

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") is entered into this ___th day of April 2017, by and among Sierra Club, a California not-for-profit corporation ("Petitioner"), on the one hand, and Timoteo Land Investors, LLC and Timoteo Land Development (jointly, "Developer"), on the other hand. Petitioner and Developer are sometimes referred to herein as a "Party," and collectively as the "Parties."

WHEREAS, Developer applied to the City of Beaumont ("City") for certain land use entitlements necessary to develop the Hidden Canyon Industrial Park project, including for Plot Plan 16-PP-02, to facilitate the development of a 196.52-acre Industrial Center with 2.86 million square feet of floor area within two buildings (the "Project");

WHEREAS, on September 6, 2016, the City Council of the City of Beaumont approved the Developer's application for Plot Plan 16-PP-02 needed to develop and construct the Project;

WHEREAS, on October 6, 2016, Petitioner filed a Petition for Writ of Mandate challenging the Project, alleging legal violations under the California Environmental Quality Act ("CEQA") and California Water Code (the "Lawsuit"); and

WHEREAS, the Parties have engaged in settlement negotiations, and have reached terms, as set forth herein, upon which to settle their disputes, and wish to avoid litigation and resolve their disputes concerning the Project on the terms set forth herein.

NOW, THEREFORE, the Parties hereby agree as follows:

- A. **Construction-Related Terms:** All terms set forth herein must be required of Developer and the Project and must be incorporated into the construction contract with the general contractor.
1. **Emissions Control.** All off-road diesel-powered construction equipment greater than 25 horsepower must meet Tier 4 emission standards. Tier 4 or Tier 3 equipment may be used. In addition, all construction equipment must be outfitted with Best Available Control Technology (BACT) devices certified by the California Air Resources Board ("CARB"). The general contractor must certify that these requirements have been satisfied, and a copy of each unit's certified tier specifications, BACT documentation, and CARB or the South Coast Air Quality Management District ("SCAQMD") operating permit, and the contractor's certification must be emailed monthly to Petitioner upon request.
 2. **No Diesel-Powered Portable Generators.** Diesel-powered portable generators must not be used at any time.
 3. **Air Quality Complaints.** Prior to the start of grading, Developer must post legible, durable, weather-proof signs at the property's frontage which state in English and Spanish: (i) Diesel trucks servicing the Project must not idle for more than 5 minutes; and (ii) the name and telephone numbers of an authorized individual to be contacted to resolve dust and air quality complaints, and a phone number to SCAQMD and CARB to report violations. These signs must remain posted on the property until construction is

complete and must be of a size easily readable from the street. All dust complaints must be resolved in 24 hours.

4. Lunch Vendor Services. Lunch vendor services must be provided on-site during construction to minimize the need for off-site vehicle trips.
5. Setback from Coopers Creek and Wildlife Corridors. All construction and grading activities must include any setbacks set forth in the MSHCP, the Army Corps Section 404 Permit (SPL-2013-00802-JEM), the Regional Board Section 401 Certification (SARWQCB Project No. 322013-18), the CDFW Section 1601 Agreement (SAA No. 1600-2101-0136-R6) (collectively, the "Agency Permits"), and City of Beaumont Resolution No. 2007-16, and shall comply with the applicable mitigation plans set forth in those Agency Permits. The setback area must be clearly delineated with orange fencing throughout grading and construction. No form of (concrete or graded) catch basins, detention basins, or any other man-made drainage/runoff or water conveyance structure shall be allowed within Coopers Creek or within the minimum setbacks set forth in this section. The Developer shall record a Restrictive Covenant or Conservation Easement, in a form approved by the U. S. Army Corps of Engineers, to the Riverside Land Conservancy or other similar entity, over the 10.95 acres of riparian and wetland habitat within Cooper's Creek to remain undeveloped, designated and managed as open space in perpetuity. In addition, the water quality basins to be constructed within the Project, adjacent to the 10.95 acres of riparian and wetland habitat within Cooper's Creek shall serve as additional buffer between the Creek and the Project buildings and parking areas. The Developer shall vegetate the water quality basins with native species and will not plant any invasive plant species within it, and shall provide fencing as necessary for public safety and to prevent access from the buildings and parking areas to the riparian and wetland habitat within Cooper's Creek. Finally, within 60 days after completion of the new bridge over Cooper's Creek, the Developer will remove the three existing access bridges in order to create high quality in-stream habitat.

