Endowment Fund shall be maintained in perpetuity so that the interest earned thereon will be available to use for the management and maintenance of the Conservation Bank lands in accordance with this Agreement and the Conservation Easement. The principal amount of the Endowment Fund shall be invested by City only in those investments as permitted to be made by institutional trustees acting as fiduciaries in California. The interest earned thereon shall be used exclusively to fund City’s land management obligations under this Agreement and the Conservation Easement unless otherwise approved by the Wildlife Agencies in writing. The sum of Five Hundred Dollars ($500.00) per Credit sold by City, excluding the Two Hundred (200) Credits being transferred by City to Shea as of the Effective Date, (the "Dedicated Endowment"), shall be applied within one (1) month of the Credit transfer to the Endowment Fund. The Endowment Fund shall be fully funded only upon sale of City’s last Credit. During the period between establishment of the Conservation Bank and the sale of the first Credits, no endowment fund will be required. Until full funding of the Endowment Fund, City shall remain obligated to manage the Property in accordance with this Agreement and the Conservation Easement, provided that City shall not be obligated to expend more than Eighty Thousand Dollars ($80,000.00) per year, less any interest earned on and expended from the Endowment Fund, to fulfill its management obligations under this Agreement and the Conservation Easement. After the first year, said amount shall be subject to adjustment equal to any changes in the Consumer Price Index. City may elect, in its sole discretion, to contribute additional monies to the Endowment Fund. However, City shall not be required to fund or contribute any additional monies to the Endowment Fund except for the Five Hundred Dollar ($500.00) Dedicated Endowment payment described above. City agrees that, City shall give priority to the use of interest on the Dedicated Endowment for items 2, 4, 6, 7, and 8 of the Required Components of the Long-term Management Plan. City reserves the right to apply an additional amount of Credit sales to the Endowment Fund and shall use the interest earned on said additional funds to manage and maintain the
Conservation Bank lands in accordance with this Agreement and the Conservation Easement unless otherwise approved by the Wildlife Agencies in writing.

7. Restoration Fund.

(a) Fifty percent (50%) of the balance of the sales proceeds of City’s Credits, after deducting the required minimum amount set forth in Section 6 for the Dedicated Endowment, shall be applied to a fund to finance City’s obligations with respect to restoration of the Property, and/or any other liability or mitigation obligation of City under this Agreement and the Conservation Easement (the "Restoration Fund"). At the City’s request, the Wildlife Agencies may, by joint written agreement, permit the principal balance of the Restoration Fund to be used for other purposes, provided in that event, and until City replaces in the Restoration Fund any portion of the principal used for other purposes, City’s liability for obligations set forth below shall not be limited to the monies actually held in the Restoration Fund, but shall be limited to One Million Dollars ($1,000,000.00), the amount set forth below as the maximum aggregate Restoration Fund obligation.

(b) When, and for so long as, the Restoration Fund has a principal balance of at least Five Hundred Thousand Dollars ($500,000.00), City shall not be required to make payments to the Restoration Fund. If the event City shall incur a restoration obligation, liability, or mitigation obligation under the terms of this Agreement, or the Conservation Easement, City shall first apply any existing interest earned on and then available in the Restoration Fund in excess of the Five Hundred Thousand Dollar ($500,000.00) minimum balance set forth above to such obligation or liability, then shall apply the principal balance of said Fund. After such application of principal funds, the Restoration Fund shall be replenished, to its Five Hundred Thousand Dollar ($500,000.00) minimum, with fifty percent (50%) of the sales proceeds of any remaining, unsold City Credits and with interest earned on the principal balance of the Restoration Fund. Prior to the sale by City of its final 250 Credits, City shall provide written notice thereof to the Wildlife Agencies and City and the Wildlife Agencies shall confer as to whether the Five Hundred Thousand Dollar ($500,000.00) Restoration Fund is sufficient to meet the then identifiable restoration requirements of the Property. If the Wildlife Agencies reasonably determine that the Restoration Fund needs to be adjusted to meet then identifiable restoration needed for the Property, then the Wildlife Agencies may require that a percentage (not to exceed fifty percent (50%)) of the sales price for the final 250 Credits to be sold by the City be applied to increase the principal balance of the Restoration Fund as to the amount reasonably required to meet such identifiable restoration needs. In no event shall the additional sales proceeds required to increase the Restoration Fund as provided above, together with (i) the initial funding of the Restoration Fund, (ii) any subsequent replenishment required hereunder, and (iii) any interest which City has permitted to be retained in the Restoration Fund, exceed the aggregate sum of One Million Dollars ($1,000,000.00). The determination of whether the Restoration Fund shall be increased shall be made within forty-five (45) days of the receipt by the Wildlife Agencies of City’s notice. Except as required above for the initial funding or replenishment of the Restoration Fund, and as required in Section 6 for the
Dedicated Endowment, City may apply its Credit sales proceeds and any interest earned on the Restoration Fund to such uses as City, in its sole discretion, shall decide, whether or not related to the Property, including but not limited to, reimbursing City’s General Fund for its management costs incurred during the period between City’s acquisition of the Property and full funding of the Dedicated Endowment.

(c) The Parties intend that City’s liability for restoration or off-site mitigation under this Agreement and under the Conservation Easement, and any other costs or expenses required to be incurred or expended by City hereunder or in connection with the enforcement hereof or with respect to the Conservation Easement, but excluding management costs intended to be covered by the Endowment Fund, shall be limited to the monies held in the Restoration Fund, whether fully-funded or not. However, as the Restoration Fund is funded or replenished as set forth herein, any unfulfilled restoration or off-site mitigation requirement shall be carried out with said funds received by the Restoration Fund in the future. Until such time as the City has made deposits to the Restoration Fund totaling at least Five Hundred Thousand Dollars ($500,000.00), then, for the period of time during which any required restoration or off-site mitigation remains incomplete, City shall not be allowed to assign, sell or convey any interest in those Credits corresponding to the habitat requiring restoration or off-site mitigation, which “impounded” Credits shall not exceed twenty-five percent (25%) of City’s unsold Credits. Notwithstanding anything herein to the contrary, in no event shall City’s obligation to fund the Restoration Fund from sales proceeds of City’s Credits (including the initial funding of the Restoration Fund, any interest permitted by the City to be retained in the Restoration Fund and any subsequent replenishment required hereunder) exceed the aggregate sum of One Million Dollars ($1,000,000.00).

(d) Nothing herein shall be deemed to allow the City to use monies from the principal balance of the Restoration Fund for any purpose other than direct costs of restoration of the Property or off-site mitigation or such other purposes as the Wildlife Agencies may allow in writing. Either of the Wildlife Agencies shall, upon not less than five (5) days’ prior written notice to City, have the right to audit the City’s books and records relating to the Endowment Fund and the Restoration Fund. Nothing herein shall be construed to permit the City to use any portion of the Restoration Fund to replace or supplement the Endowment Fund as a result of any misuse by the City of any portion of the Endowment Fund in violation of the terms of this Agreement.

8. Term of Agreement: Termination Rights. Except for the Endowment Fund obligations described in Section 6, the Restoration Fund obligations of Section 7, the management obligations described in this Agreement and the obligations under the Conservation Easement, all of which obligations shall continue in perpetuity as a covenant running with the land (subject to the limitations on City’s financial obligations as set forth herein), this Agreement shall end upon the filing of the final annual report to the Wildlife Agencies described in Section 4(e) (filed after all Credits have been applied to development projects).
9. Cooperation. The Wildlife Agencies and City agree to reasonably cooperate in the implementation of this Agreement, including the Wildlife Agencies confirming to prospective Credit Purchasers that Credits are available within the Daley Ranch Conservation Bank, and that said Bank is "approved" by the Wildlife Agencies. The Wildlife Agencies, and City agree to meet annually, during the forty-five (45) day comment period following the delivery of the annual report provided by City to the Wildlife Agencies, as set forth in Section 4(c), to coordinate Conservation Bank management and monitoring activities.

10. Entire Agreement. This Agreement and its related Exhibits and the Conservation Easement contain the entire agreement of the Parties with respect to the matters covered by this Agreement, and no other agreement, statement, or promise made by any party, which is not contained in this Agreement shall be binding or valid.

11. Modification. This Agreement is not subject to modification or amendment except in writing signed by all Parties. The Parties shall use their good faith efforts to complete acceptable modifications within ninety (90) days after the initial request is made for a modification by the requesting party. The Wildlife Agencies agree that, upon the request of the City, the Wildlife Agencies shall evaluate the inclusion of additional areas within and adjacent to the Property to which additional Credits may be allocated. The Wildlife Agencies shall not unreasonably withhold their consent or approval of such additional allocation of Credits.

12. Notices. All notices, demands, or requests from one party to another may be personally delivered, sent by facsimile, sent by recognized overnight delivery service, or sent by mail, certified or registered, postage prepaid, to the addresses stated in this paragraph and shall be effective at the time of personal delivery, facsimile transmission, or mailing. Any party may change the address by giving the other party written notice of such change. Telephone numbers are given for information purposes only.

Property Owner:  City of Escondido
City Attorney's Office
201 N. Broadway
Escondido, CA 92025
Attn: City Attorney
Tel.: (619) 741-4608
Fax No. (619) 741-7541

CDFG:  General Counsel
California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, California 95814
Tel.: (916) 654-3821
Fax No. (916) 654-3805
13. **Exhibits.** All Exhibits referred to in this Agreement are attached to this Agreement and are incorporated herein by this reference.

14. **Counterparts.** This Agreement may be executed by the Parties in several counterparts, each of which shall be deemed to be an original executed document, all of which together shall constitute a single executed Agreement.

