

Newhall School District Fair Share School Mitigation Agreement

Recording Requested by
and when recorded mail to:

Newhall School District
Attention: Superintendent
25375 Orchard Village Dr., Suite 200
Valencia, CA 91355

Space above this line for Recorder use only.
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SCHOOL FACILITIES FUNDING AND MITIGATION AGREEMENT

This School Facilities Funding and Mitigation Agreement (“Agreement”) is made effective as of November 1, 2005 (“Effective Date”), by and between the Newhall School District (“District”), a school district organized and existing under the laws of the State of California, and Western Pacific Housing-Lyons Canyon Partners, LLC (“Developer”), a Delaware limited liability company. District and Developer may hereinafter be referred to individually as “Party” and collectively as “Parties.”

RECITALS

A. Developer has contractual rights to acquire property situated in the County of Los Angeles (“County”), the legal description of which is attached hereto as Exhibit “A” (“Property”). The Developer has applied to the County for approvals to develop the Property for residential purposes (“Project”), including, without limitation, approval of Vesting Tentative Tract Map Number 53653 for the Property (“Tract 53653”). The Property and the Project are depicted in Exhibit “B” attached hereto. Developer intends to construct a total of 186 dwelling units (“DU”) within the Project, including 93 single-family DU (“SFDU”) and 93 senior housing DU (“SHDU”). The title to the SHDU shall be restricted in conformance with the provisions of Government Code Section 65995.1 and as provided herein.

B. The plans for development of the Property may change over time to meet the needs of the market, and modifications of existing governmental approvals for development of the Property also may occur. The provisions herein are applicable to whatever development may occur on the Property. In the event of any change in the development from that described in Recital A, the term SFDU shall be deemed and construed to include any and all residential construction on the Property other than SHDU. In the case of any commercial and/or industrial construction on the Property (“C/I Development”), the Developer shall pay the applicable fees pursuant to Education Code Section 17620 *et seq.* and Government Code Section 65995 *et seq.* or comparable or successor statutes (“Statutory School Fees”).

C. The Parties acknowledge and agree that development of the Property will generate additional elementary school students (“Project Students”). Therefore, the District will

need additional kindergarten through grade 6 interim and permanent school facilities including land, buildings, furnishings and equipment, interim and permanent classrooms, and central and administration facilities (collectively, "School Facilities") in order to serve the Project Students.

D. The Parties desire to enter into this Agreement to establish the Developer's obligations to mitigate the impacts on the School Facilities of the District resulting from development of the Property and the District's obligations to provide the School Facilities necessary to accommodate the Project Students. The Parties intend that this Agreement shall be valid, binding and effective immediately upon execution, including for purposes of adjustments described in Section 1, but that it automatically shall become operative for all purposes related to the Property, simultaneously with conveyance to Developer, directly or through any assignee, subsidiary or related company, of title to the last parcel constituting or substantially constituting the Property or the recording of a Final Map covering all or a portion of the Property, whichever occurs first, as further provided in Section 20.

E. The Developer has advanced to the District the sum of five thousand dollars (\$5,000) as a deposit to cover legal costs incurred by the District in connection with preparation of this Agreement. Any unused amount of such deposit shall be refunded to the Developer without interest.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the terms and conditions set forth herein, the Parties agree as follows:

Section 1. Mitigation Obligation.

(a) As of the Effective Date, and subject to all other provisions herein, the amounts payable by Developer to the District pursuant to this Agreement for construction of any SFDU within the Project shall be in each case an amount equal to the average assessable space of such DU (in square feet) multiplied by \$5.87 per square foot ("Mitigation Payment Amount"). For purposes of this Agreement, the term "assessable space" shall have the meaning set forth in Government Code Section 65995(b)(1) and the term "average assessable space" shall mean 3,250 square feet. Prior to issuance of a building permit for the first SFDU to be constructed on the Property, the Developer may prepay in full to the District the Mitigation Payment Amounts for all SFDU presently anticipated to be construed on the Property, calculated as an amount equal to 3,250 square feet per SFDU, multiplied by 93 SFDU, multiplied by \$5.87 per square foot. Alternatively, the Developer may pay the required Mitigation Payment Amounts to the District as development of the Property progresses, and, in each such case, the Developer shall pay the required Mitigation Payment Amount prior to issuance of the corresponding building permit.

(b) Notwithstanding the foregoing, if the total assessable space of all SFDU actually constructed or to be constructed on the Property ("Actual Assessable Space") exceeds 3,250 square feet multiplied by the number of such SFDU, the Developer shall pay to the District an additional amount, equal to \$5.87 multiplied by the total excess square feet. Notwithstanding

the foregoing, if the Actual Assessable Space is less than 3,250 square feet multiplied by the number of such SFDU, the District shall reimburse the to the Developer an amount equal to \$5.87 multiplied by the total shortfall in square feet. If the Developer obtains Certificates of Compliance (defined in Section 2) from the District as development of the Property progresses, rather than prepaying for all SFDU to be constructed, the District shall determine the total Actual Assessable Space upon request by Developer for issuance of the last of the Certificates of Compliance for DU to be constructed on the Property. If the Developer obtains Certificates of Compliance from the District by prepaying for all SFDU to be constructed, the District shall determine the total Actual Assessable Space after issuance to Developer of the last of the building permits for DU to be constructed on the Property. The determination of the Actual Assessable Space (square feet) in each instance shall be based on completed building permit applications or issued building permits for the DU to be constructed on the Property. The Developer shall provide written notice to the District upon submitting the last of the applications for building permits for DU to be constructed on the Property within one week (seven days) of such occurrence.