B. Operational/Design-Related Terms: All terms set forth herein are required of the Developer and required of the Project. Developer may assign the duties set forth herein to any end user and, in such an instance, Developer must incorporate the below requirements as contract provisions into any contract for the sale, lease, and/or transfer of the property to any purchaser, assignee, tenant, owner, operator etc. of the Project.

1. Plug-ins for Refrigeration. If refrigerated trucks are to be used on the premises, the Developer must install plug-ins sufficient to accommodate all refrigerated units.
2. No Diesel Yard Trucks. Developer shall encourage any future owner, operator or tenant not to use diesel-powered "yard goats," hostlers or forklifts.
3. Electrical Charging for Forklifts. Developer must design and construct the Project with the infrastructure necessary to support electrical charging stations for charging on-site electrical forklifts or similar on-site equipment that future tenants may use. The electrical charging stations must be clearly labeled with permanent, durable, weatherproof signage. Developer must provide any tenant or purchaser with detailed

information about the availability of this infrastructure. Prior to final site plan approval, these improvements must be delineated on the Project site plan and emailed and mailed to Petitioner.

4. Alternatively Fueled Vehicles:

- a. To the extent not in conflict with code or other legal requirements (including any requirements of the Americans With Disabilities Act or other similar requirements), Developer must designate a minimum of 30 parking spaces for alternatively fueled vehicles (including electric and hybrid vehicles) in locations closest in proximity to the Project buildings' main and employee entries. These spaces must be marked with permanent signs specifying that non-alternatively fueled vehicles will be towed at the owner's expense, and listing the number of a designated towing company.
- b. Developer must at a minimum install at least ten (10) DC Quick Charge/ Fast Charge EVSE charging units and twenty (20) Level 2 EVSE charging units onsite, prior to the issuance of an occupancy permit. Project building plans must include the location, type of EVSE, wiring schematics, and electrical calculations to verify the electrical system has sufficient capacity to charge simultaneously all the electric vehicles at all designated EV charging spaces at their full rated amperage. All EVSE charging stations must be open to the public at no cost; or at a maximum, for the cost of electricity.

EVSE charging stations must be designated with readily visible, permanent signs on-site stating their availability for public use. On-site permanent signs must also designate that vehicles improperly parked in EVSE charging parking spaces will be towed at the owner's expense, and list a phone number for a designated towing company. Permanent signs at the Quick Charge/ Fast Charge stations must also indicate a two-hour parking limit. A permanent, two-sided, sign promoting the availability of each charging station must be placed along the street right-of-way, facing traffic, nearest the access driveway to each facility, so as to be visible to traveling motorist in each direction. Developer must maintain all EVSE charging units in good working condition for a minimum of fifteen (15) years. Charging station parking spaces must be in addition to the 30 parking spaces listed in B.4.a.

- c. Developer must conduct an annual review, during the term of Developer's ownership, for up to six years following the occupancy of the buildings to determine the level of use of alternatively fueled vehicles and whether there is further demand for alternatively fueled parking. The annual review must consist of a survey of vehicles parked in the Project's parking lots on a normal business day during busy working hours. If Developer sells the Project prior to the end of the six years, it shall encourage the new owner to continue such surveys. Copies of the annual reviews must be provided to the City and Petitioner via mail and email upon completion.
- d. At least ten percent of the total auto parking spaces for each building must be capable of supporting installation of future EVSE as defined in B.4.b., with service connections provided to those spaces and labeled. Prior to final site plan approval,

EVSE capable parking spaces must be delineated on the Project site plan, which must be provided to Petitioner by email upon completion.