15. **Governing Law** This Agreement shall be governed by the laws of the State of California and applicable federal law.

16. **Binding on Successors** This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns, provided that no conveyance or assignment of any portion of, or interest in, the Daley Ranch Conservation Bank Property shall be made without prior written concurrence of the Wildlife Agencies, which concurrence shall require that the successor or assign assume all City's management and other obligations under this Agreement and the Conservation Easement arising following such conveyance or assignment and have sufficient financial capacity to carry out any unfunded obligations under Section 6, in which event, said concurrence shall not be unreasonably withheld or delayed. Upon any assignment or delegation of the rights and duties of this Agreement by City, and subject to the prior written approval of the Wildlife Agencies of the proposed assignee or delegatee as set forth above, City shall be released from and shall no longer have any obligations, responsibilities, liabilities, right or duty under this Agreement with respect to the assigned obligations following such assignment.
17. **No Third Party Benefitted.** No person other than City, CDFG and USFWS and their permitted successors and assigns to whom such rights have been expressly transferred shall have any right of action under this Agreement, provided however, TPL, so long as it is Grantee under the Conservation Easement, to carry out its rights under the Conservation Easement, and subject to the limitations thereof as set forth in Section 8 of the Conservation Easement, shall have the right to enforce City's land management obligations under Section 5 hereof, and, subject to the prior written consent of the Wildlife Agencies, shall have the right to pursue the remedies set forth in Section 5(f) hereof and subject to its limitations, to carry out said right of enforcement.

18. **Authority.** Nothing contained in this Agreement shall be deemed to affect CDFG's and USFWS' respective authorities under applicable law, including, without limitation, CESA and ESA.

19. **Federal and State Appropriations.** The duty of USFWS and CDFG to carry out their respective obligations under this Agreement shall be subject to the availability of appropriated funds.

20. **Agency Conflict.** In the event that City receives conflicting directives from the Wildlife Agencies, City shall notify the Wildlife Agencies of said conflict, in which event the Wildlife Agencies agree to confer, resolve the conflict and give City consistent directives. City shall have no obligation to carry out any Wildlife Agencies' directives which conflict until the Wildlife Agencies resolve the conflict and give written notice to City of the resolution of the conflict.
21. Effective Date. This Agreement shall be effective upon both the conveyance of the Property in fee simple title to the City and City's conveyance of the Conservation Easement to TPL (the "Effective Date").

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

PROPERTY OWNER:
CITY OF ESCONDIDO, a municipal corporation
Name: Douglas K. Clark
Signature: Douglas K. Clark
Title: City Manager
Date: 1/29/97

USFWS:
UNITED STATES FISH AND WILDLIFE SERVICE
Name: 
Signature: 
Title: 
Date: 

CDFG:
STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME
Name: 
Signature: 
Title: 
Date: 

APPROVED AS TO FORM:
Jeffrey R. Epp
City Attorney
21. **Effective Date.** This Agreement shall be effective upon both the conveyance of the Property in fee simple title to the City and City’s conveyance of the Conservation Easement to TPL (the "Effective Date").

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

**PROPERTY OWNER:**

CITY OF ESCONDIDO, a municipal corporation

Name: ____________________________

Signature: _________________________

Title: _____________________________

Date: _____________________________

**USFWS:**

UNITED STATES FISH AND WILDLIFE SERVICE

Name: Gail C. Kobetich

Signature: _________________________

Title: Field Supervisor

Date: 1.29.97

**CDFG:**

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME

Name: ____________________________

Signature: _________________________

Title: _____________________________

Date: _____________________________
21. **Effective Date.** This Agreement shall be effective upon both the conveyance of the Property in fee simple title to the City and City's conveyance of the Conservation Easement to TPL (the "Effective Date").

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below.

**PROPERTY OWNER:**

CITY OF ESCONDIDO, a municipal corporation

Name: __________________________
Signature: _______________________
Title: __________________________
Date: __________________________

**USFWS:**

UNITED STATES FISH AND WILDLIFE SERVICE

Name: __________________________
Signature: _______________________
Title: __________________________
Date: __________________________

**CDFG:**

STATE OF CALIFORNIA
DEPARTMENT OF FISH AND GAME

Name: Curt Taucher
Signature: _______________________
Title: Regional Manager
Date: 1/29/97

Patricia Wolf, Acting Regional Manager

Approved as to legal form and sufficiency

CRAIG MANSON, General Counsel
PARCEL 1:

THAT PORTION OF REVERSION TO ACREAGE, (OF COUNTY OF SAN DIEGO TRACT NO'S: 3531-1, MAP 9480; 3531-2, MAP 9481; AND 3531-3, MAP 9482), IN THE CITY OF ESCONDIDO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 10032, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MARCH 16, 1981, LYING SOUTHERLY AND EASTERLY OF A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SECTION 36, TOWNSHIP 11 SOUTH, RANGE 2 WEST DISTANT THEREON NORTH 8° 03’ 29” WEST 4703.30 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 36; THENCE NORTH 89° 38’ 30” WEST 5648.69 FEET; THENCE SOUTH 5° 10’ 02” WEST 4712.06 FEET TO THE SOUTHERLY LINE OF SECTION 35, TOWNSHIP 11 SOUTH, RANGE 2 WEST.

EXCEPTING FROM LOTS 18, 19, 20 AND A PORTION OF LOT 21, OF SAN DIEGO TRACT NO. 3531-1, ALL THE COAL AND OTHER MINERALS IN SAID LAND, TOGETHER WITH THE RIGHT TO PROSPECT FOR, MINE AND REMOVE THE SAME AS RESERVED BY THE UNITED STATES OF AMERICA IN THE PATENT RECORDED AUGUST 12, 1933 IN BOOK 239, PAGE 2 OF OFFICIAL RECORDS.

PARCEL 2A:

THAT PORTION OF REVERSION TO ACREAGE, (OF COUNTY OF SAN DIEGO TRACT NO'S: 3531-1, MAP 9480; 3531-2, MAP 9481; AND 3531-3, MAP 9482), IN THE CITY OF ESCONDIDO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 10032, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MARCH 16, 1981, LYING NORTHERLY AND EASTERLY OF THE LOCATION OR PROLONGATIONS OF A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SECTION 36, TOWNSHIP 11 SOUTH, RANGE 2 WEST DISTANT THEREON NORTH 8° 03’ 29” WEST 4703.30 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 36; THENCE NORTH 89° 38’ 30” WEST 6148.69 FEET; THENCE NORTH 0° 55’ 21” WEST 629.59 FEET TO THE SOUTHEAST CORNER OF THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 26 IN SAID TOWNSHIP 11 SOUTH, RANGE 2 WEST; THENCE ALONG THE EAST LINE OF SAID WEST HALF NORTH 0° 55’ 21” WEST 2630.40 FEET TO THE NORTHEAST CORNER THEREOF BEING AN ANGLE POINT IN SAID MAP NO. 10032; THENCE ALONG THE WESTERLY LINE OF SAID MAP NORTH 0° 55’ 21” WEST 1911.34 FEET TO AN ANGLE POINT THEREIN.


ALSO TOGETHER WITH THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 23 AND THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 24 IN TOWNSHIP 11 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THEREOF LYING SOUTHWESTERLY OF A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SOUTHWEST QUARTER OF SECTION 24; THENCE SOUTH 42° 53’ 07” EAST 3573.20 FEET TO THE SOUTHEAST CORNER OF SAID
SOUTHWEST QUARTER

PARCEL 2B:

THAT PORTION OF REVERSION TO ACREAGE, (OF COUNTY OF SAN DIEGO TRACT NO.'S: 3531-1, MAP 9480; 3531-2, MAP 9481; AND 3531-3, MAP 9492), IN THE CITY OF ESCONDIDO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 10032, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, MARCH 16, 1981, LYING WESTERLY OF A LINE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EAST LINE OF SECTION 36, TOWNSHIP 11 SOUTH, RANGE 2 WEST DISTANT THEREON NORTH 8° 03' 29" WEST 4703.30 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 36; THENCE NORTH 89° 38' 30" WEST, 5,648.69 FEET TO POINT "X" OF THIS DESCRIPTION; THENCE SOUTH 5° 10' 02" WEST 4712.06 FEET TO THE SOUTHERLY LINE OF SECTION 35 IN TOWNSHIP 11 SOUTH, RANGE 2 WEST BEING THE TRUE POINT OF BEGINNING; THENCE RETRACING NORTH 5° 10' 02" EAST 4712.06 FEET OF SAID POINT "X"; THENCE NORTH 89° 38' 30" WEST 500.00 FEET; THENCE NORTH 0° 55' 21" WEST 629.59 FEET TO THE SOUTHEAST CORNER OF THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 26 IN SAID TOWNSHIP 11 SOUTH, RANGE 2 WEST; THENCE ALONG THE EAST LINE OF SAID WEST HALF NORTH 0° 55' 21" WEST 2630.40 FEET TO THE NORTHEAST CORNER THEREOF BEING AN ANGLE POINT IN SAID MAP NO. 10032; THENCE ALONG THE WESTERLY LINE OF SAID MAP NORTH 0° 55' 21" WEST 1911.34 FEET TO AN ANGLE POINT THEREIN.

TOGETHER WITH THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 22; THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 27; AND THOSE PORTIONS OF THE WEST HALF OF THE NORTHWEST QUARTER AND OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 26 LYING NORTHERLY OF THE NORTHERLY BOUNDARY SAID REVERSION TO ACREAGE MAP NO. 10032, ALL BEING IN TOWNSHIP 11 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THEREOF.