(c) The per-square-foot payment amount of \$5.87 shall be fixed for a period of one year after the Effective Date. Each year on the anniversary of the Effective Date, the \$5.87 per-square-foot amount specified in this Agreement shall be adjusted based on the change, during the 12 month period ending November 1 of the immediately preceding year, in the "Class D Building" construction cost index used by the State Allocation Board ("SAB") and posted on the SAB/Office of Public School Construction ("OPSC") website (the "Index"). The adjustment in the per-square-foot amount shall be automatic, without need for notice or written agreement of the Parties. In the event the Index is discontinued, no longer published, or no longer used by the SAB, the annual adjustments in the per-square-foot amount shall be based on a reasonably comparable construction cost index as determined by the District. Notwithstanding anything herein to the contrary, the amounts payable in accordance with Subsections (a) and (b) of this Section shall be based in each year on the per-square-foot amount as adjusted pursuant to this Subsection. In the event the District is to reimburse the Developer pursuant to Subsection (b) of this Section, because the Actual Assessable Space averages less than 3,250 square feet per SFDU, then the per-square-foot amount adjusted pursuant to this Subsection shall be applied to the total shortfall in square feet on a proportionate basis. As an illustration of the foregoing, if the Actual Assessable Space totals 300,000 square feet, and 150,000 square feet are constructed in each year over a two-year period commencing the first year this Agreement is in effect, then \$5.87 would be multiplied by one-half of the shortfall, and the \$5.87 amount as adjusted in accordance with the Index would be multiplied by one-half of the shortfall, in order to calculate the reimbursement amount.

(d) The Developer shall pay to the District the applicable Statutory School Fee for all SHDU and C/I Development to be constructed on the Property. Notwithstanding anything to the contrary, to be considered an SHDU, the DU must comply with all requirements of Government Code Section 65995.1. Upon conveyance of title for each such DU, the title shall include a restriction requiring occupancy consistent with Government Code Section 65995.1, and such title shall provide that, upon any removal of such restriction, the then-owner of the DU shall pay to the District an amount equal to the mitigation obligation then in effect pursuant to this Agreement or as otherwise agreed by the District. Upon conveyance of title to any DU that

Developer has conveyed as an SHDU, the Developer shall provide to the District evidence of the required title restriction that is reasonably satisfactory to the District, including but not limited to, a copy of any recorded agreement with Los Angeles County requiring that the SHDU be maintained for qualified senior citizens.

Section 2. Certificates of Compliance.

(a) Upon payment to the District of the Mitigation Payment Amount required pursuant to Subsection (a) of Section 1 for each SFDU as requested by Developer, or upon payment of the Statutory School Fees required pursuant to Subsection (d) of Section 1 for any SHDU or C/I Development as requested by the Developer, the District shall immediately thereafter issue to the Developer the certification required by the County, City of Santa Clarita (“City”), or other applicable building department as a condition to issuance of building permit(s) for the applicable construction (each a “Certificate of Compliance”).

(b) The Developer acknowledges that Certificates of Compliance are valid for a period of 90 days after issuance by the District. If the Developer does not apply for a building permit corresponding to any Certificate of Compliance within 90 days, upon request of the Developer, the District shall reimburse to the Developer the amount paid on account of such unused Certificate of Compliance, and the Developer shall pay the amounts required pursuant to this Agreement as are in effect at such time as the Developer requests a Certificate of Compliance in replacement of any Certificate of Compliance that has expired.

Section 3. Adequacy of Mitigation Obligation.

(a) The Mitigation Payment Amounts provided for in this Agreement are hereby appropriated and dedicated to payment of the future acquisition, construction, financing, and other costs incurred by District in providing School Facilities. The Parties intend that this Agreement shall provide for the complete mitigation of all impacts, direct and cumulative, from development of the Property on District’s ability to provide adequate educational opportunities to the Project Students. The Mitigation Payment Amounts that Developer shall pay to District pursuant to the terms of this Agreement constitute the entire extent of Developer’s obligation to provide the funds necessary for District to acquire and/or construct the School Facilities needed to house Project Students. Therefore, the District shall not, under any circumstances:

(i) Exercise any power or authority under current or future law to levy or impose an exaction of land, goods, money, or services, whether denominated a fee, charge, dedication, condemnation, or otherwise, against any development of the Property;

(ii) Require, request, or cooperate with the County, the City, or any other governmental entity to exercise any power or authority to levy or impose an exaction of land, goods, money, or services, whether denominated a fee, charge, dedication, condemnation, or otherwise, for District’s benefit;

(iii) Oppose the development of any portion of the Property or any governmental approval, whether legislative or administrative, or any change in any governmental approval on any basis whatsoever; or

(iv) Sponsor or require the formation of a Mello-Roos Community Facilities District (“CFD”) for any of the Property, except for a CFD or multiple CFDs which together include all of the land within District’s boundaries, without the express, written consent

of Developer which consent may be given or withheld in Developer's sole discretion. However, the District may pursue through the election process any general-obligation bond measure that it desires, on a District-wide basis or by one or more school facilities improvement districts.

Section 4. CFD Financing. The Developer may request that the District form a CFD applicable to the Property and the Project ("Project CFD"), and the Parties shall thereafter make best efforts to enter into a "CFD Formation and Funding Agreement" setting forth terms and conditions reasonably acceptable to the Parties for financing the obligations set forth in this Agreement by means of a Project CFD. The CFD Funding and Formation Agreement shall include provisions for securing payment of the special taxes within the Project CFD, the total tax obligation to be imposed on homes within the Project CFD, allocation of Project CFD bond proceeds, and other terms consistent with applicable laws and the District's "CFD Goals and Policies," however those are denominated. The Developer shall be required to advance funds for formation of the Project CFD and issuance of any bonds thereof, subject to reimbursement without interest from Project CFD bond proceeds.

Section 5. District Policies. This Agreement shall not in any manner be deemed or construed to limit, or to permit any interference with, determinations by the Governing Board of the District as to the educational and school-facilities policies that will best further the interests of District's students or the construction or operation of the District's educational facilities.