5. Carpool/ Vanpool Parking. The Project must provide preferential parking for carpools and vanpools for 5% of the total parking spaces. Locations and configurations of proposed preferential parking for carpools and vanpools are subject to review and approval by the City. On-site signs must designate that vehicles improperly parked in carpool/vanpool parking spaces will be towed at the owner's expense, and must list a phone number for a designated towing company. Prior to final site plan approval, preferential parking for carpools and vanpools must be delineated on the Project site plan, which must be provided to Petitioner via email upon completion.
6. Idling Prohibited Signage. All truck and trailer parking areas must provide permanent large lettered, reflective signs prohibiting idling for more than five minutes and requiring trucks turn off headlights once docked or parked. These signs must be printed in both English and Spanish and readily visible from cabs at all such parking areas, dock doors, and entry points.
7. SmartWay. Developer must provide detailed information to Project tenants regarding the U.S. Environmental Protection Agency's SmartWay program, and encourage Project tenants to begin implementing SmartWay programs.
8. Improved Landscaping. Developer must use only native or drought tolerant landscaping on the Project site. In addition, Developer must plant and maintain at least twenty (20) California Coastal Live Oak yearling trees from seedlings harvested and germinated from existing trees within 5 miles of the Project site. Seedlings may be harvested and germinated in cooperation with the Riverside Lands Conservancy and Moreno Valley College/ Moreno Valley College Biology Lab (Felice Galacia, Chair). In addition, London Plane or California Sycamore trees or similar trees shall be planted and maintained onsite, particularly around the Project's automobile parking areas. Developer shall encourage any future owner, operator, or tenant to endeavor to obtain 50% shade coverage within 10 years. In the event of tree death, trees will be replaced with same species. Palm trees must not be planted on the Project site. Developer also agrees to landscape with plants know to capture diesel PM, including e.g. bottlebrush, conifers (such as Italian Stone Pine), and similar vegetation with rough or sticky surfaces.
9. Concrete Parking Lots to Reduce Heat Island Effect. Developer must use concrete instead of asphalt in the parking lots. Concrete must have an initial solar reflectance value of at least .30 as determined in accordance with American Society for Testing and Materials (ASTM) Standards E 1980 or E1918.
10. Renewable Energy:
 - a. Developer must design and construct the roof of the buildings to accommodate maximally sized photovoltaic (PV) solar arrays taking into consideration limitations imposed by other rooftop equipment, building and fire code requirements, and other physical or legal limitations. Developer must develop each Project building with the

necessary electrical system and other infrastructure to accommodate maximally sized PV arrays in the future. The electrical system and infrastructure must be clearly labeled with noticeable and permanent signage which informs future tenant/purchasers of the existence of this infrastructure. Prior to final site plan approval, these improvements must be delineated on the Project site plan and emailed and mailed to Petitioner.

- b. Developer must install solar PV system(s) on the roof(s) of the building(s) and/or in Project parking areas to provide a total of at least 60 kW AC electrical power. The installation of the solar PV system must be completed and fully operational prior to the issuance of an occupancy permit. Developer must notify Petitioner of the completion of installation of the solar cells and provide Petitioner with proof of completion by mail and email.
 - c. Additional High Energy Demand Improvements: In the event a "High Energy Consumption User" will occupy and/or utilize the Project, Developer shall consider, and shall encourage a future owner/operator to consider, installing additional solar PV cells on the roof of the building to provide 20% additional-kW of AC electrical power, which represents a 20% increase over that required per building as outlined in Section B. 10.b. A "High Energy Consumption User" is a tenant or end user that anticipates using 25% or more of the total area of any of the buildings for refrigeration or other high energy demand equipment. Developer must provide Petitioner evidence of any additional solar PV installed for the Project by email following building occupancy.
11. Cool Roof for Reduction of Heat Island Effect. Roof areas not covered by PV must be constructed to comply with 2016 CalGreen Nonresidential Voluntary Measure A5.106.11.2, Tier 2 [Table A5.106.11.2.3].
 12. LEED Silver Certification Standards. The Project buildings must be designed and built to meet the standard for LEED Silver Certification under the LEED v.4 Building Design and Construction Standards for Core and Shell Development set forth by the U.S. Green Building Council. The measures listed on Exhibit "A" must be implemented by Developer in order to meet the standard for LEED Silver Certification.
 13. Electric Landscaping Equipment. Yard maintenance/ landscaping crews must utilize only electric or CARB equipment certified to the highest current standards in all areas covered by this agreement now and in the future.
 14. Incentivize Carpooling. Developer shall encourage Project tenants to provide incentives to their employees who carpool.
 15. Dark Sky Lighting. The Project shall meet all City Dark Sky Lighting Ordinance requirements.
 16. Trip Reduction Plan. Developer will encourage tenants to develop a trip reduction plan to achieve 1.5 average vehicle ridership (AVR) if the Project employs fewer than 250 stationary employees. Developer shall provide evidence of the development and