PARCEL 2C:

EXCEPT THEREFROM THAT PORTION DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 23; THENCE ALONG THE EASTERLY LINE OF SAID NORTHWEST QUARTER OF THE NORTHWEST QUARTER, NORTH 02° 09' 17" WEST, 27.50 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID EASTERLY LINE, NORTH 02° 09' 17" WEST, 225.00 FEET; THENCE AT RIGHT ANGLES, SOUTH 87° 50' 43" WEST, 215.00 FEET; THENCE AT RIGHT ANGLES SOUTH 02° 19' 17" EAST, 225.00 FEET; THENCE AT RIGHT ANGLES, NORTH 87° 50' 43" EAST, 215.00 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 2D:

THE WEST HALF OF THE SOUTHWEST QUARTER OF SECTION 23 IN TOWNSHIP 11 SOUTH, RANGE 2 WEST IN THE CITY OF ESCONDIDO, IN THE COUNTY OF SAN DIEGO, State of California, ACCORDING TO OFFICIAL PLAT THEREOF.

PARCEL 2E:


PARCEL 3:

AN EASEMENT FOR ROAD AND UTILITY PURPOSES OVER, UNDER, ALONG AND ACROSS A 104 FOOT WIDE STRIP OF LAND BEING A PORTION OF THE SOUTH HALF OF LOT 1 OF SECTION 1, TOWNSHIP 12 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF ESCONDIDO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THEREOF, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 1; THENCE NORTH 89° 55' 44" EAST ALONG THE SOUTHERLY LINE OF SAID LOT 1, A DISTANCE OF 340.50 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 35° 24' 16" WEST 358.60 FEET TO A 1500 FOOT RADIUS TANGENT CURVE CONCAVE NORTHEASTERLY; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 10° 10' 00" A DISTANCE OF 266.16 FEET; THENCE NORTH 25° 14' 16" WEST A SUFFICIENT DISTANCE SO THAT THE SIDELINES OF SAID 104 FOOT WIDE STRIP CAN BE PROLONGED OR SHORTENED TO END IN THE SOUTHERLY LINE OF SAID LOT 1.

THE SIDELINES OF SAID 104 FOOT WIDE STRIP SHALL BE PROLONGED OR SHORTENED TO END IN THE SOUTHERLY LINE OF SAID LOT 1.
PARCEL 4:

AN EASEMENT FOR ROAD AND UTILITY PURPOSES OVER, UNDER, ALONG AND ACROSS A 104 FOOT WIDE, STRIP OF LAND BEING A PORTION OF LOT 3 OF SECTION 6, TOWNSHIP 12 SOUTH, RANGE 1 WEST, IN THE CITY OF ESCONDIDO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, SAN BERNARDINO MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THEREOF, WHOSE CENTER LINE IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1, TOWNSHIP 12 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN; THENCE NORTH 89° 55' 44" EAST ALONG THE NORTHERLY LINE OF SAID QUARTER QUARTER SECTION A DISTANCE OF 456.03 FEET TO A POINT, SAID POINT LYING ON THE ARC OF A 500 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY, A RADIAL LINE TO SAID POINT BEARING SOUTH 54° 29' 01" WEST; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 9° 33' 35" A DISTANCE OF 83.42 FEET; THENCE SOUTH 45° 04' 34" EAST A DISTANCE OF 1009.35 FEET TO A TANGENT CURVE CONCAVE NORTHEASTERLY HAVING A RADIUS OF 500 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 24° 58' 42" A DISTANCE OF 217.98 FEET; THENCE SOUTH 70° 03' 16" EAST A DISTANCE OF 416.17 FEET TO A POINT OF TERMINUS IN THE CENTER LINE OF COUNTY HIGHWAY COMMISSION ROUTE 19, DIVISION 1, (60.00 FEET WIDE) ACCORDING TO OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE COUNTY ENGINEER OF SAID SAN DIEGO COUNTY; EXCLUDING ALL THOSE PORTIONS LYING OUTSIDE THE BOUNDARIES OF THE LAND GRANTED TO JOHN MC KENZIE BY DEED RECORDED ON DECEMBER 22, 1976 PER DOCUMENT NO. 76-430477 AS FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY.


PARCEL 5:

THOSE PORTIONS OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER AND OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER IN SECTION 1., TOWNSHIP 12 SOUTH, RANGE 2 WEST, SAN BERNARDINO-MERIDIAN, AND THOSE PORTIONS OF LOTS 3 AND 4 IN SECTION 6, TOWNSHIP 12 SOUTH, RANGE 1 WEST, SAN BERNARDINO MERIDIAN, ALL BEING IN THE CITY OF ESCONDIDO, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1; THENCE ALONG THE WEST LINE THEREOF, NORTH 1° 38' 02" EAST, 1334.28 FEET TO THE NORTHWEST CORNER THEREOF; THENCE ALONG THE NORTH LINE THEREOF, NORTH 89° 55' 44" EAST, 716.25 FEET TO THE MOST WESTERLY CORNER OF LAND DESCRIBED IN DEED TO NORMAN A. MC KENZIE AND GERTRUDE H. MC KENZIE AS TRUSTEES, RECORDED DECEMBER 29, 1965 AS FILE NO. 234330 OF OFFICIAL RECORDS; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LAND, SOUTH 43° 28' 27" EAST (RECORD SOUTH 43° 32' 20" EAST), 1332.51 FEET TO THE MOST NORTHERLY CORNER OF THE LAND DESCRIBED IN DEED TO THE CITY OF ESCONDIDO RECORDED APRIL 26, 1973 AS FILE NO. 73-110316; THENCE ALONG THE NORTHWESTERLY BOUNDARY OF SAID LAND AS FOLLOWS: SOUTH 55° 20' 40" WEST (RECORD SOUTH 55° 45' 14" WEST) 36.00 FEET; SOUTH 34° 39' 20" EAST (RECORD SOUTH 34° 14' 46" EAST) 50.00 FEET; SOUTH 25° 20' 40" WEST (RECORD SOUTH 25° 45' 14" WEST) 30.62 FEET; SOUTH 23° 03' 15" WEST (RECORD SOUTH 23° 27' 49"
DESCRIPTION

WEST) 100.00 FEET; AND SOUTH 25° 20' 40" WEST 253.80 FEET (RECORD SOUTH 25° 45'
14" WEST 253.80 FEET) TO THE NORTHERLY LINE OF THE LAND DESCRIBED IN THAT
CERTAIN DEED IN JUDGMENT TO JAMES B. DIXON UNDER SUPERIOR COURT CASE NO. 96071
AND RECORDED OCTOBER 2, 1940 IN BOOK 1074, PAGE 432 OF OFFICIAL RECORDS; THENCE
ALONG SAID NORTHERLY LINE, SOUTH 89° 41' 03" WEST 1158.79 FEET TO AN ANGLE POINT
THEREIN; THENCE NORTH 0° 18' 57" WEST 57.27 FEET TO THE NORTH LINE OF SAID
NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 1; THENCE ALONG SAID NORTH
LINE, SOUTH 89° 01' 35" WEST, 348.68 FEET TO THE POINT OF BEGINNING.

PARCEL 6:

THOSE PORTIONS OF LOTS 3 AND 4 IN SECTION 6, TOWNSHIP 12 SOUTH, RANGE 1 WEST,
SAN BERNARDINO MERIDIAN, IN THE CITY OF ESCONDIDO, IN THE COUNTY OF SAN DIEGO,
State of California, ACCORDING TO OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF COUNTY HIGHWAY COMMISSION
ROUTE 19 DIVISION 1, (60 FEET WIDE) ACCORDING TO OFFICIAL PLAT THEREOF ON FILE
IN THE OFFICE OF THE COUNTY ENGINEER OF SAN DIEGO COUNTY, WITH THE EASTERNLY
PROLONGATION OF THE NORTHERLY LINE OF THE LAND DESCRIBED IN THAT CERTAIN DEGREE
IN JUDGMENT TO JAMES B. DIXON, UNDER SUPERIOR COURT CASE NO. 96071 AND RECORDED
OCTOBER 2, 1940 IN BOOK 1074, PAGE 432 OF OFFICIAL RECORDS; THENCE TO AND ALONG
SAID NORTHERLY LINE SOUTH 89° 41' 03" WEST 79.38 FEET TO THE SOUTHEASTERLY CORNER
OF THE LAND DESCRIBED IN DEED TO THE CITY OF ESCONDIDO, RECORDED APRIL 26, 1973
AS FILE NO. 73-110316 OF OFFICIAL RECORDS; THENCE ALONG THE SOUTHEASTERLY
BOUNDARY OF SAID LAND AS FOLLOWS:

NORTH 25° 20' 40" EAST 201.56 FEET (RECORD NORTH 25° 45' 14" EAST 200.00 FEET);
NORTH 30° 29' 14" EAST (RECORD NORTH 30° 53' 48" EAST), 100.40 FEET; AND NORTH 25°
20' 40" EAST 29.41 FEET; (RECORD NORTH 25° 45' 14" EAST 29.44 FEET) TO THE
SOUTHWESTERNLY LINE OF THE LAND DESCRIBED IN DEED TO NORMAN A. MC KENZIE AND
GERTRUDE H. MC KENZIE AS TRUSTEES, RECORDED DECEMBER 29, 1965 AS FILE NO. 234330
OF OFFICIAL RECORDS; THENCE ALONG THE SOUTHWESTERLY LINE OF SAID LAND SOUTH 43°
28' 27" EAST (RECORD SOUTH 43° 32' 20" EAST), 38.65 FEET TO SAID CENTER LINE OF
ROUTE 19, DIVISION 1; THENCE ALONG SAID CENTER LINE, SOUTH 19° 58' 59" WEST
283.86 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCELS 5 AND 6 ARE THE SAME AS THE LAND DESCRIBED IN THOSE
CERTAIN DEEDS FROM LUDOLF WILLEM SCHREPBIER, WHO ACQUIRED TITLE AS LUDOLF WILLEM
SCHREPBIER AND CORNELLIA SCHREPBIER, HUSBAND AND WIFE TO DALEY CORPORATION, A
CALIFORNIA CORPORATION AND DALEY CORPORATION, A CALIFORNIA CORPORATION TO RANCHO
ESCONDIDO, INC., A DELAWARE CORPORATION, RECORDED JANUARY 6, 1982 AS FILE NO.
82-002393 AND 82-002394, RESPECTIVELY.