Section 6. State Funding. Nothing in this Agreement shall be deemed or construed as granting or permitting the Developer any right to payment or reimbursement from funds received by District from the State of California, whether or not such funds are attributable to Project Students.

Section 7. Changes In Law. Nothing (including without limitation, the development of the Property or any change therein, or any governmental approval relating to the Property or any change therein) shall constitute a sufficient basis for any modification or termination of this Agreement. The provisions of this Agreement shall not be affected by: (i) any existing applicable law; (ii) any subsequent legislation enacted by the State of California acting through the legislative or initiative process; or (iii) any subsequent judicial decisions related to the matters provided for in this Agreement.

Section 8. Transfer and Encumbrance. In its sole discretion, Developer may sell or encumber the Property or a portion thereof, in an improved or unimproved condition, through any means including, but not limited to, deed, mortgage, deed of trust, or other security device. Except as provided in Section 9, no sale, transfer, or encumbrance of any portion of the Property shall affect Developer's obligations under this Agreement. Neither this Agreement nor any breach of this Agreement shall defeat, invalidate, diminish, or impair the lien or priority of any deed, mortgage, deed of trust, or other security device.

Section 9. Assignment of Agreement. Developer shall have the unconditional right, at any time, to assign any right or obligation under this Agreement to any successor in interest to

all or any portion of the Property, and the assignee shall automatically assume its proportionate share of all applicable provisions of this Agreement. Whenever this Agreement provides Developer with a right, that right may be exercised by the assignee of that right to the same extent that Developer could have exercised that right. The assignment of any right or obligation under this Agreement shall be in writing and a copy of the assignment shall be provided to District. No such assignment shall relieve Developer of any of its obligations under this Agreement without District's written consent, which District shall not unreasonably withhold.

Section 10. No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of District and Developer. Other than District and Developer, no third person shall be entitled, directly or indirectly, to base any claim or to have any right arising from, or related to, this Agreement.

Section 11. Entire Agreement. This Agreement contains the entire agreement and understanding concerning the funding of School Facilities as to the Property, and this Agreement supersedes and replaces all prior negotiations and proposed agreements, written or oral, except as they are included in this Agreement. District and Developer acknowledge that neither the other Party nor its agents nor attorneys have made any promise, representation, or warranty whatsoever, express or implied, not contained herein to induce the execution of this Agreement and acknowledge that this Agreement has not been executed in reliance upon any promise, representation, or warranty not contained herein.

Section 12. Amendments Must Be In Writing. This Agreement may not be modified except by a writing duly approved and signed by District and Developer.

Section 13. Acknowledgment of Independent Investigation. District and Developer acknowledge that each has conducted an independent investigation of the facts concerning the development of the Property, the impacts that Project Students will have on District's School Facilities, and the costs of creating or otherwise providing such facilities for Project Students.

Section 14. Notice of Right to Protest. The Parties acknowledge that Government Code Section 66020(d)(1) requires local agencies including District to provide a project applicant notice, in writing, at the time of imposition of fees, dedications, reservations, or other exactions, a statement of the amount of fees, or a description of the dedications, reservations, or other exactions and a notification that the 90-day approval period in which the applicant may protest such fees has begun. Developer hereby stipulates that this Agreement shall constitute, for purposes of Government Code Section 66020(d), a comprehensive description of the exactions that have been required of Developer with respect to development of the Property, and acknowledges that the 90-day approval period in which Developer may protest any imposed fees, description of dedications, reservations or other exactions, for school facilities mitigation, as set forth in this Agreement will begin to run as of the Effective Date. Developer hereby agrees and acknowledges that the Mitigation Payment Amounts required pursuant to this Agreement constitute a contractual obligation and not a fee, dedication, reservation or other exaction within the meaning of Government Code Section 66020.

Section 15. Disputes To Be Arbitrated. District and Developer desire to resolve as quickly as possible any disputes as to the meaning of any portion of this Agreement, the validity of any determination or calculation, or the rights or obligations of District or Developer pursuant thereto. Therefore, any such disputes shall be resolved by binding arbitration conducted by a mutually agreed-upon retired judge of the Los Angeles Superior Court. If District and Developer are unable to agree on the arbitrator within thirty (30) days of the receipt of a request for arbitration, they shall request that the presiding judge of the Los Angeles Superior Court designate one. District and Developer shall each pay one-half the cost of the arbitration and each shall be responsible for its own attorneys fees and costs as to any such arbitration.

Section 16. Governing Law and Venue. The interpretation of this Agreement and any disputes arising from this Agreement shall be governed by California law. Any action, arbitration, mediation or other proceeding arising out of this Agreement shall be initiated and conducted only in the County.

Section 17. Right to Cure. If a Party not in default of its obligations pursuant to this Agreement (“Non-Defaulting Party”) asserts that the other Party (“Defaulting Party”) is in default of its obligations pursuant to this Agreement, the Non-Defaulting Party shall provide written notice to the Defaulting Party specifying in reasonable detail the nature of such default. In any such event, the Non-Defaulting Party shall not take any action in response to the default unless the Defaulting Party fails to cure the default within five (5) days after receipt of the notice of default. Nothing in this Section shall be deemed or construed to require that the District issue any Certificate of Compliance for which it has not received corresponding payment as provided herein.

Section 18. Interpretation Guides. In interpreting this Agreement, it shall be deemed to have been prepared by the Parties jointly and no ambiguity shall be resolved against either Party on the premise that it or its attorneys was responsible for drafting this Agreement or any provision hereof. The captions or headings set forth in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any Section, Subsection, Subdivision or other provision of this Agreement. Any reference in this Agreement to a Section, Subsection, Subdivision or other provision, unless specified otherwise, shall be a reference to a Section, Subsection, Subdivision or provision of this Agreement.