implementation of any such plans to Petitioner via mail and email within six months of building occupancy and annually for five (5) years.

17. Promoting Electric Vehicles. Developer must acquire one alternatively fueled vehicle (either electric or plug-in hybrid at Developer's option), which it will offer to Project tenant for its business use, and which must be used for a minimum of five years solely within the Inland Empire. In the event that the Project tenant does not need or want use of the alternatively fueled vehicle, Developer must use the vehicle for business purposes solely within the Inland Empire and ideally Beaumont. Developer must provide Petitioner with evidence of completion of this requirement via email following issuance of the occupancy permit.
18. No Diesel Generators. There must be no diesel powered generators allowed on the site.
19. Contribution to Center for Community Action and Environmental Justice. Within 30 days following execution of this agreement, Developer must contribute \$30,000 to CCAEJ to use at their sole discretion. Developer's contribution must constitute Developer's sole obligation with respect to this term. Proof of contribution must be submitted to Petitioner within 30 days of payment.
20. Setback from Coopers Creek and Wildlife Corridors/Open Space Buffer Zone. All Project developed areas must include any setbacks set forth in the Agency Permits and City of Beaumont Resolution No. 2007-16 and Developer shall comply with all requirements set forth in the Agency Permits. In general, this buffer zone should be maintained as protected open space for the benefit of sensitive biological uses and residents. No portion of this setback area may be utilized for operational activities such as parking, drive aisles, or outside storage. The developer shall install signage along the edge of the developed area stating that the Creek and Corridor are protected wildlife habitat; to keep out; and to remain on any designated trails. In addition, the water quality basins to be constructed within the Project, adjacent to the Cooper's Creek Conservation Easement area shall serve as additional buffer between the Creek and the Project buildings and parking areas. The Developer shall vegetate the water quality basins with native species and will not plant any invasive plant species within it, and shall provide fencing as necessary for public safety and to prevent access from the buildings and parking areas to the Conservation Easement Area.
21. Compliance with Urban/Wildland Interface Guidelines. The Project must comply with the MSHCP guidelines for urban/wildland interface.
22. Cooper's Creek Connectivity Reserve. The Project will be developed in compliance with the Cooper's Creek Special Connectivity Reserve and Policy Area terms (est. 2007), except where exceeded by this agreement.
23. Deed Restriction/Offer of Dedication of Trail Easement. The Developer shall offer a non-endowed perpetual Restrictive Covenant and/or Conservation Easement to the Riverside Land Conservancy or other similar entity over the northeast corner of APN no. 421-020-006 (aka, as recently renumbered, APN no. 424-010-002) that is outside of the

Conservation Easement that the Developer is already granting over other portions of that assessor's parcel pursuant to its obligation under the Streambed Alteration Agreement No. 1600-2012-0136-R6. This portion is colored pink and marked with "23" on the attached Exhibit B. The purpose of the Restrictive Covenant and/or Conservation Easement is to maintain this area in permanent open space and land conservation.

In the event the Riverside Land Conservancy or other entity does not accept the offered conservation easement, Developer shall prepare and record a Perpetual Open Space and Land Conservation Covenant and Deed Restriction over this same portion of APN no. 421-020-006 marked "23" on Exhibit B. The Perpetual Open Space and Land Conservation Covenant and Deed Restriction shall reserve in perpetual open space and land conservation that area marked "23," while permitting as compatible uses environmental maintenance and monitoring (e.g. planting, invasive plant removal, litter removal), and a passive recreational trail or bike lane. Any Restrictive Covenant or Conservation Easement shall be final and recorded prior to the issuance of the certificate of occupancy. Copies of the any Restrictive Covenant or Conservation Easement shall be provided to Petitioner by mail and email.