PARCEL 7:

A PERPETUAL NON-EXCLUSIVE EASEMENT AND RIGHT OF WAY FOR CONSTRUCTING THE
EASEMENT IMPROVEMENTS AND FOR THE PURPOSE OF VEHICULAR AND PEDESTRIAN ACCESS,
INGRESS, EGRESS, TRAFFIC CIRCULATION AND UTILITIES UPON THE TERMS AND CONDITIONS
AS DESCRIBED IN THAT CERTAIN EASEMENT AGREEMENT RECORDED DECEMBER 22, 1993 AS
FILE NO. 1993-065456, OFFICIAL RECORDS OVER, UNDER, ALONG AND ACROSS THE
FOLLOWING DESCRIBED LAND.

PARCEL A:

THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 3, IN TOWNSHIP 12
EXCEPTING ALL THAT PORTION OF LOT 2, LYING EASTERLY OF THAT ROAD KNOWN AS LA HONDA DR., IN SECTION 2, TOWNSHIP 12 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, PER DOCUMENT 89-364744; EXCEPTING THAT PORTION DESCRIBED IN DEED PER DOCUMENTS 72-260846 AND 79-347938.

PARCEL F:

ALL THAT PORTION OF LOT 2, LYING EASTERLY OF THAT ROAD KNOWN AS LA HONDA DR., IN SECTION 2, TOWNSHIP 12 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, PER DOCUMENT 89-364744; EXCEPTING THAT PORTION DESCRIBED IN DEED PER DOCUMENTS 72-260846 AND 79-347938, TOGETHER WITH ALL THAT PORTION OF LOTS 20 AND 21 OF ESCONDIDO TRACT NO. 723, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP NO. 12508 THEREOF, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON NOVEMBER 20, 1989, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 21; THENCE SOUTH 70°27'04" WEST A DISTANCE OF 227.64 FEET; THENCE NORTH 56°40'25" WEST A DISTANCE OF 144.19 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LOT 20; THENCE SOUTH 89°28'42" EAST ALONG THE NORTHERLY LOT LINE OF SAID LOTS 20 AND 21, A DISTANCE OF 335.01 FEET ALONG SAID LINE TO THE TRUE POINT OF BEGINNING.
SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, in the County of San Diego, State of California, according to the official plat thereof.

PARCEL B:

THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 2, in Township 12 South, Range 2 West, San Bernardino Meridian, in the City of Escondido, County of San Diego, State of California, according to the official plat thereof.

PARCEL C:

THE SOUTHEAST QUARTER OF THE NORTHWEST ONE-QUARTER OF SECTION 2, in Township 12 South, Range 2 West, San Bernardino Meridian, in the City of Escondido, County of San Diego, State of California, according to the official plat thereof.

PARCEL D:

LOT 3 in Section 2, Township 12 South, Range 2 West, San Bernardino Meridian, in the City of Escondido, County of San Diego, State of California, according to the official plat thereof.

PARCEL E:

LOT 2 in Section 2, Township 12 South, Range 2 West, San Bernardino Meridian, in the City of Escondido, County of San Diego, State of California, according to the official plat thereof.

EXCEPTING THEREFROM THE INTEREST CONVEYED TO THE CITY OF ESCONDIDO IN DEED RECORDED AUGUST 20, 1979, RECORDER'S FILE NO. 79-347938 IN AND TO A 40 FOOT WIDE STRIP OF LAND LYING IN LOT 2, SECTION 2, TOWNSHIP 12 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, WHERE CENTER LINE IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OR SAID LOT 2; THENCE NORTH 89° 31' 29" WEST ALONG THE SOUTH LINE OF SAID LOT 2 A DISTANCE OF 485.23 FEET TO THE TRUE POINT OF BEGINNING OF SAID CENTER LINE; THENCE NORTH 15° 23' 06" EAST, 54.22 FEET TO A TANGENT CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 300 FEET; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 37° 30' 07", 196.36 FEET; THENCE NORTH 22° 07' 02" WEST, 100.00 FEET TO A TANGENT CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 300 FEET; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 47° 09' 26", 246.92 FEET TO A POINT ON A COMPOUND CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 350 FEET, SAID POINT ALSO BEING ON THE CENTER LINE OF THAT CERTAIN 40 FOOT WIDE ROAD KNOWN AS LA HONDA DRIVE, DESCRIBED IN EASEMENT DEED RECORDED SEPTEMBER 28, 1972 IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AS FILE/PAGE NO. 260846, A RADIAL LINE TO SAID POINT BEARING NORTH 64° 57' 36" WEST; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE AND SAID CENTER LINE OF SAID 40 FOOT WIDE ROAD, THROUGH A CENTRAL ANGLE OF 55° 16' 17"; 337.63 FEET; THENCE NORTH 80° 18' 42"; 237.12 FEET TO THE EAST LINE OF SAID LOT 2; THE SIDELINES OF SAID 60 FOOT STRIP BEING PROLONGED OR SHORTENED TO TERMINATE IN THE SOUTH AND EAST LINES OF SAID LOT 2.

EXCEPTING THEREFROM THAT PORTION AS DESCRIBED IN DEED FROM DONALD AND LAWRENCE DALEY TO THE CITY OF ESCONDIDO RECORDED BY THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY, SEPTEMBER 28, 1972 AS FILE/PAGE NO. 260846, BOOK 1972 OF OFFICIAL RECORDS.
DESCRIPTION

PARCEL B:

THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 2, IN TOWNSHIP 12 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL C:

THE SOUTHEAST QUARTER OF THE NORTHWEST ONE-QUARTER OF SECTION 2, IN TOWNSHIP 12 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL D:

LOT 3 IN SECTION 2, TOWNSHIP 12 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

PARCEL E:

LOT 2 IN SECTION 2, TOWNSHIP 12 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THE INTEREST CONVEYED TO THE CITY OF ESCONDIDO IN DEED RECORDED AUGUST 20, 1979, RECORDER'S FILE NO. 79-347938 IN AND TO A 40 FOOT WIDE STRIP OF LAND LYING IN LOT 2, SECTION 2, TOWNSHIP 12 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, WHOSE CENTER LINE IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OR SAID LOT 2; THENCE NORTH 89° 31' 29" WEST ALONG THE SOUTH LINE OF SAID LOT 2 A DISTANCE OF 485.23 FEET TO THE TRUE POINT OF BEGINNING OF SAID CENTER LINE; THENCE NORTH 15° 23' 06" EAST, 54.22 FEET TO A TANGENT CURVE CONCAVE WESTERLY, HAVING A RADIUS OF 300 FEET; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 37° 30' 07", 196.36 FEET; THENCE NORTH 22° 07' 02" WEST, 100.00 FEET TO A TANGENT CURVE CONCAVE EASTERLY, HAVING A RADIUS OF 300 FEET; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 47° 09' 26" 246.92 FEET TO A POINT ON A COMPOUND CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 350 FEET, SAID POINT ALSO BEING ON THE CENTER LINE OF THAT CERTAIN 40 FOOT WIDE ROAD KNOWN AS LA HUDA DRIVE, DESCRIBED IN EASEMENT DEED RECORDED SEPTEMBER 28, 1972 IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, AS FILE/PAGE NO. 260846, A RADIAL LINE TO SAID POINT BEARING NORTH 64° 57' 36" WEST; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE AND SAID CENTER LINE OF SAID 40 FOOT WIDE ROAD, THROUGH A CENTRAL ANGLE OF 55° 16' 17", 337.63 FEET; THENCE NORTH 80° 16' 42" 237.12 FEET TO THE EAST LINE OF SAID LOT 2; THE SIDELINES OF SAID 60 FOOT STRIP BEING PROLONGED OR SHORTENED TO TERMINATE IN THE SOUTH AND EAST LINES OF SAID LOT 2.

EXCEPTING THEREFROM THAT PORTION AS DESCRIBED IN DEED FROM DONALD AND LAWRENCE DALY TO THE CITY OF ESCONDIDO RECORDED BY THE COUNTY RECORDER OF SAID SAN DIEGO COUNTY, SEPTEMBER 28, 1973 AS FILE/PAGE NO. 260846, BOOK 1972 OF OFFICIAL RECORDS.
EXCEPTING ALL THAT PORTION OF LOT 1, LYING EASTERLY OF THAT ROAD KNOWN AS LA HONDA DR., IN SECTION 2, TOWNSHIP 12 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, PER DOCUMENT 89-364744; EXCEPTING THAT PORTION DESCRIBED IN DEED PER DOCUMENTS 72-268846 AND 79-347938.