Section 19. Recitals and Exhibits. All Recitals set forth herein and all Exhibits attached hereto or referenced herein, if any, are hereby incorporated as operative and effective provisions of this Agreement.

Section 20. Operative Date and Recording of Agreement.

(a) This Agreement shall become operative for all purposes on the “Operative Date,” which shall be the earlier to occur of (i) the date the last parcel of land constituting or substantially constituting the Property is conveyed to the Developer or (ii) the date the first Final Map covering all or a portion of the Property is recorded. Developer shall notify District in writing at least ten business days prior to the anticipated occurrence of either of the two events

described immediately above, and shall additionally notify District of the actual occurrence of either of such two events within two business days thereafter. Any failure of Developer to provide either of such notices shall be a material breach of the Developer's obligations pursuant to this Agreement. The District shall, on or after the Operative Date, record this Agreement in the official records of the County, and the Developer shall reasonably cooperate in that regard, including, without limitation, execution and delivery of any documentation that may be necessary to so record this Agreement. Within five business days after the Operative Date, the Developer shall provide to the District all such documents, in recordable form, as are necessary to, and that do, subordinate all monetary liens and encumbrances and option agreements of record relating to the Property, if any, to the terms of this Agreement.

(b) For all purposes of this Agreement, including, without limitation, for purposes of Subsection (a) of this Section, conveyance of any portion of the Property to Developer, directly or indirectly, through any assignee, subsidiary, or other related entity, shall be deemed to be a conveyance to Developer. The Developer shall not, by any conveyance or transfer of its contractual, beneficial or other interests in the Property, including, without limitation, any conveyance of its option(s) or other rights to acquire any portion of the Property, or by any other means or mechanism, avoid this Agreement becoming effective and/or operative with respect to the Property, and any attempt to do so shall be a material breach of the Developer's obligations pursuant to this Agreement.

(c) Upon recording of this Agreement in the official records of the County relating to all or a portion of the Property, the obligations herein shall thereafter be deemed to be obligations that relate to such portion of the Property and shall run with the land as obligations of whatever development may occur on such portion of the Property.

Section 21. Counterparts. This Agreement may be signed in one or more original counterparts, which, taken together, shall constitute one and the same instrument.

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Section 22. Due Authority of Signatories. Each individual signing this Agreement represents and warrants that he or she has been duly authorized by the Party he or she represents to execute, and thereby bind such Party to, this Agreement.

IN WITNESS WHEREOF, each of the undersigned execute this Agreement on behalf of the Party he or she represents.

Newhall School District

By: _____
Dr. Marc Winger, Superintendent

Approved as to Form:
Bowie, Arneson, Wiles & Giannone

By: _____
Alexander Bowie, Attorneys for
the Newhall School District

***Western Pacific Housing-Lyons
Canyon Partners, LLC***

By: Western Pacific Housing, Inc.,
a Delaware corporation, formerly
known as Schuler Homes, Holdco, Inc.,
successor by merger to Western Pacific
Housing Development Limited
Partnership, a California limited
partnership

By: _____
Rick Coop, Vice President

Note: Please Notarize Signatures of All Parties

William S. Hart School District Fair Share School Mitigation Agreement

Recording Requested by)
and when recorded mail to:)
)
William S. Hart Union High School District)
Attention: Asst. Superintendent, Business)
21515 Centre Pointe Parkway)
Santa Clarita, CA 91350-2948)

Space above this line for Recorder's use only.
Exempt from recording fee pursuant to Gov. Code § 6103.

SCHOOL FACILITIES FUNDING AND MITIGATION AGREEMENT

This School Facilities Funding and Mitigation Agreement (“Mitigation Agreement”) is made effective as of _____, 2006 (“Effective Date”) by and between the William S. Hart Union High School District (“Hart”), a public school district organized and existing under the laws of the State of California, and Western Pacific Housing - Lyons Canyon Partners, LLC (“Developer”), a Delaware Limited Liability Company. Hart and Developer may hereinafter be referred to individually as “Party” and collectively as “Parties.”

RECITALS

A. Developer is the current owner of property located in the County of Los Angeles (“County”), State of California (“State”), the legal description and a depiction of which are attached as Exhibit “A” hereto (“Property”). The Developer is seeking governmental approvals from the County of Los Angeles for development of the Property (“Land Use Entitlements”), including, among others, Tentative Tract Map No. (“Tract”) 53653. The Property is located within Hart’s boundaries. The Property is also located within the boundaries of the Newhall School District, but it is not a party to this Mitigation Agreement.

B. The proposed Land Use Entitlements provide that Developer may construct 93 single family dwelling units (“SFDU”) and 93 Age-Restricted dwelling units (“Age-Restricted DU”) within Tract 53653 (“Project”). For purposes of this Mitigation Agreement, an SFDU is any dwelling unit (“DU”) that is a single family residence with no structural walls in common with any other DU. For purposes of this Mitigation Agreement, a multi-family attached dwelling unit (“MFDU”), including an MFDU rented or for rent as an apartment, is a DU in a building or buildings in which all of the DU have one or more supporting, above-ground, vertical, common walls establishing a substantial connection between two (2) or more DU. For purposes of this Mitigation Agreement, commercial and industrial development (“C/I Development”) is deemed to be any nonresidential development, although no C/I Development is proposed as part of the project other than a Fire Station, to which this Mitigation Agreement is hereby deemed not to apply. For purposes of this Mitigation Agreement, an age restricted DU (“Age-Restricted DU”) is any DU the occupation of which is restricted in conformance with the

provisions of Government Code Section 65995.1. The plans for development of the Property may change over time to meet the needs of the market, and modifications of existing Land Use Entitlements also may occur. The provisions herein shall be applicable to whatever development may occur on the Property.