In addition, the Developer will make an offer of dedication to the City of Beaumont of a trail or bike lane easement over this same northeast corner of APN no. 421-020-006.

24. Open Space/Conservation Related to APN no. 421-020-007. Developer agrees, in connection with seeking entitlements for development of APN no. 421-020-007 (aka, as recently renumbered, APN no. 424-010-004), to use best efforts to persuade any approving agencies or regulatory entities that any open space or conservation requirements they may impose will be on the portion of that parcel located northerly of the Conservation Easement that the Developer is already granting related to Cooper's Creek and under the Streambed Alteration Agreement No. 1600-2012-0136-R6. This portion of that parcel is colored green and marked with "24" on the attached Exhibit B. In the event that no regulatory authority requires any open space or conservation requirements in connection with entitlements for development of APN no. 421-020-007, then Developer shall offer a perpetual Restrictive Covenant and/or Conservation Easement to, first, the entity, if any, that has accepted the land marked "23"; second, the Riverside Land Conservancy or other similar entity over this portion of the parcel; and, third, if such offer is not accepted, shall itself prepare and record a Perpetual Open Space and Land Conservation Covenant and Deed Restriction over this same portion of APN no. 421-020-007 marked "24" on Exhibit B. The Perpetual Open Space and Land Conservation Covenant and Deed Restriction shall reserve in perpetual open space and land conservation that area marked "24," while permitting as compatible uses environmental maintenance and monitoring (e.g. planting, invasive plant removal, litter removal), and a passive recreational trail or bike lane. Copies of any Restrictive Covenant or Conservation Easement shall be provided to Petitioner by mail and email.

In addition, if the Developer is required to offer or record Restrictive Covenant or Conservation Easement under this term, Developer will at the same time make an offer of dedication to the City of Beaumont of a trail or bike lane easement over this same corner marked "24" of APN no. 421-020-007.

25. Storm Water Design. Developer shall implement all applicable regulatory requirements with regard to storm water design. Prior to issuance of the grading permit, Developer will provide Petitioner with its approved Water Quality Management Plan.
26. Traffic Mitigation.
 - a. Streets or roads crossing Coopers Creek. Any private public street or road which crosses over Coopers Creek in the Specific Plan area; or results from traffic demands generated from the Specific Plan (i.e. 4th street); must comprise a vehicular bridge and, if possible, provide for bicycle and pedestrian use. The separate bike/ pedestrian/ lanes must be a minimum 5- feet in width for each type of lane or trail on either side of the bridged roadway and built in compliance with City requirements. In addition, any streets or roads crossing Coopers Creek must include adequate corridor area under the bridge to allow for sufficient wildlife movement under the bridge.

C. Other Terms.

1. Dismissal of Lawsuit. Within 10 days of the execution and delivery of this Agreement, Petitioner must file a request for dismissal, with prejudice, of the Action, including all respondents and real parties, in its entirety.
2. Payment of Attorney's Fees. Within 10 days of the Court's dismissal of the Action, with prejudice, Developer must reimburse Petitioner for its legal expenses in the agreed upon amount of \$30,000. Petitioner's counsel must provide Developer with its taxpayer identification number as a condition to the payment. Except for this payment, each Party must bear its own costs of suit, including attorney's fees, incurred in the Action.
3. Mutual General Releases.
 - a. Except as set forth in this Agreement, Petitioner (on behalf of itself and its predecessors and successors) hereby releases Developer and City and their respective owners, affiliates, members, officers, employees, agents, predecessors, successors, assigns, assignees, successors-in-interest, principals, partners, managers, representatives, attorneys, and all persons and entities acting by, through, under or in concert with them, or any of them, from any and all claims, demands, liabilities, obligations, costs, expenses, fees, actions, and/or causes of action that Petitioner has or had, except as expressly reserved herein, arising out of, or connected to, directly or indirectly to the Project approval or the Lawsuit (including the existence, prosecution or defense thereof), whether known, unknown or suspected, and Petitioner hereby waives the provisions of Civil Code section 1542, which provides as follows:

Section 1542. (General Release - Claims Extinguished.) A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The release in this Section 3(a) is a separate consideration for the release contained in Section 3(b), and Petitioner would not have executed this Agreement nor agreed to this Section 3(a) but for the release contained in Section 3(b). Petitioner does not waive any claims, demands, liabilities, obligations, costs, expenses, fees, actions, and/or causes of action which do not arise out of the Project approvals or the Litigation.