PARCEL F:

ALL THAT PORTION OF LOT 2, LYING EASTERLY OF THAT ROAD KNOWN AS LA HONDA DR., IN SECTION 2, TOWNSHIP 12 SOUTH, RANGE 2 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, PER DOCUMENT 89-364744; EXCEPTING THAT PORTION DESCRIBED IN DEED PER DOCUMENTS 72-268846 AND 79-347938.

TOGETHER WITH ALL THAT PORTION OF LOTS 20 AND 21 OF ESCONDIDO TRACT NO. 723, IN THE CITY OF ESCONDIDO, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP NO. 12508 THEREOF, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY ON NOVEMBER 20, 1969, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 21; THENCE SOUTH 70°27'04" WEST A DISTANCE OF 227.64 FEET; THENCE NORTH 56°40'25" WEST A DISTANCE OF 144.19 FEET TO A POINT ON THE NORTHERLY LINE OF SAID LOT 20; THENCE SOUTH 85°28'42" EAST ALONG THE NORTHERLY LOT LINE OF SAID LOTS 20 AND 21, A DISTANCE OF 335.01 FEET ALONG SAID LINE TO THE TRUE POINT OF BEGINNING.

EXCEPTING FROM THE ABOVE-DESCRIBED PROPERTY THE FOLLOWING:

Those portions of the southeast quarter of the northeast quarter and of the northeast quarter of the southeast quarter in Section 1, Township 12 South, Range 2 West, San Bernardino Meridian, and those portions of Lots 3 and 4 in Section 6, Township 12 South, Range 1 West, San Bernardino Meridian, all being in the City of Escondido, County of San Diego, State of California according to Official Plat thereof as described in Parcel 5 in deed from Daley Ranch Associates, a California Limited Partnership to Shea Homes Limited Partnership, a California Limited Partnership and recorded December 22, 1993 as File No. 1993-0865455, and all of that property described as Parcel 6 of that same said deed lying southeasterly of the following described line:

Commencing at the southwest corner of said southeast quarter of the northeast quarter of Section 1; thence North 89°01'35" East along the south line of said southeast quarter of the northeast quarter of Section 1, a distance of 348.68 feet; thence South 0°18'57" East 57.27 feet to the northerly line of the land described in that certain Decree In Judgment to James R. Dixon under Superior Court Case No. 96071 and recorded October 2, 1940 in Book 1074, Page 432 of San Diego County Official Records; thence along said northerly line, North 89°41'11" East 388.72 feet to the TRUE POINT OF BEGINNING of said line; thence North 0°18'57" West 49.47 feet to the beginning of a tangent 1200 foot radius curve concave southeasterly; thence northeasterly along said curve through a central angle of 46°50'30" a distance of 981.05 feet; thence North 46°31'33" East 54.98 feet more or less to the end of said line and also being a point on the southeasterly line of land described in deed to Norman A. McKenzie and Gertrude H. McKenzie as Trustees, ordered December 29, 1965 as file no. 234330 of Official Records.
Legend for Daley Ranch

Daley Conservation Areas

- Area I - 87 ac.

- Area II - 115 ac.

- Area III - 2642 ac.

*Acres include two 5-acre hiking/equestrian camping areas to be identified; may be located in Area III.

- Daley Ranch Boundary
- Lake
- 20 ft. Contour Lines

Sensitive Habitat / Plant Species

- Chaparral
- Coast Live Oak Woodland
- Coastal Sage Scrub
- Dense Englemann Oak Woodland
- Fresh Water Marsh
- Non-Native Grassland/Disturbed Habitat
- Open Englemann Oak Woodland
- Orchard
- Pond
- Riparian Scrub
- Road
- Southern Willow Scrub
- Wet Meadow

1:26000

Biological Resource Map generated by the City of Escondido GIS Division on 01/20/97. COE Project File: dx_bzo.apr
Sensitive habitat and plant species data provided by Rick Engineering of San Diego, based on the draft resource assessment for Daley Ranch, Escondido, dated October 1996, prepared by Michael Bran.

BIOLOGICAL RESOURCE MAP

An original color version of this map is available at the offices of the signatories to this Agreement.
The land uses listed on the attached table are considered compatible with the Daley Ranch Conservation Bank for each area as defined below and as depicted on the Area Map Exhibit:

**Area I (Recreational Park Use Area)** - This area is intended for active park and recreational uses and associated public facilities which are compatible with adjacent natural and conservation areas.

**Area II (Natural Park Area)** - This area is intended to provide limited low intensity recreational opportunities in confined locations which are compatible with and maintain the natural character and habitat value of the surrounding property. No Mitigation Credits are initially attributed to acreage within this area; however, upon completion of a Master Plan for the Subject Property, acreage exclusive of Permitted and/or Conditionally Appropriate use areas may be considered at a future date for inclusion in a conservation bank with Mitigation Credits to be determined in accordance with prevailing State and Federal resource protection policies.

**Area III (Conservation Area)** - This area is intended as an open space and habitat conservation area with limited public access for passive recreational uses along established roads and trails. All acreage within this area is included in a conservation bank in accordance with State and Federal resource protection policies.

**C (Conditionally Appropriate)** - Use may be permissible upon referral to the U. S. Fish and Wildlife Service and the California Department of Fish and Game regarding specific locations, site design and operational characteristics, as determined by a Statement of Compatibility.

**Equestrian Staging Area** - An area located near a trailhead intended for use by equestrians, and which is designated for parking, unloading of horse trailers, and saddling of horses; small shade structures may be permitted provided no boarding of horses is allowed.

**Historic Monuments and Sites** - Identification signs, sculptures or small structures commemorating an event or site feature of historic significance.

**NA (Not Allowed)** - Use is prohibited within these areas.

**Observation Points** - Areas designated for scenic overlooks, which may include a trail, small interpretive display, and a bench or small seating area.
P (Permissible) - Use is permitted within these areas.

Passive Recreational Use - Hiking, equestrian riding and non-motorized bicycling.

Statement of Compatibility - A determination made by the U.S. Fish and Wildlife Service and the California Department of Fish and Game regarding compatibility of a proposed use with the ongoing maintenance of a viable conservation bank. Within 30 days of the receipt of notice from the City of Escondido of a proposed use, the agency shall notify the City in writing as to whether the proposed use is compatible, conditionally compatible or incompatible. If the use is not determined to be compatible, within the next 60 days the agency shall provide recommendations for modifying the proposed use to eliminate the incompatibility or cite reasons for denial of the use.

Retreat Center - A rustic, low profile facility including limited lodging and related services.

Trailside Rest Stop - A designated seating area which may include benches or a limited number of picnic tables, and trash receptacles.

Youth Camp Activities - Overnight camping and day use recreational activities for supervised groups of up to 50 people, and confined to specified areas which are not considered to be environmentally sensitive. In Area II, youth camp activities shall be limited to supervised groups of up to 20 people.
# LAND USE COMPATIBILITY MATRIX

<table>
<thead>
<tr>
<th>LAND USE</th>
<th>AREA I</th>
<th>AREA II</th>
<th>AREA III</th>
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</thead>
<tbody>
<tr>
<td>1. Public Recreation Uses:</td>
<td></td>
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<tr>
<td>a. Playgrounds</td>
<td>P</td>
<td>C</td>
<td>NA</td>
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<tr>
<td>b. Camping Areas:</td>
<td></td>
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<tr>
<td>1. Walk-In</td>
<td>P</td>
<td>C</td>
<td>C**</td>
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<tr>
<td>2. Vehicle (for ADA accessibility only)</td>
<td>P</td>
<td>NA</td>
<td>NA</td>
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<tr>
<td>3. Equestrian</td>
<td>P</td>
<td>C</td>
<td>C**</td>
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<tr>
<td>c. Youth Camp Activities</td>
<td>P</td>
<td>C</td>
<td>NA</td>
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<tr>
<td>d. Swimming Pools</td>
<td>P</td>
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<tr>
<td>e. Boating Areas</td>
<td>NA</td>
<td>NA</td>
<td>NA</td>
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<td>f. Fishing Activities</td>
<td>NA</td>
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<td>g. Historic Monuments and Sites</td>
<td>P</td>
<td>P</td>
<td>C</td>
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<td>h. Retreat Center</td>
<td>P</td>
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<tr>
<td>i. Bicycling (Non-Motorized Only):</td>
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<tr>
<td>1. On Existing Roads</td>
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<td>2. On Existing Trails</td>
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<td>3. On New Roads and Trails</td>
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<td>j. Interpretive Center</td>
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<tr>
<td>k. Interpretive Displays</td>
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<tr>
<td>l. Benches</td>
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<tr>
<td>m. Hiking (On Roads and Trails)</td>
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<tr>
<td>n. Equestrian Riding</td>
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<td>1. On Existing Roads</td>
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<td>2. On Existing Trails</td>
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<td>3. On New Roads and Trails</td>
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<td>o. Equestrian Staging Areas</td>
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<td>NA</td>
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<td>p. Observation Points</td>
<td>P</td>
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<tr>
<td>q. Hunting, War Games and Paint Ball Activities</td>
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<td>NA</td>
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<td>r. Special Events:</td>
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<tr>
<td>1. Organized Athletic Events</td>
<td>P</td>
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<td>C</td>
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<tr>
<td>2. Other Cultural, Entertainment and Recreational Events</td>
<td>P</td>
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<tr>
<td>s. Trailside Rest Stops</td>
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<tr>
<td>t. Habitat Restoration Areas</td>
<td>NA</td>
<td>C</td>
<td>P</td>
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</tbody>
</table>