C. Developer acknowledges that the development of the Property will generate additional junior high school (“JHS”) students and additional senior high school (“SHS”) students (collectively, “Project Students”). Developer and Hart acknowledge that Hart must provide interim and permanent school facilities including land, buildings, furnishings and equipment, interim and permanent classrooms, and central and administration facilities (collectively, “School Facilities”) for the Project Students. Hart does not have capacity in its existing School Facilities to accommodate the Project Students and, therefore, must construct additional JHS and SHS School Facilities.

D. Historically, the State has provided a substantial portion of the funds necessary for acquisition and construction of School Facilities (“State Funds”). However, over the last several years the availability of State Funds for construction of new School Facilities has been varied and uncertain. With the enactment by the Legislature of Statutes 1998, Ch. 407 (“SB-50”), approval of Proposition 1A by the voters on November 3, 1998, and the implementation of the funding program pursuant to the Leroy F. Greene School Facilities Act of 1998 (“SFP”), the State may provide funds for construction of new School Facilities. State Funds, pursuant to the SFP and subject to certain limitations, may be available to any school district that meets the State’s eligibility requirements and local-matching-funds requirements. Whether Hart obtains State Funds for School Facilities necessary to accommodate Project Students is dependent on Hart’s ability to meet those requirements. Hart does not expect that the State Funds to be made available will ultimately be sufficient to fund the backlog of School Facilities needs in the State.

E. Developer and Hart acknowledge the possibility that Hart may receive State Funds for a portion of the cost of the additional School Facilities needed to accommodate Project Students. However, there is no guarantee that Hart will receive such State Funds in an amount sufficient to provide School Facilities for the Project Students and other students within Hart’s boundaries. In prior years, Hart provided each real-estate developer with the opportunity to assign to Hart any rights the developer may have to reimbursement from State Funds not including any financial or other hardship assistance received by Hart pursuant to applicable law, including State Allocation Board regulations implementing the SFP (“Reimbursable State Funds”). In exchange for the assignment to Hart of such rights, the developer’s obligation to mitigate the impacts on Hart’s School Facilities is proportionally reduced. Developer acknowledges that Hart and other developers (“Fair Share Mitigation Payment Participants”) have entered into similar agreements and that those agreements may contain such reimbursement provisions. Developer has agreed to assign to Hart the Developer’s rights, if any, to future Reimbursable State Funds, and in exchange therefore, the Developer’s obligation

to mitigate the impacts of development of the Property has been reduced as specified herein. Hart hereby assumes the risk that State Funds will not be available to assist in funding School Facilities necessary to mitigate the impact of development of the Property.

F. Hart has determined that it will be able to mitigate the adverse impacts that might otherwise result from the development of the Property through payment by Developer of the Fair Share School Impact Mitigation Payments pursuant to this Mitigation Agreement. Developer and Hart desire to enter into this Mitigation Agreement to hereby set forth Developer's obligations to mitigate impacts of the development of the Property and Hart's obligations to provide School Facilities necessary to accommodate Project Students.

G. The procedure set forth in this Mitigation Agreement will ensure that the development of the Property, either individually or cumulatively with other projects within Hart's boundaries, will have no adverse impacts on Hart's ability to provide adequate School Facilities for the Project Students.

IN LIGHT OF THE FOREGOING FACTS, IT IS MUTUALLY AGREED THAT:

Section 1. Incorporation of Recitals. The foregoing Recitals are hereby incorporated into, and are fully operative and effective provisions of, this Mitigation Agreement.

Section 2. Mitigation Obligation. Hart has caused to be prepared and approved a report dated April 1, 2006, and entitled "Fair Share School Impact Mitigation Payment Adjustment Analysis for Calendar Year 2006" ("Annual Adjustment Analysis"), which established the fair share mitigation payments applicable in calendar year 2006 to new residential development within Hart's boundaries (each a "Fair Share School Impact Mitigation Payment"). The Annual Adjustment Analysis is on file and may be reviewed at Hart's district office.

(a) The Fair Share School Impact Mitigation Payments payable hereunder to Hart, if received by Hart in calendar year 2006, as determined by Hart on a per DU basis, are thirteen thousand, five hundred, twenty-three dollars and sixty-six cents (\$13,523.66) per SFDU and six thousand, one hundred, ninety-eight dollars and twenty-four cents (\$6,198.24) per MFDU. As previously described herein, the Parties agreed to reduce the initial Fair Share School Impact Mitigation Payment amounts in consideration of the assignment to Hart by Developer of its rights, if any, to Reimbursable State Funds attributable to Project Students that are received by Hart. The Developer hereby assigns to Hart all of Developer's rights to reimbursement, if any, from future Reimbursable State Funds. Therefore, the initial Fair Share School Impact Mitigation Payment amounts payable in calendar year 2006 have been reduced to twelve thousand, five hundred, fifty-seven dollars and sixty-eight cents (\$12,557.68) per SFDU and five thousand, seven hundred, fifty-five dollars and fifty-three cents (\$5,755.53) per MFDU.

(b) With respect to any Age-Restricted DU or C/I Development occurring on the Property, Developer shall pay such fees as are required pursuant to Education Code Section 17620 *et seq.* and Government Code Section 65995 *et seq.* or similar or successor statutes (“Statutory School Fees”). At the time it seeks any Certificates of Compliance (defined in Section 6) for Age-Restricted DU, Developer shall provide documentation to Hart reasonably evidencing that such DU are restricted as provided in Government Code Section 65995.1.

