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RECORDING REQUESTED BY:

County of San Luis Obispo

AND WHEN RECORDED MAIL TO:

Clerk of the Board of Supervisors
County of San Luis Obispo
County Government Center
San Luis Obispo, CA 93408

APN 046-212-010

AGREEMENT ESTABLISHING RESTRICTIONS AND OBLIGATIONS
FOR REAL PROPERTY ADJUSTED BY LOT LINE ADJUSTMENT COAL 13-0098

THIS AGREEMENT is made and entered into this _____ day of _____, 2014, by and between STEPHEN B. SAMERJAN, III, TRUSTEE OF THE LIFETIME BENEFIT TRUST FBO STEPHEN B. SAMERJAN, III, and STEPHEN B. SAMERJAN, a single man, hereinafter collectively referred to as "Owner," and the COUNTY OF SAN LUIS OBISPO, a political subdivision of the State of California, hereinafter referred to as "County."

WITNESSETH:

WHEREAS, Owner is record owner of certain real property (hereinafter referred to as "Owner's Property") located in the unincorporated area of the County of San Luis Obispo described in Exhibit A attached hereto and incorporated by reference herein as though set forth in full, consisting of two adjoining legal lots in the unincorporated area of the County of San Luis Obispo, State of California; and

WHEREAS, Owner has filed an application and lot line adjustment map requesting approval of Lot Line Adjustment COAL 13-0098 (SUB2013-00040); and

WHEREAS, Owner agreed in his project description to include the obligations and restrictions set forth below in this agreement as covenants, conditions, and restrictions affecting the use of Parcel 2 of the Owner's Property; and

WHEREAS, as agreed to by Owner and as a condition of approval of said lot line adjustment and as a condition precedent to the recordation of certificates of compliance completing and finalizing said lot line adjustment, Owner is required to enter into an agreement with the County imposing the restrictions and obligations set forth below as an obligation of Owner and the successors in interest of Parcel 2 of the Owner's Property; and

WHEREAS, by the execution of this agreement by Owner and County, and the subsequent performance of the obligations of this agreement by Owner and his successors in interest, Owner will have satisfied the requirements of condition 11 of the conditions of approval of said lot line adjustment; and

WHEREAS, Owner has supplied County with a current title company preliminary title report or lot book guarantee listing all trust deed beneficiaries and mortgagees, if any, under prior recorded deeds of trust and mortgages on Owner's Property.

NOW, THEREFORE, in consideration of County approval of certificates of compliance to complete and finalize the above lot line adjustment and the benefits conferred thereby on Owner and Owner's Property, and in further consideration of the mutual promises, covenants and conditions herein contained, the parties hereto agree as follows:

1. Restrictions and obligations. The Owner hereby irrevocably covenants with and to the County, and Owner agrees that Parcel 2 of the Owner's Property shall be subject to and bound by such covenants, restrictions and obligations, as follows:

(a) California Red-Legged Frog. The following measures shall apply to all residential construction and associated grading activities on Parcel 2 of Owner's

Property:

- (1) Pre-construction survey. Prior to commencement of grading activities, a USFWS-approved biologist will survey the project site 48 hours before the onset of work activities. If any life stage of the California Red-legged Frog (CRLF) is found and these individuals are likely to be killed or injured by work activities, the biologist will be allowed sufficient time to move them from the site before work activities begin. The biologist will relocate the CRLF the shortest distance possible to a location that contains suitable habitat and will not be affected by activities associated with the proposed project. The biologist will maintain detailed records of any individuals that are moved (e.g., size, coloration, distinguishing features, digital images, etc.) to assist in determining whether translocated animals are returning to the original point of capture.
- (2) Pre-construction training. Prior to commencement of grading activities, a USFWS-approved biologist will conduct a training session for all construction personnel. At a minimum, the training will include a description of the CRLF and its habitat, the specific measures that are being implemented to conserve the CRLF for the current project, and the boundaries within which the project may be accomplished. Brochures, books, and briefings may be used in the training session, provided that a qualified person is on hand to answer any questions.
- (3) Biologist present during construction. A USFWS-approved biologist will be present at the work site until all CRLF have been removed, workers have been instructed, and disturbance of habitat has been completed. After this time, the County Department of Planning and Building (County) will designate a person to monitor on-site compliance with all minimization measures. The biologist will ensure that this monitor receives the training outlined above and in the identification of CRLF. If the monitor/biologist determine CRLF impacts are greater than anticipated or approved, work shall stop until the issue is resolved. The monitor/biologist shall immediately contact the resident engineer (the engineer overseeing and in command of the construction activities), where the resident engineer will either resolve the situation by eliminating the effect immediately, or require that all actions which are causing these effects be halted. If work is stopped, the County/USFWS will be notified as soon as is reasonably possible.
- (4) Trash removal. During construction/ground disturbing activities, all trash that may attract CRLF predators will be properly contained, removed from the work site, and disposed of regularly. Prior to occupancy or final inspection,