- b. Except as set forth in this Agreement, Developer (on behalf of itself, its predecessors and successors) hereby releases Petitioner and its respective owners, affiliates, members, officers, employees, agents, attorneys, and all persons and entities acting by, thru, under or in concert with them, or any of them, from any and all claims, demands, liabilities, obligations, costs, expenses, fees, actions, and/or causes of action that Developer has or had, except as expressly reserved herein, arising out of, or connected to, directly or indirectly to the Project approval or the Lawsuit (including the existence, prosecution or defense thereof), whether known, unknown or suspected, and Developer hereby waives the provisions of Civil Code section 1542, which provides as follows:

Section 1542. (General Release - Claims Extinguished.) A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The release in this Section 3(b) is a separate consideration for the release contained in Section 3(a), and Developer would not have executed this Agreement nor agreed to this Section 3(b) but for the release contained in Section 3(a). Developer does not waive any claims, demands, liabilities, obligations, costs, expenses, fees, actions, and/or causes of action which do not arise out of the Project approvals or the Litigation.

- c. Each Party expressly waives and relinquishes all rights and benefits under that section and any law or legal principle of similar effect in any jurisdiction, with respect to the claims released hereunder.
 - d. Each of the Parties has executed this Agreement voluntarily, with full knowledge of its significance, and with the express intention of affecting the legal consequences provided by a waiver of California Civil Code Section 1542.
4. Exclusive Remedies. The Parties' sole and exclusive remedy for breach of this Agreement must be an action for specific performance or injunction. In no event will any Party be entitled to monetary damages for breach of this Agreement. In addition, no legal action for specific performance or injunction can be brought or maintained until: (a) the non-breaching Party provides written notice to the breaching Party which explains with particularity the nature of the claimed breach, and (b) within thirty (30) days after receipt of said notice, the breaching Party fails to cure the claimed breach or, in the case of a claimed breach which cannot be reasonably remedied within a thirty (30) day period, the breaching Party fails to commence to cure the claimed breach within

such thirty (30) day period, and thereafter diligently complete the activities reasonably necessary to remedy the claimed breach.

5. Governing Law; Venue. This Agreement shall be deemed executed and delivered within the State of California; the rights and obligations of the Parties hereunder must be governed, construed and enforced in accordance with the laws of the State of California. The venue for any dispute arising from or related to this Agreement, its performance, and its interpretation must be the Superior Court of California, County of Riverside.
6. Entirety of Agreement. This Agreement is entered into in full compromise of disputed claims. It is fully acknowledged by all parties hereto that the execution of this Agreement and the payment of consideration and performance hereunder is not and must not be construed in any way as any admission of liability or wrongdoing on the part of any of the parties hereto, and that all parties completely and expressly deny any liability and merely intend by their actions pursuant hereto to avoid prolonged and further litigation. This Agreement represents and contains the entire agreement and understanding among the parties hereto with respect to the subject matter of this Agreement and supersedes any and all prior written and oral agreements and understandings. This Agreement may be amended or modified only through a writing executed by all the Parties.
7. Assignment. Developer may assign and delegate any or all of its obligations under this Agreement to any purchaser, assignee, tenant, end user, etc. of the Project, without consent of Petitioner. The obligations of Developer under this agreement must be assigned via assignment contract and by incorporating the terms herein into contract provisions for the sale, lease, and/or transfer of the property to any purchaser, assignee, tenant, end user, etc. of the Project. Developer must provide notice to Petitioner of assignment upon execution of any assignment contract. Any purchaser, assignee, tenant, end user, etc. thereby accepts, and must be subject to, the obligations of this Agreement.
8. Severability. If any provision of this Agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire Agreement will be severable and remain in effect.
9. Notice. Any notice or communication given or permitted to be given under this Agreement must be deemed to have been given three (3) calendar days following deposit of such notice or communication in the United States mail with first class postage prepaid, certified mail return receipt requested, and addressed as follows:

If to Developer:

Neil Brandom
1300 Quail, Suite 100
Newport Beach, CA 92660
brandom@brooks-street.com

With a copy to:

William R. Devine, Esq.
Allen Matkins Leck Gamble Mallory & Natsis LLP
1900 Main Street, Fifth Floor
Irvine, CA 92614
wdevine@allenmatkins.com

If to Petitioner:

Sierra Club
Attn: Aaron Isherwood, Coordinating Attorney
Environmental Law Program
2101 Webster St., Suite 1300
Oakland, CA 94612
Aaron.Isherwood@Sierraclub.org

With a copy to:

Kimberly Foy, Esq.
Johnson, Smith & Foy
P.O. Box 1029
Temecula, CA 92593
kim@socalceqa.com

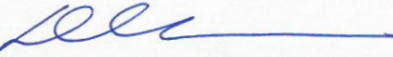
10. Modification. This Agreement may be amended or modified only through a writing executed by all the Parties.
11. Further Assurances. The Parties shall act in good faith and shall take all further actions reasonably necessary to effectuate the letter and the spirit of this Agreement.
12. No Obligation to Develop. Nothing in this Agreement obligates Developer to proceed with development of the Project, and the Parties acknowledge that the decisions of whether or not to proceed with such development, and the timing of such development, are solely within Developer's discretion.
13. Authorization. Each individual signing this Agreement represents and warrants that he or she has been authorized to do so by proper action of the party on whose behalf he or she has signed, and no other or further consent or signature is required.
14. Advice of Counsel; Joint Preparation. This Agreement was prepared by all Parties, and no Party shall be deemed the drafter or have any ambiguities construed against it. Each Party and each person signing this Agreement represents that it has been advised to consult with, and has consulted with its own independent attorney regarding the

meaning and consequences of signing this Agreement. Each Party represents that it has read and understands this Agreement and any attached exhibits, and has entered into and signed this Agreement freely and voluntarily without duress, fraud, undue influence or coercion.

15. Successors and Assigns. This Agreement shall bind and benefit the Parties and their respective successors and assigns.
16. Counterparts. This Agreement may be executed in any number of counterparts each of which must be deemed an original and all of which must constitute one and the same agreement, with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and reattached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first set forth above.

DEVELOPER:

By: 
Name: NEIL BRANDON
Title: Manager

PETITIONER:

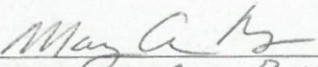
By: 
Name: MARY ANN RUIZ
Title: CHAIR, SIERRA CLUB SAN Geronimo
CITADEL

Exhibit "A"

LEED Silver Certification Items that must be Utilized

- **Alternative Transportation:**
 - **Bicycle Storage & Changing Rooms:** The project will provide secure bicycle lockers within 200 yards of the building entrances for 5% or more of all building users and must provide shower facilities with water conserving shower heads and changing facilities in the building for 0.5% of full-time equivalent occupants.
 - **Low Emission and Fuel Efficient Vehicles:** The project will provide preferred parking for low-emission and fuel efficient vehicles for >5% of the total vehicle parking capacity of the site.
 - **Parking Capacity:** The project will meet, but not exceed the number of parking stalls required by the local zoning requirements and must provide preferred parking for carpools and vanpools for 5% of the total parking spaces as set forth in Term B.6 of the Settlement Agreement.
- **Site Development:**
 - **Maximum Open Space:** As approved by the City, the project will provide vegetated open space within the project boundary in accordance with the local zoning's open space requirement.
- **Water Efficient Landscaping:**
 - The project will reduce potable water consumption for irrigation by 50% from a calculated mid-summer baseline case.
- **Storm Water Design:**
 - **Quality Control:** Developer will implement the City-approved Storm Water Pollution Prevention Program (SWPPP).
- **Water Use Reduction:**
 - The project will utilize water reduction usage measures, such as very low flow toilets. The Project will employ strategies that in aggregate use 30% less water than the water use baseline calculated for the Project buildings (not including irrigation).
- **Optimize Energy Performance:** The Project will demonstrate a percentage improvement in the proposed Project buildings' performance rating compared to the baseline Project buildings' performance rating.
- **Enhanced Commissioning:** The project will verify the building's systems operate and perform as intended.
- **Construction Waste Management:** The project will recycle and/or salvage a minimum of 50% (by weight) of non-hazardous construction and demolition debris.