Section 3. Timing of Payments. The Fair Share School Impact Mitigation Payments required pursuant to Subsection (a) of Section 2, and the Statutory School Fees required pursuant to Subsection (b) of Section 2, of this Mitigation Agreement shall be paid to Hart for each DU or C/I Development prior to the time that an application for a building permit for any construction for such DU or C/I Development on the Property is submitted to the County, the City, or any other governmental entity that has the authority to issue building permits for the development of the DU or C/I Development on the Property. The foregoing is intended to require only payments attributable to construction for which the Developer is then seeking building permits, and is not intended to require that the Developer pay in advance any amounts attributable to construction for which the Developer is not yet seeking, or has not sought, building permits. Once the Fair Share School Impact Mitigation Payment is paid by Developer for a DU or for C/I Development in accordance with this Mitigation Agreement, Developer shall have no further payment obligation under this Mitigation Agreement to Hart with respect to such DU or C/I Development.

Section 4. Adjustments To Mitigation Obligation. The Fair Share School Impact Mitigation Payment amounts shall be reviewed and, if applicable, increased or decreased by Hart, at the times, and in accordance with the methodologies set forth in the Annual Adjustment Analysis and this Section. The adjustments shall be based on variations in student generation factors (“SGF”), land value of school sites (“Land Value Component”) and costs of construction, furnishings, equipment and related costs (“Non-Land Value Component”) as provided in this Section. In no event shall any adjustment of the Fair Share School Impact Mitigation Payment amounts be applied retroactively to any DU for which the Fair Share School Impact Mitigation Payment was duly paid to Hart prior to the effective date of such adjustment.

(a) **Student Generation Factors.** As set forth in the Annual Adjustment Analysis, certain initial SGF were used in determining the initial amounts of the Fair Share School Impact Mitigation Payments. Effective each January 1, commencing January 1, 2007, or as soon thereafter as practicable, the amount of Fair Share School Impact Mitigation Payments shall be increased or decreased based upon the recalculation of the SGF for Hart determined in accordance with the methodology set forth in the Annual Adjustment Analysis and the other provisions of this Section.

(b) *Land Value Component.* The Annual Adjustment Analysis established a Land Value Component assuming a construction-ready condition, with dedicated and improved public roads and utilities, including storm drainage facilities. This Land Value Component has been used in calculating the initial Fair Share School Impact Mitigation Payments that are effective during calendar year 2006. The Parties acknowledge this value per acre may vary as the Property is developed. Consequently, effective each January 1st, commencing January 1, 2007, or as soon thereafter as practicable, the Fair Share School Impact Mitigation Payment amounts shall be increased or decreased based upon the Land Value Component determined as of a valuation date of the preceding October 15th. This adjustment shall be determined by the appraised value per-net-acre of the sites then under consideration by Hart for the next JHS site and the next SHS site (“Proposed Sites”). If Hart identifies more than one (1) JHS Proposed Site or more than one (1) SHS Proposed Site, the Land Value Components for the JHS and for the SHS shall be based on the average of the appraised per acre values of all JHS Proposed Sites and the average of the appraised per acre values of all SHS Proposed Sites. Hart shall select an appraiser (“Hart Appraiser”), who shall be a member of the Appraisal Institute (“AI”), to conduct the appraisals of the Proposed Sites. Hart shall pay the cost of the appraisals with Fair Share School Impact Mitigation Payments received by Hart from Developer or others, or interest earned thereon. The Proposed Sites shall be appraised on the basis of the highest and best use of the Proposed Sites as determined by the Hart Appraiser. If Developer does not concur with Hart’s choice of the Hart Appraiser, or with the Hart Appraiser’s opinion of value, Developer may, at its own expense, designate an AI appraiser (“Developer Appraiser”) to independently appraise the Proposed Sites and prepare a report establishing and supporting the Developer Appraiser’s opinion of the fair market value (“FMV”) of each of the Proposed Sites. If the opinions of value of the Hart Appraiser and the Developer Appraiser differ by ten percent (10%) or less from each other, the appraised FMV of the Proposed Sites shall be deemed to be the average FMV of the two (2) appraisals of the Proposed Sites. If the opinions of value of the Hart Appraiser and the Developer Appraiser differ by more than ten percent (10%), the Hart Appraiser and the Developer Appraiser shall be instructed to agree upon a third AI appraiser (“Supplemental Appraiser”) to appraise the Proposed Sites. Hart and Developer shall equally share the cost of the Supplemental Appraiser. The Supplemental Appraiser also shall independently appraise the Proposed Sites and prepare a report establishing and supporting his or her opinion of the FMV of each of the Proposed Sites. In that event, the appraised FMV of each of the Proposed Sites shall be deemed to be the average FMV of the two (2) appraisals having the closest opinions of value. In the event the appraisal of each of the Proposed Sites conducted by the Supplemental Appraiser equals the average of the Hart Appraiser and the Developer Appraiser, then the appraised FMV of each of the Proposed Sites shall be deemed to be the value determined by the Supplemental Appraiser. In the event one or more other Fair Share Mitigation Payment Participants also desire to designate a Developer Appraiser, such appraiser shall be the appraiser designated by a majority of Developer and the other Fair Share Mitigation Payment Participants whose mitigation agreements contain a Land Value Component adjustment substantially similar to the provisions of this Mitigation

Agreement. Developer agrees to bear its pro rata share of the cost of the Developer Appraiser and the Supplemental Appraiser designated by a majority of the parties executing such mitigation agreements with Hart. If the parties are unable to agree on the Developer Appraiser, Hart shall designate the Developer Appraiser from a list of appraisers submitted by Developer and other Fair Share Mitigation Payment Participants.

(c) *Non-Land Value Component.* Each January 1, commencing January 1, 7, or as soon thereafter as practicable, the Non-Land Value Component shall be increased or decreased, if applicable, based upon the percentage change in the Marshall & Swift Class D Wood Frame Index for the Western United States (“Index”) for the twelve (12) month period ending on the preceding October 31st. In the event the Index is no longer published, an equivalent index shall be reasonably determined by Hart.