whichever occurs first, all trash and construction debris will be removed from work areas.

- (5) Equipment maintenance. During construction/ ground disturbing activities, all refueling, maintenance, and staging of equipment and vehicles will occur at least 100 feet from riparian habitat or water bodies and not in a location from where a spill would drain directly toward aquatic habitat. The monitor will ensure contamination of habitat does not occur during such operations. Prior to commencement of grading/construction activities, the monitor will ensure that a plan is in place for prompt and effective response to any accidental spills. All workers will be informed of the importance of preventing spills and of the appropriate measures to take should a spill occur.
- (6) Revegetation. Prior to occupancy or final inspection, whichever occurs first, for disturbed areas within the project boundaries, they shall be revegetated with an assemblage of native riparian, wetland and upland vegetation suitable for the area. Locally collected plant materials will be used to the extent practical. Invasive, exotic plants will be controlled to the maximum extent practical and not included in any landscaping efforts. This measure shall apply to all disturbed areas unless determined not practical or feasible by the County.
- (7) Land restoration. Prior to occupancy or final inspection, whichever occurs first, to the extent practical, contours shall be returned to as close to original, unless it is determined by the biologist that the new contours provide greater benefit for the CRLF.
- (8) Work scheduling. Prior to commencement of grading/construction activities, the applicant shall make all efforts to schedule work activities for times of the year when impacts to the CRLF would be minimal. As examples: (a) work that would affect large pools that may support breeding would be avoided, to the maximum extent practical, during the breeding season (November through May); (b) isolated pools that are important to maintain CRLF through the driest portions of the year (late summer, early fall) would be avoided to the maximum extent practical. When such conditions exist, the applicant will work with the biologist to coordinate the construction schedule to minimize impacts to the CRLF.
- (9) Sedimentation and erosion control. Prior to issuance of construction permit(s), sedimentation and erosion control plans shall be submitted using Best Management Practices (BMPs) to minimize sediment from entering nearby water bodies or prominent drainage courses. During or after construction/ ground disturbing activities, if these BMPs are ineffective, the applicant will work with the monitor/biologist and resident engineer, in consultation with USFWS, to install effective measures prior to the next rain event.

- (10) Water impoundment. Unless approved by the USFWS, water will not be impounded in a manner that may attract CRLF.
- (11) Completion report. Prior to occupancy or final inspection, whichever occurs first, the Owner shall submit to the County and USFWS, a project completion report form, completed by the USFWS-approved biologist. The report form should identify any recommended modifications or protective measures, if additional stipulations to protect CRLF are warranted, or if alternative measures would facilitate compliance with the provisions of this consultation.

2. Indemnification. The Owner shall defend, indemnify and save harmless the County of San Luis Obispo, its officers, agents and employees from any and all claims, demands, damages, costs, expenses, judgments, or liability occasioned by the performance or attempted performance of the provisions hereof, or in any way arising out of this agreement, including, but not limited to, those predicated upon theories of violation of statute, ordinance or regulation, violation of civil rights, inverse condemnation, equitable relief, or any wrongful act or any negligent act or omission to act on the part of the Owner or of agents, employees, or independent contractors directly responsible to the Owner; providing further that the foregoing obligation to defend, indemnify, and save harmless shall apply to any wrongful acts, or any passively negligent acts or omissions to act, committed jointly or concurrently by the Owner, the Owner's agents, employees, or independent contractors and the County, its agents, employees or independent contractors. Nothing contained in the foregoing indemnity provisions shall be construed to require the Owner to indemnify the County against any responsibility or liability in contravention of Section 2782 of the Civil Code.