- **Recycled Content:** The project will use materials with recycled content such that the sum of post-consumer recycled content plus one-half of the pre-consumer content constitutes at least 10% (costbased) on the total value of the materials in the project.
- **Regional Materials:** The project will use building materials or products that have been extracted, harvested or recovered, as well as manufactured, within 500 miles of the project site for a minimum of 20% (cost-based) of the total materials value.
- **Increased Ventilation:** The project will increase breathing zone outdoor air ventilation rates to all occupied spaces by at least 30% above the minimum rates required by ASHRAE Std. 62.1-2004.
- **Construction IAQ Management Plan:** The project will develop and implement an Indoor Air Quality (IAQ) Management Plan for the construction and pre-occupancy phases of the building.
- **Low Emitting Materials:** The project will utilize only those paints and coatings that comply with LEED Indoor Environmental Quality standards.
- **Innovation in Design:** The project will utilize locally-sourced concrete and interior fixtures providing a 40% water use savings.
- **LEED Accredited Professional:** At least one principal participant of the project team will be a LEED Accredited Professional (AP).
- **Heat Island Effect-Nonroof:** Use hardscape materials with an SRI of at least 29.
- **Recycling of All Used Materials:** Recycling bins will be provided throughout the site for recycling during the operation of the building. Recycling of construction waste will be required to the greatest degree practicable.
- **Low-flow Urinals:** Very low flow urinals will be used in the facility which will provide a 30% reduction in water use over typical low-flow urinals.
- **Automatic turn on and off for lavatory faucets — reduce use from baseline 1/2 gal. per minute:** These products will be installed throughout the building.
- **Photo Sensors for Lighting:** Motion sensors will be installed in the office areas of the building to turn off all lighting (except security lighting) when these areas of the building are not occupied. At least 3% of the roof must be comprised of roof-mounted skylights, which will provide substantial natural light in the warehouse areas. Sensors will be installed in the warehouse areas to automatically turn off artificial area lighting when ambient light is adequate.
- **Reduce carpet and flooring glue toxics by environmentally friendly carpet and nontoxic glue:** Only low VOC carpeting, paint and adhesives will be used throughout the building.

- **50% of Construction Waste Salvaged or Recycled:** The project will salvage or recycle as much construction waste as is feasible, but in no case less than 50% by weight of such waste. The project may utilize recycled (crushed) concrete during construction for temporary access roads and for paving base where acceptable. The project is directing green waste from clearing operations during construction, to a location for mulching and may be re-used.
- **Thermal Controls in Various Work Spaces:** The warehouse area is not heated or cooled, utilizing a controlled air exchange system to moderate interior temperatures. The office and commercial areas will be served by a number of 11 VAC zones each with its own controls. The units will be equipped with an automatic time switch with an accessible manual override that allows operation of the system during off-hours.
- **Monitoring system that keeps track of all systems so that response can be quick if one of the systems does not function properly:** The Project will include a building systems monitoring program.
- **Independent Venting for Toxic Places:** The storage of toxic materials, as identified by the State of California, will be in accordance with all applicable building code requirements. Separate ventilation systems will be provided for storage areas for hazardous chemicals in order to minimize and control pollutants in the buildings. The Project will provide entryway systems to prevent the infiltration of dirt and particulates into the indoor environment.
- **The building occupant/owner must share whole-project energy and water usage data for at least five years with the US Green Building Council or Green Building Certification Institute.** Developer will provide all documentation used to secure LEED Silver certification including any tenant operational documentation. Such documentation requirements will be addressed in the lease documents.

EXHIBIT B