**KEY:**  
- C = Conditionally Appropriate  
- NA = Not Allowed  
- P = Permissible  
- * = To be mapped as part of the Park Master Plan  
- ** = Two five-acre hike-in / equestrian camping areas to be identified
2. Parking Areas | P | C | NA
---|---|---|---
3. Roads and Trails |  |  |  |
   a. Emergency, Maintenance & ADA Required Vehicle Access on Existing Roads and Trails | P | P | P
   b. New Roads and Trails | P | C | C
4. Fuel Management and Weed Abatement | P | P | C
5. Water Storage & Distribution Systems (Serving On-Site Uses Only) | P | C | NA
6. Communications Facilities (Public Safety Only) | P | C | C
7. Accessory Structures (for On-Site Facilities) |  |  |  |
   a. Concession Stands | P | NA | NA
   b. Maintenance Buildings | P | C | NA
   c. Rest Room Facilities | P | P | C
   d. Information & Directional Signs | P | P | P
8. Caretaker & Ranger Housing | P | NA | NA
9. Demonstration Gardens & Orchards | P | C | NA
10. Public Utility Easements |  |  |  |
    a. Existing | P | P | P
    b. New | P | C | NA
11. Other Existing Easements (for use consistent with intended purpose) | P | P | P
12. Improvements Required for ADA Accessibility | P | P | P
13. Other Uses Determined to be of Reasonably Certain Likeness and Intensity to Compatible Uses | C | C | C

Key:  
C = Conditionally Appropriate  
NA = Not Allowed  
P = Permissible  
* = To be mapped as part of the Park Master Plan  
** = Two five-acre hike-in / equestrian camping areas to be identified
CONSERVATION EASEMENT GRANT AND AGREEMENT

THIS CONSERVATION EASEMENT GRANT AND AGREEMENT ("Easement") is made this 23rd day of January, 1997, by and between the CITY OF ESCONDIDO, a municipal corporation ("Grantor"), and THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in the City of Escondido, County of San Diego, State of California, more particularly described in Exhibit A attached hereto, and this Easement is granted on and over that portion of Grantor’s real property described in Exhibit A-1 attached hereto (the "Property"); and

WHEREAS, the Property possesses wildlife and native habitat values (collectively, "conservation values") of great importance to Grantor, Grantee, the people of San Diego County, the people of the State of California and the people of the United States; and

WHEREAS, the Property supports a variety of native plant communities including, without limitation, coastal sage scrub, and comprises habitat which may be suitable for a variety of endangered, threatened and sensitive species; and

WHEREAS, the Grantee is a publicly supported tax-exempt nonprofit organization qualified under Section 501(C)(3) and Section 170(h) of the Internal Revenue Code, whose primary purpose is to acquire, on behalf of the general public, open lands devoted to the preservation of native plants or animals, biotic communities, geologic or geographic formations of scientific interest, or recreation and scenic beauty; and

WHEREAS, the State of California, acting by and through the California Department of Fish and Game ("CDFG") has, pursuant to the Fish and Game Code Section 1802, jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable population of those species; and

WHEREAS, Grantor, CDFG and the United States Fish and Wildlife Service ("USFWS") have entered into that certain Conservation Bank Implementation Agreement for...
the Daley Ranch Conservation Bank dated January 23, 1997 (the "Implementation Agreement") (Exhibit B, attached hereto), which Implementation Agreement sets forth certain terms and conditions pursuant to which Grantor shall convey to Grantee this Easement over the Property; and

WHEREAS, the specific conservation values of the Property are documented in a biological resource assessment titled "Draft Resources Assessment for Daley Ranch, Escondido," dated October 1995, and prepared by Michael Brandman Associates, on file at the offices of CDFG and incorporated herein by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation; and

WHEREAS, Grantor intends to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity in the manner and to the extent provided herein; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and in the Implementation Agreement and to preserve and to protect the conservation values of the Property in perpetuity in accordance with, and subject to, the terms of this Easement;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of California and Civil Code Section 815, et seq., Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth.

1. Intent. It is the intent of Grantor and Grantee that this Easement be created to ensure the continued use and conservation of the Property for the uses and purposes set forth below. Grantor reserves the right and intends to use portions of the Property for a variety of public purposes, while other portions of the Property shall be subject to restrictions that will permit only limited uses of the Property so as to preserve it in its natural state, consistent with the habitat conservation purposes of this Easement. Such permitted uses and limitations are described in more detail below.

2. Permitted Uses. Attached hereto as Exhibit D to the Implementation Agreement is an area map ("Area Map") of the Property, pursuant to which the Property has been divided into three categories of use areas, designated on the Area Map as "Area I," "Area II," and "Area III." Attached hereto as Exhibit E to the Implementation Agreement is a Land Use Compatibility Matrix (the "Matrix") which describes in greater detail the uses, and limitations on uses, contemplated for each Area. In addition, management of the Property shall be consistent with the components of the long-term management plan set forth in Exhibit H to the Implementation Agreement attached hereto ("Required Components of the Long-term Management Plan") and the final, long-term management plan adopted by Grantor, and approved by Grantee and USFWS (the "Management Plan"). Prior to the development of the Management Plan, the Property shall be managed in accordance with the interim management plan attached hereto as Exhibit I to the Implementation Agreement (the "Interim Management
Plan"). The Matrix, Required Components of the Long-term Management Plan, the Management Plan and the Interim Management Plan may collectively be referred to herein as the "Management Plans."

Grantee acknowledges and agrees that all uses of, and modifications to, the Property required by law or regulation, and all easements, rights of way and other use rights affecting the Property, and in existence as of the date of recording this Easement, consisting of the following: (i) as identified in Title Commitment 997745-C 50, dated December 12, 1996, issued by Chicago Title Company (the "Title Commitment"); (ii) that certain "Right of First Offer Agreement," dated January 23, 1997 between Grantor and Shea Homes Limited Partnership, a California limited partnership, recorded immediately hereafter; (iii) those certain off-record rights or claims disclosed by Grantor to Grantee, CDFG and USFWS (CDFG and USFWS jointly referred to hereinafter as the "Wildlife Agencies") (being all of said rights outstanding to the best of Grantor's knowledge); and (iv) those certain access easements provided by Grantor to Grantee and the Wildlife Agencies to review and approve prior to the Effective Date of the Implementation Agreement; (collectively, the "Existing Rights") shall be permitted notwithstanding the fact that they are not specifically referred to in the Matrix. In consultation with Grantee and the Wildlife Agencies, Grantor, to the extent of its discretionary authority over Existing Rights, will use reasonable efforts to minimize adverse effects of Existing Rights to the natural habitat and biological values of the Property.

Grantor agrees that, for the purpose of preserving and conserving the natural habitat and condition of the Property, the limitations on use of the Property set forth in the Management Plans, and as otherwise set forth herein and in the Implementation Agreement, as the same may be amended by the parties from time to time, shall constitute a perpetual easement and restriction on the Property which shall be binding on Grantor and its successors and assigns. Activities and uses not specified in the Matrix as "Permissible" are subject to the approval of Grantee and the Wildlife Agencies, which approval will not be unreasonably withheld.

3. Rights of Grantee. To accomplish the purpose of this Easement, the following rights are conveyed to Grantee:

(a) To preserve and protect the conservation values of the Property, subject to, and consistent with, the terms and conditions of this Easement and the Implementation Agreement;

(b) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and

(c) To enforce (by means including, without limitation, injunctive relief) the terms and conditions of this Easement in the manner and subject to the limitations set forth in Section 5 below.
4. **Reserved Rights.** Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not prohibited herein and/or in the Implementation Agreement and are not inconsistent with the purpose of this Easement.

5. **Enforcement.**

(a) Grantee, and CDFG and USFWS as third party beneficiaries of the Easement, shall have the right to inspect the Property, upon forty-eight (48) hour notice to Grantor, to confirm that the Property is being managed in accordance with this Easement and the Implementation Agreement. If Grantee or the Wildlife Agencies determine that Grantor is in material breach of the land management obligations of the Implementation Agreement (including the Management Plans) and/or this Easement, Grantee, or the Wildlife Agencies shall give written notice to Grantor of such breach and request corrective action sufficient to cure the breach and, where the breach involves substantial damage to the Property, subject to the limitation on Grantor’s financial obligation, as set forth in the Implementation Agreement, to restore the portion of the Property so injured.

(b) If Grantor fails to cure the breach within a reasonable time after receipt of notice thereof from Grantee or the Wildlife Agencies, or fails to begin curing such breach within one (1) month of the notice, or fails to continue diligently to cure such breach until finally cured or, in lieu of the foregoing, fails to provide Grantee or the Wildlife Agencies with satisfactory assurance that the breach will be cured and the habitat value restored, subject to the limitation on Grantor’s financial obligation, as set forth in the Implementation Agreement, and the effect of such breach has been to eliminate or substantially degrade, or (with respect to obtaining a temporary or permanent injunction as provided in subparagraph (B) below) threatens to imminently eliminate or substantially degrade the habitat values of Areas II and/or III as described in the Baseline Documentation, subject to subsection (d) below, then the Wildlife Agencies or Grantee, with the consent of the Wildlife Agencies, may elect, in their discretion, to pursue any one or a combination of the following remedies (which, if in combination, shall be in a reasonable apportionment, so as not to cause duplicative remedies) by commencing an action in law or in equity in a court of competent jurisdiction:

(A) to obtain a judgment authorizing an appropriate reduction of the number of unsold Credits owned by Grantor and allocated to the Conservation Bank for the damaged area within Area III, provided, however, that in no event shall such reduction exceed the number of Credits allocable to the aggregate acreage of such damaged area; and/or

(B) to enforce the terms of this Easement and/or the Implementation Agreement, to enjoin the breach, by temporary or permanent injunction, and/or to require the restoration of the Property, provided that, in no event shall Grantor be required to expend funds in excess of the limitation on Grantor’s financial obligation, as set forth in Section 5(f) and in Section 7 of the Implementation Agreement, to comply with any order requiring restoration or to comply with any other order directly or indirectly requiring the expenditure of funds by Grantor in connection with enjoining a breach.
under, or otherwise enforcing the terms of this Easement and/or the Implementation Agreement; and/or

(C) to require Grantor to offset the negative impacts of such uses or activities through off-site mitigation or on-site restoration, provided that, in no event shall Grantor be required to expend funds in excess of the limitation on Grantor's financial obligation, as set forth in the Implementation Agreement.