3. Binding on successors in interest. This agreement shall be deemed an equitable servitude and a covenant running with the land described herein and shall be binding on the parties hereto and their heirs, assigns, and successors in interest. Any

conveyance, transfer, or sale made by Owner of said property or any portion thereof shall be deemed to incorporate by reference, and be subject to, each of the provisions of this agreement.

4. Survival of covenants. This agreement shall constitute a servitude upon and burden to Owner's Property within the meaning of Section 3712(d) of the California Revenue and Taxation Code, or successor statute, and shall survive any conveyance of Owner's Property, by a tax sale or otherwise.

5. Effect of waiver. County's waiver of breach of any one term, covenant, or provision of this agreement, shall not be a waiver of a subsequent breach of the same term, covenant, or provision of this agreement or of the breach of any other term, covenant, or provision of this agreement.

6. Judicial enforcement. Enforcement shall be by proceeding at law or in equity, either to restrain a violation or an attempted violation or by suit to recover damages against any person or persons violating or attempting to violate any covenant or restriction contained herein.

7. Law governing and venue. This agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with the laws of the State of California. All duties and obligations of the parties created thereunder are performable in the County of San Luis Obispo, and such County shall be that venue for any action, or proceeding that may be brought, or arise out of, in connection with or by reason of this agreement.

8. Enforceability. If any term, covenant, condition or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the

remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.

9. Notices. Unless otherwise provided, all notices herein required shall be in writing, and delivered in person or sent by United States first class mail, postage prepaid. Notices required to be given to County shall be addressed as follows: Director of Planning and Building, County of San Luis Obispo, County Government Center, Room 300, San Luis Obispo, California 93408. Notices required to be given to the Owner shall be addressed as follows: Stephen B. Samerjan, 3919 E. California Blvd., Pasadena, California 91107.

Provided that any party may change such address by notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

10. Owner not agent of County. Neither Owner nor any of Owner's agents or contractors are or shall be considered to be agents of County in connection with the performance of Owner's obligations under this agreement.

11. Entire agreement and modifications. This agreement sets forth the full and entire understanding of the parties regarding the matter set forth herein, and any other prior or existing understandings or agreements by the parties, whether formal or informal, regarding such matters are hereby superseded or terminated in their entirety. No changes, amendments, or alterations to the provisions of this agreement shall be effective unless in writing and executed by the parties hereto or their assigns and successors in interest.

12. Agreement to be recorded. Owner and County intend and consent to the recordation of this agreement in the office of the County Recorder of the County of San

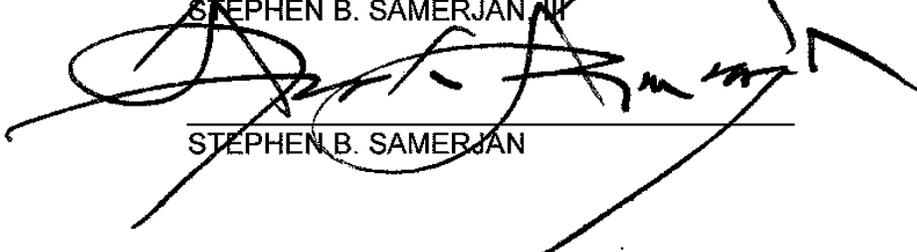
Luis Obispo, and such recordation of this agreement shall serve as constructive notice of the obligations contained herein to be performed by the Owner and the successors in interest to all or any portion of Owner's Property.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

OWNER



STEPHEN B. SAMERJAN, III, TRUSTEE OF
THE LIFETIME BENEFIT TRUST FBO
STEPHEN B. SAMERJAN, III



STEPHEN B. SAMERJAN

COUNTY OF SAN LUIS OBISPO

By: _____
Chairperson of the Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGAL EFFECT:

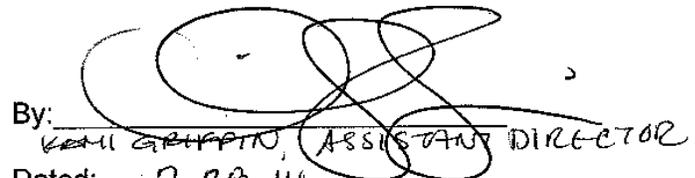
RITA L. NEAL
County Counsel

By: 
Deputy County Counsel

Dated: August 6, 2014

APPROVED AS TO CONTENT:

JAMES A. BERGMAN, AICP
Director of Planning and Building

By: 
Assistant Director

Dated: 7.28.14

LEGAL DESCRIPTION APPROVED AS TO FORM:

DOUGLAS A. RION
County Surveyor

By: 

Dated: 8/6/2014

[NOTE: This Agreement will be recorded. All signatures to this agreement must be acknowledged by a notary.]
25plhagr.docx

STATE OF CALIFORNIA)
)
) ss.
COUNTY OF SAN LUIS OBISPO)

On _____, before me, _____, Deputy County Clerk-Recorder, County of San Luis Obispo, State of California, personally appeared _____, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

JULIE L. RODEWALD, County Clerk-Recorder and Ex-Officio Clerk of the Board of Supervisors

By: _____
Deputy County Clerk-Recorder

[SEAL]

ACKNOWLEDGMENT

State of California
County of Los Angeles

On 7/18/14 before me, Catherine Pan
Stephen Bedros Samerjan III
(here insert name and title of the officer)

personally appeared Stephen Bedros Samerjan III

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Catherine Pan

(Seal)



PARCEL 1 - COAL 13-0098

Exhibit A

Those portions of Parcel A and Parcel C of Parcel Map CO-72-240 as shown on the Map filed in Book 12 of Parcel Maps at Page 14, said Parcel A and Parcel C also shown on Record of Survey filed in Book 72 of Licensed Surveys, at Page 67 in the Office of the County Recorder, County of San Luis Obispo, State of California described as follows:

Beginning at the center of Section 33, Township 28 South, Range 11 East, Mount Diablo Base and Meridian, point also being the southwest corner of said Parcel A,

1. Thence North $01^{\circ}36'17''$ West along the westerly line of said Parcels A and C, a distance of 2683.61 feet to the northwest corner of said Parcel C;
2. Thence South $84^{\circ}10'44''$ East along the northerly line of said Parcel C, a distance of 448.18 feet;
3. Thence South $01^{\circ}26'56''$ East, a distance of 2680.64 feet to the southerly line of said Parcel A;
4. Thence North $84^{\circ}26'24''$ West along the southerly line of said Parcel A, a distance of 440.57 feet to the point of beginning.

PARCEL 2 - COAL 13-0098 Exhibit A

Those portions of Parcel A and Parcel C of Parcel Map CO-72-240 as shown on the Map filed in Book 12 of Parcel Maps at Page 14, said Parcel A and Parcel C also shown on Record of Survey filed in Book 72 of Licensed Surveys, at Page 67 in the Office of the County Recorder, County of San Luis Obispo, State of California described as follows:

Beginning at the center of Section 33, Township 28 South, Range 11 East, Mount Diablo Base and Meridian, point also being the southwest corner of said Parcel A,

Thence North $01^{\circ}36'17''$ West along the westerly line of said Parcels A and C, a distance of 2683.61 feet to the northwest corner of said Parcel C, also shown on said Record of Survey;
Thence South $84^{\circ}10'44''$ East along the northerly line of said Parcel C, a distance of 448.18 feet to the true point of beginning;

1. Thence South $01^{\circ}26'56''$ East, a distance of 2680.64 feet to the southerly line of said Parcel A;
2. Thence South $84^{\circ}26'24''$ East along the southerly line of said Parcel A, a distance of 440.56 feet to the southeast corner of said Parcel A;
3. Thence North $01^{\circ}17'33''$ West along the easterly line of said Parcels A and C, a distance of 2677.70 feet to the northerly line of said Parcel C;
4. Thence North $84^{\circ}10'44''$ West along the northerly line of said Parcel C, a distance of 448.18 feet to the true point of beginning.