(d) *Adjustment Process.* The annual adjustment of the Fair Share School Impact Mitigation Payments shall be accomplished in the manner and in accordance with the procedure set forth in the Annual Adjustment Analysis and this Subsection. On or about November 15th of each year, or as soon thereafter as practicable, commencing with calendar year 2006, Hart shall prepare and submit to Developer an analysis for the subsequent calendar year, which shall specify the adjustments made in accordance with Subsections (a) through (c) above (“Annual Adjustment Analysis”). The Annual Adjustment Analysis shall set forth the proposed Fair Share School Impact Mitigation Payments to be applicable effective January 1st of the next succeeding calendar year. Upon Developer’s request at any other reasonable time, Hart shall meet with Developer to review and discuss the Annual Adjustment Analysis before December 10th of each year, or as soon thereafter as practicable. Hart shall take into account any information provided by Developer with respect to the Annual Adjustment Analysis, either before or after completion of the Annual Adjustment Analysis, in determining adjustment of the Fair Share School impact Mitigation Payments. Any disputes between Developer and Hart with respect to the Annual Adjustment Analysis not resolved to each Party’s satisfaction shall be resolved in accordance with Section 24 of this Mitigation Agreement, but only after either Hart or Developer determines that no other alternative is feasible. Pending such resolution, any revised Fair Share School Impact Mitigation Payments that become due may be paid under protest and, if any amount subsequently is determined to have been improperly applied by Hart, Hart shall return such additional amount to Developer with interest at the average rate paid by the Los Angeles County Local Agency Investment Fund accruing from the date of payment to the date of repayment by Hart to Developer.

Section 5. Notice of Annual Adjustment. On or about November 15th of each year, commencing with calendar year 2006, or as soon thereafter as practicable, Hart shall forward to Developer the Annual Adjustment Analysis provided for in Section 4(d) of this Mitigation Agreement. The Annual Adjustment Analysis shall serve as notice from Hart of any determination applicable in the next calendar year of the SGF, Land Value Component, Non-Land Value Component, Fair Share School Impact

Mitigation Payments, or any other determination or document that would impose a duty on Developer or change the extent of Developer's obligations under this Mitigation Agreement. Developer acknowledges that Hart's ability to provide the Annual Adjustment Analysis to Developer by November 15 in any particular year is dependent on collection and analysis of certain information not within Hart's control. Failure by Hart in any particular year to forward the Annual Adjustment Analysis to Developer by November 15 shall be deemed insufficient grounds for Developer to avoid the increase or decrease in the Fair Share School Impact Mitigation Payments for the subsequent calendar year. Hart's provision of the Annual Adjustment Analysis to Developer after November 15 in any particular year shall not prejudice Developer's right, as set forth in Subsection (d) of Section 4, to review the Annual Adjustment Analysis and seek a determination from Hart, if Developer requests such determination within thirty (30) calendar days after receipt of the Annual Adjustment Analysis.

Section 6. Certificates of Compliance.

(a) Immediately upon receipt by Hart of the required Fair Share School Impact Mitigation Payment, in the amount required pursuant to this Mitigation Agreement for each SFDU or MFDU, together with a written request from Developer, Hart shall issue written certification required by Developer to obtain building permits for the construction of those SFDU or MFDU from the County or other governmental entity that requires such certification ("Certificates of Compliance").

(b) Immediately upon receipt by Hart of the amount required pursuant to this Mitigation Agreement for Age-Restricted DU or C/I Development together with a written request from Developer, Hart shall issue Certificates of Compliance to Developer for those Age-Restricted DU or that C/I Development.

Section 7. Hart Educational and School Facilities Policies. Except as set forth herein, this Mitigation Agreement shall not in any manner be asserted by Developer to interfere in any way with, or to limit, the Governing Board of Hart in determining what educational and facilities policies will best further the interests of Hart's students or the construction or operation of its School Facilities.

Section 8. Support of Land Use Applications. Within ten (10) days of a receipt of written request from Developer, Hart shall express, in written form, its support for any Developer request for a land use approval, whether legislative or administrative, sought for the development of any portion of the Property from the County or any other governmental entity that has the right to grant such an approval. Such action by Hart shall relate only to the adequacy of School Facilities for such development and not the desirability or undesirability of approval except as related to adequacy of School Facilities for such proposal.

Section 9. Certification of Adequacy of Mitigation. Hart shall provide written certification within ten (10) days of receipt of a written request from Developer

that adequate School Facilities exist, or that the financing provided by this Mitigation Agreement guarantees their availability as needed, to house the Project Students. This written certification shall be given to the California Department of Real Estate, the County, or any other governmental entity which may have development approval authority over any portion of the Property.

Section 10. Equal Treatment Provisions.

(a) On or about November 15th of each year, or as soon as reasonably practicable thereafter, or upon Developer's written request at any other time, Hart shall provide Developer with copies of all mitigation agreements entered into by Hart and other developers or landowners subsequent to execution of this Mitigation Agreement that Hart has not already provided to Developer. Hart shall, at the same time, provide any analyses of such agreements prepared by Hart or its consultants and all other materials in Hart's possession reasonably necessary for the evaluation of the economic terms of such agreements to the extent such analyses or other materials are not subject to any attorney-client or attorney-work-product privilege.

(b) If, subsequent to the date of this Mitigation Agreement, Hart enters into any such agreement that is more economically advantageous to other developers or landowners than this Mitigation Agreement is for Developer, as agreed upon by the Parties or as determined pursuant to Section 24 herein, this Mitigation Agreement shall be modified to make the obligations of this Mitigation Agreement consistent with, and no greater than, the obligation imposed by that subsequent agreement upon other developers or landowners. Any such modification shall not require a formal amendment to this Mitigation Agreement, but may be described in an addendum signed by Hart and Developer. Any modification of the obligations imposed on Developer pursuant to this Mitigation Agreement shall be effective as of the date of Hart's approval of the more economically advantageous agreement, and Developer shall be entitled to a refund of the amount of the Fair Share School Impact Mitigation Payments in excess of the modified amount plus interest on the refunded amount at the average interest rate paid by the Los Angeles County Local Agency Investment Fund accruing from the date of each payment to the date of refund.