(c) Except as otherwise provided by law for criminal acts, the Grantee and the Wildlife Agencies agree that the provisions of this entire Section 5, and Sections 5(f) and 7 of the Implementation Agreement shall constitute their sole remedies in the event of breach of the Implementation Agreement or this Easement by Grantor. It is the intent and agreement of the parties that Grantor's liability for any costs or expenses required to be incurred or expended by Grantor hereunder or in connection with the enforcement hereof or with respect to the Implementation Agreement, shall not extend beyond the loss of Credits, expenditure of the interest earned on the "Endowment Fund," as set forth in Section 6 of the Implementation Agreement and the expenditure of the "Restoration Fund," as set forth in Section 7 of the Implementation Agreement, for restoration and/or for off-site mitigation set forth in Section 5(f)(C) of the Implementation Agreement (subject to the financial limitations therein) and Section 5(b)(C) hereof. Nothing herein shall be deemed to allow the Grantor to use monies from the principal balance of the Restoration Fund for any purpose other than direct costs of restoration of the Property or off-site mitigation or such other purposes as the Wildlife Agencies may allow in writing.

(d) Nothing contained in the Implementation Agreement or in this Easement shall be construed to entitle Grantee or the Wildlife Agencies to bring an action against Grantor, for any injury to or change in the Property resulting from any cause beyond Grantor's reasonable control, including, without limitation, strikes, riots, shortages of labor, governmental laws or regulations, acts of God, including fire, flood, storm, insect infestation, disease and earth movement, or from any reasonable action taken by Grantor to prevent, abate, or mitigate significant injury to the Property resulting from such causes, provided that, promptly after the cessation of any of the aforesaid force majeure events, Grantor uses reasonable efforts to restore any damage to the Property resulting therefrom, subject to the limitation on Grantor's financial obligation respecting use of the Restoration Fund described in Section 7 of the Implementation Agreement. In the event Grantor fails to apply the funds from the Restoration Fund to carry out its restoration obligation, Grantee or the Wildlife Agencies shall have the right to use the remedies set forth above, in Section 5(b)(A), (B) and (C), subject to the conditions thereof. Notwithstanding the foregoing, when the force majeure event constitutes an act of God (e.g. fire from any cause, flood, storm, earth movement or insect infestation), restoration of the Property shall not be required, and Credits shall not be canceled or reduced, unless the Wildlife Agencies, in their reasonable discretion, have determined that restoration is biologically necessary, and Grantor has failed to use reasonable efforts to promptly restore the Property, subject to the limitation on Grantor's financial obligation respecting use of the Restoration Fund described in Section 7 of the Implementation Agreement. In the aforesaid circumstances, if Grantor fails to apply available monies from the Restoration Fund to carry out its restoration obligation, Grantee or the Wildlife Agencies shall
have the right to use the remedies set forth above, in Section 5(b)(A), (B) and (C), subject to
the conditions thereof.

(e) It is understood by Grantee that no enhancement, such as habitat restoration
of the Area III lands to increase Conservation Credits, is required hereunder or by the
Implementation Agreement, except as set forth in Sections 5(f) and 5(h) of the Implementation
Agreement, and in this Section 5, with respect to certain damage to the Property and protected
habitat. Habitat enhancement and restoration is permissible under this Easement. All habitat
enhancement and/or restoration required or permitted under the Implementation Agreement
and/or this Easement shall be coordinated between Grantor, Grantee and the Wildlife
Agencies.

6. Forbearance. Enforcement of the terms of the Implementation Agreement
and this Easement shall be at the discretion of Grantee or the Wildlife Agencies, and any
forbearance by Grantee or the Wildlife Agencies to exercise its rights under the
Implementation and/or this Easement in the event of any breach by Grantor shall not be
deemed or construed to be a waiver by Grantee or the Wildlife Agencies of such term or of
any subsequent breach of the same or any other term of the Implementation Agreement or this
Easement.

7. Fire Protection. This Easement shall not preclude native vegetation
removal or additions required by law including, but not limited to, brush clearing as required
by fire fighting protection agencies. Upon receipt of any such written order by a fire fighting
or fire protection agency, Grantor shall notify Grantee and CDFG in writing no less than five
(5) days prior to compliance with the order, except for emergency fire control and shall, at
either Grantor's or the Wildlife Agencies' request, confer with said entities prior to
undertaking fire prevention activities to minimize adverse effects to the natural habitat and
biological values of the Property.

8. Assignment By Grantee. Grantee agrees that Grantee shall not assign its
interest under this Easement without the prior written consent of Grantor and the Wildlife
Agencies. Notwithstanding the foregoing, it is the intent of the parties and the Wildlife
Agencies that this Easement shall ultimately be assigned and conveyed to CDFG, which
assignment and conveyance is subject to the approval of the California Fish and Game
Commission (the "Commission") and recordation of an "Assignment of Conservation
Easement Grant and Agreement" in the form of Exhibit C attached hereto (the "Assignment").
The Commission will make its decision on whether or not to approve the Assignment within
three (3) months from the "Effective Date" hereof, as set forth in Section 15(m) below. CDFG
shall have the right, but not the obligation, to have this Easement assigned and conveyed to
CDFG pursuant to the Assignment. During the period that CDFG is not the Grantee
hereunder, prior to exercising its rights, Grantee shall first have received the written directive
of the Wildlife Agencies to exercise said rights. If, during said period, Grantor obtains the
written consent of the Wildlife Agencies for any action within the discretionary consent of
Grantee or the Wildlife Agencies, Grantee will be deemed to have consented to such action,
provided that, Grantor shall provide Grantee written notice of same, including a copy of the
Wildlife Agencies' consent.
9. **Transfer or Assignment by Grantor.** No conveyance of any portion of the Property shall be made without prior written concurrence of the Grantee and the Wildlife Agencies, which concurrence shall require that the successor or assign assume all management and other obligations under this Easement and the Implementation Agreement arising following such assignment and have sufficient financial capacity to carry out any unfunded obligations under Section 6 of the Implementation Agreement, in which event, said concurrence shall not be unreasonably withheld or delayed. Upon any assignment or delegation of the rights and duties of this Easement by Grantor, and subject to the prior written approval of Grantee and the Wildlife Agencies of the proposed assignee or delegatee as set forth above, Grantor shall be released from and shall no longer have any obligations, responsibilities, liabilities, right or duty under this Easement with respect to the assigned obligations following such assignment.

10. **Costs and Liabilities.** Grantee and the Wildlife Agencies shall not bear any responsibility, cost or liability of any kind related to the ownership, operation, upkeep, and maintenance of the Property.

11. **Taxes.** Grantor, or subsequent transferees, shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee and CDFG with satisfactory evidence of payment upon request.

12. **Hold Harmless.** Grantor shall hold harmless, indemnify, and defend Grantee and the Wildlife Agencies, to the extent the Wildlife Agencies or their employees are not otherwise immune from such claim, and their employees (collectively, "Indemnified Parties") from and against all liabilities, costs, losses, damages, expenses, causes of action, claims, demands or judgements (collectively, "Claims") including, without limitation, reasonable attorneys’ fees, arising or resulting from personal injury to or the death of any person, or physical damages to any personal property (but not including habitat or wildlife on the Property), resulting from any act, omission, condition, or other matter related to or occurring on the Property, regardless of cause, unless due to the negligence or misconduct of any of the Indemnified Parties.

13. **Condemnation.** In the event this Easement is assigned to CDFG, the purposes of the Conservation Easement are presumed to be the best and most necessary public use as defined at Civil Procedure Code Section 1240.680 notwithstanding Civil Procedure Code Sections 1240.690 and 1240.700.

14. **Third Party Beneficiaries.** CDFG and USFWS are recognized as third party beneficiaries of this Easement, each with independent rights of access to the Property and enforcement of the Easement as granted to Grantee.

15. **General Provisions.**

(a) **Notices.** All notices, demands, or requests from one party to another may be personally delivered, sent by facsimile, sent by recognized overnight delivery service, or
sent by mail, certified or registered, postage prepaid, to the addresses stated in this paragraph and shall be effective at the time of personal delivery, facsimile transmission, or mailing. Any party may change the address by giving the other party written notice of such change. Telephone numbers are given for information purposes only.

Grantor:  
City of Escondido  
City Attorney's Office  
201 N. Broadway  
Escondido, CA 92025  
Attn: City Attorney  
Tel.: (619) 741-4608  
Fax No. (619) 741-7541

Grantee:  
The Trust for Public Land  
116 New Montgomery St.,#300  
San Francisco, CA 94105  
Attn: Legal Department  
Tel: (415) 495-5660  
Fax No. (415) 495-0541

CDFG:  
General Counsel  
California Department of Fish and Game  
1416 9th Street, 12th Floor  
Sacramento, California 95814  
Tel.: (916) 654-3821  
Fax No. (916) 654-3805

with a copy to:  
Regional Manager  
California Department of Fish and Game  
330 Golden Shore, Suite 50  
Long Beach, California 90802  
Tel.: (310) 590-5113  
Fax No. (310) 590-5193

USFWS:  
United States Fish and Wildlife Service  
911 N.W. 11th Ave.  
Portland, Oregon 97232-4181  
Attn: Regional Director  
Tel.: (503) 231-6118  
Fax No. (503) 872-2716

with a copy to:  
United States Fish and Wildlife Service  
2730 Loker Avenue West  
Carlsbad, California 92008  
Attn: Field Office Supervisor  
Tel.: (619) 431-9440
(b) **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of California and applicable federal law.

(c) **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose Civil Code Section 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(d) **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(e) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The covenants hereunder benefitting Grantee shall also benefit the Wildlife Agencies.

(g) **Termination of Rights and Obligations.** A party's rights and obligations under this Easement shall terminate upon transfer of the party's interest in the Easement or Property, except that any liability for acts or omissions occurring prior to transfer shall survive transfer.

(h) **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

(i) **Exhibits.** All Exhibits referred to in this Easement are attached to this Agreement and are incorporated herein by this reference.

(j) **Modification.** This Easement is not subject to modification or amendment except in writing and signed by Grantor, Grantee and the Wildlife Agencies or their permitted successors or assigns.

(k) **Federal or State Appropriations.** The duty of USFWS and CDFG to carry out their respective obligations under this Easement shall be subject to the availability of appropriated funds.
(l) **Agency Conflict.** In the event that Grantor receives conflicting directives from Grantee and the Wildlife Agencies, Grantor shall notify Grantee and the Wildlife Agencies of said conflict, in which event Grantee and the Wildlife Agencies agree to confer, resolve the conflict and give Grantor consistent directives. Grantor shall have no obligation to carry out any of Grantee’s or Wildlife Agencies’ directives which conflict until Grantee and the Wildlife Agencies resolve the conflict and give written notice to Grantor of the resolution of the conflict.

(m) **Effective Date.** This Easement shall be effective upon recording with the San Diego County Recorder’s Office (the “Effective Date”).

IN WITNESS WHEREOF Grantor and Grantee have executed this instrument as of the date set forth hereinabove.

**GRANTOR**

CITY OF ESCONDIDO, a municipal corporation

By: ________________________________

Its: ________________________________

**GRANTEE**

THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation

By: ________________________________

Its: ________________________________
ACKNOWLEDGEMENT

State of 

) ss.

County of 

On this ___ day of __________, 19___, before me, __________________________, a notary public, personally appeared __________________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

________________________
Notary Public

My commission expires

State of 

) ss.

County of 

On this ___ day of __________, 19___, before me, __________________________, a notary public, personally appeared __________________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

________________________
Notary Public

My commission expires

tplce2.agr/1.27.97/d.1/pp
CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in the real property conveyed by the attached Assignment of Deed of Conservation Easement in favor of The State of California acting by and through the California Department of Fish and Game, is hereby accepted by the undersigned officer on behalf of the State of California, acting by and through the California Department of Fish and Game, pursuant to authority granted by the Act of __________________________, and the grantee consents to the recordation thereof.

Date: ____________________

By: ______________________

Title: _____________________

Correct as to consideration, description and conditions

_____________________________________________________

Date: ____________________
ASSIGNMENT OF CONSERVATION EASEMENT GRANT AND AGREEMENT

WHEREAS, The Trust for Public Land ("TPL"), a California nonprofit public benefit corporation, Grantee under that certain Conservation Easement Grant and Agreement dated January 23, 1997 holds a conservation easement (the "Easement") over certain property in San Diego County, California;

WHEREAS, The State of California Department of Fish and Game, is a California public government agency ("CDFG") and an organization eligible under California law to hold a conservation easement;

WHEREAS, CDFG wishes to hold and enforce the terms of the Easement; and

WHEREAS, it is consistent with the charitable purpose of TPL to transfer the Easement to CDFG and it is consistent with the purposes of CDFG to hold and enforce the Easement;

NOW THEREFORE, effective upon the recordation of this document in the Official Records of San Diego County, California, TPL hereby assigns and conveys to CDFG all of its right, title and interest in and to that certain Conservation Easement Grant and Agreement, dated January 23, 1997 and recorded in Official Records of San Diego County, California on that date and in that Book and Page(s) as described in the Recording Information Box annexed at the end of this instrument, and CDFG hereby accepts the within assignment and conveyance of said easement.

Executed in San Francisco, California this ____ day of ____ , 1997.

THE TRUST FOR PUBLIC LAND, a California nonprofit public benefit corporation

By: __________________________
Title: _________________________

STATE OF CALIFORNIA, acting by and through the DEPARTMENT OF FISH AND GAME

By: __________________________
Title: _________________________

Recording Information Box

Conservation Easement Grant and Agreement dated January 23, 1997

Recorded on ______________, 1997, Book ____, Page ____ of Official Records of San Diego County
ACKNOWLEDGEMENT

State of )
 )ss.
County of )

On this ___ day of __________, 19__, before me, ____________________, a notary public, personally appeared ____________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity and that by his/her/ signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

________________________________________
Notary Public

My commission expires ________

State of )
 )ss.
County of )

On this ___ day of __________, 19__, before me, ____________________, a notary public, personally appeared ____________________, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity and that by his/her/ signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

________________________________________
Notary Public

My commission expires ________
INITIAL DISTRIBUTION OF CREDITS

The Daley Ranch Conservation Credits shall consist of 2,842 total credits (equivalent to the initial acreage within Area III), to be divided into five categories based on the vegetation areas described in the Biological Resources Map, as follows:

1. Coast Live Oak Woodland: (156 credits)
2. Engelmann Oak Woodland:
   - Dense Engelmann Oak Woodland
   - Open Engelmann Oak Woodland
   (84 credits)
3. Chaparral and Coastal Sage Scrub: (2,252 credits)
4. Water Dependent Habitats:
   - Freshwater Marsh
   - Pond
   - Wet Meadow
   - Riparian Scrub
   - Southern Willow Scrub
   (18 credits)
5. Non-native Grassland and Other: (332 credits)
   - Non-native Grasslands
   - Disturbed Habitat
   - Orchard and Roads
REQUIRED COMPONENTS OF THE LONG TERM MANAGEMENT PLAN

The Long Term Management Plan shall address the purpose, responsibility, level of effort required and timing of the following components:

1. **Relationship to Master Plan** - Describe how the uses and criteria developed in the Master Plan will be coordinated with the long term management responsibilities.

2. **Access Control** - Address construction and maintenance of fencing, parking areas, and signs; define caretaker responsibilities and frequency of patrol by park rangers.

3. **Trail and Road Elements** - Address procedures regarding inspection, and criteria for restoration of eroded and overgrown trails and roads.

4. **Enforcement** - Identify responsible parties for enforcement activities and remedies.

5. **Fuel Management** - Address fire prevention and fuel management activities, including the potential need for prescribed burns.

6. **Habitat Monitoring and Reporting** - Address the frequency of biological studies, timing and reporting procedures, and triggering criteria and responsibilities for corrective measures.

7. **Habitat Restoration and Enhancement** - Identify opportunities and responsibilities for habitat restoration and enhancement, including removal of invasive species and predator control.

8. **Monitoring and Reporting of Conservation Credits and Sales** - Address the procedures and responsibilities for tracking and reporting the sale of conservation credits by habitat type.

9. **Creation and Utilization of the Endowment Funds** - Determine estimated annual costs for management and monitoring of conservation credits, and identify management agency.

10. **Administration** - Identify responsible parties and define responsibilities and timeframes for administration of management and maintenance activities.
### INTERIM MANAGEMENT PLAN

<table>
<thead>
<tr>
<th>Task</th>
<th>Responsibility</th>
<th>Level of Effort</th>
<th>Timing</th>
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</table>
| 1. Control Access to the Property | City of Escondido | 1. Construct and maintain perimeter fencing of key access points.  
2. Establish hours and control gate access.  
3. Retain the caretaker to monitor activity on a 24 hour basis.  
4. Determine location and construct appropriate parking and staging areas.  
5. Determine allowable interim uses and use regulations, and prepare informational handouts.  
6. Erect signs regarding uses and regulations. | Prior to opening to the public |
| 2. Trail and Road Maintenance | City of Escondido (Park Rangers and Maintenance Crews) supplemented by public volunteers | 1. Restore eroded and overgrown trails.  
2. Maintain established roads for limited access by maintenance and emergency vehicles. | As needed |
| 3. Habitat Maintenance Monitoring | City of Escondido (Caretaker) | Patrol property to identify habitat damage. | Daily upon opening to the public |
| 4. Habitat Restoration | City of Escondido | Restore damage caused by illegal activity occurring after City takes possession of property. | As needed |
| 5. Fuel Management | City of Escondido | Maintain existing safety standards. | Ongoing |
| 6. Maintain Records of Habitat Sales Transactions | City of Escondido | 1. Maintain a precise, written accounting of all conservation credit sales that includes the parties involved, type of habitat, and remaining habitat inventories. Transmit status to the USFWS and CDFG.  
2. Quarterly Transmittal of status reports. | 1. Ongoing maintenance of records  
2. Quarterly Transmittal of status reports. |
| 7. Master Plan | City of Escondido | Prepare a Master Plan addressing Land Use, Design and Operational Criteria based on public input. | One year from execution date of agreement. |
| 8. Long Term Management Plan | City of Escondido | Prepare Long Term Management Plan for review and approval, to include all components described in Exhibit H. | One year from execution date of Implementation Agreement. |