(c) An agreement requiring a lesser mitigation payment per DU, but requiring other consideration of equal or greater value, such as land, shall not be deemed or construed as more economically advantageous than this Mitigation Agreement. A subsequent agreement shall not be deemed or construed as more economically advantageous than this Mitigation Agreement if it is the result of either a condition of approval imposed by a public agency other than Hart prior to the date of this Mitigation Agreement that explicitly limits the amounts payable to Hart or a change in applicable law.

Section 11. No Further Exactions. Provided that the Developer is not in breach of its obligations set forth herein, Hart shall not, under any circumstances:

(a) Exercise any power or authority under current or future law to levy or impose an exaction of land, goods, money, or services, whether denominated a fee, charge, dedication, or otherwise, against any development of the Property;

(b) Require, request, or cooperate with the County or any other governmental entity to exercise any power or authority to levy or impose an exaction of land, goods, money, or services, whether denominated a fee, charge, dedication, or otherwise, for Hart's benefit;

(c) Oppose the development of any portion of the Property or any governmental approval, whether legislative or administrative, or any change in any governmental approval on any basis whatsoever; or

(d) Sponsor or require the formation of a Mello-Roos Community Facilities District ("CFD") for any of the Property, except for a CFD or multiple CFDs which together include all of the land within Hart's boundaries, without the express, written consent of Developer which consent may be given or withheld in Developer's sole discretion. Hart shall not unreasonably refuse to act as a sponsor for a CFD or similar public financing procedure if requested to do so by Developer. Hart may accomplish any general obligation bond election that it desires on a District-wide basis or by one or more school facilities improvement districts.

Section 12. Adequacy of Developer's Mitigation Obligation. The Fair Share School Impact Mitigation Payments that Developer shall pay to Hart pursuant to the terms of this Mitigation Agreement constitute the entire extent of Developer's obligation to Hart to provide the funds necessary for Hart to obtain the School Facilities needed to house Project Students or for any other purpose related to mitigation of impacts on the School Facilities arising from development of the Property.

Section 13. Mitigation Agreement Not Terminated By Change In Law. The Parties intend that this Mitigation Agreement shall provide for the complete mitigation of all impacts, direct and cumulative, from development of the Property on Hart's ability to provide adequate educational opportunities to the Project Students and School Facilities needed to house Project Students. No development or change in the development of the Property, and no governmental approval or change in any governmental approval relating to any portion of the Property, shall constitute a sufficient basis for any modification or termination of this Mitigation Agreement. The provisions of this Mitigation Agreement shall not be affected by: (i) any existing applicable law; (ii) any subsequent legislation enacted by the State of California acting through the legislative or initiative process; or (iii) any subsequent judicial decisions related to the matters provided for in this Mitigation Agreement. The Fair Share School Impact Mitigation Payments provided for in this Mitigation Agreement are hereby appropriated and dedicated to payment of the future acquisition, construction, financing, and other costs incurred by Hart to accommodate Hart's students in its School Facilities.

Section 14. Transfer and Encumbrance. In its sole discretion, Developer may sell or encumber the Property or a portion thereof, in an improved or unimproved condition, through any means including, but not limited to, deed, mortgage, deed of trust, or other security device. No sale, transfer, or encumbrance of any portion of the Property shall affect Developer's obligations under this Mitigation Agreement, except as provided in Section 16 below. The Certificates of Compliance issued pursuant to this Mitigation Agreement may not be utilized to satisfy an obligation to mitigate impacts on Hart's School Facilities attributable to development of real property other than the Property. Except as provided in Section 33, neither this Mitigation Agreement, nor any breach of this Mitigation Agreement, shall defeat, invalidate, diminish, or impair the lien or priority of any deed, mortgage, deed of trust, or other security device.

Section 15. Mutual Cooperation. Unless this Mitigation Agreement provides to the contrary, Hart and Developer shall, within ten (10) days of receipt of a written request from the other Party, perform any acts and prepare, sign, deliver, file, and record any documents reasonably required to obtain the goals, and to satisfy the conditions, contained in this Mitigation Agreement. This includes, but is not limited to, providing the requesting Party with a written statement certifying that:

(i) This Mitigation Agreement is unmodified and in full force and effect, or, if there have been modifications, this Mitigation Agreement, as modified, is in full force and effect, stating the date and nature of any modification; and

(ii) There are no current uncured defaults under this Mitigation Agreement, or, if there are any, the dates and natures of the defaults.

Section 16. Assignment of Mitigation Agreement; Successors and Assigns. Developer shall have the unconditional right to assign any right or obligation under this Mitigation Agreement to anyone at any time, and the assignee shall automatically assume its proportionate share of all applicable provisions of this Mitigation Agreement. Developer may act as the master developer of the Property and may sell portions of the Property to builders (each a "Merchant Builder") that will construct and sell DU to the public. Whenever this Mitigation Agreement provides Developer with a right, that right may be exercised by the assignee of that right to the same extent that Developer could have exercised that right. The assignment of any right or obligation under this Mitigation Agreement shall be in writing and a copy of the assignment shall be provided to Hart in order to be effective for purposes of this Mitigation Agreement. No such assignment shall relieve Developer of any of its obligations under this Mitigation Agreement without Hart's written consent, which Hart shall not unreasonably withhold. Subject to the foregoing, this Mitigation Agreement shall be binding on the Parties and their respective successors, assigns or transferees, whether such succession, assignment or transfer is by operation of law or otherwise.

Section 17. Indemnification re Sales to Merchant Builders. The Developer shall indemnify, defend and hold-harmless Hart against and from any claims, demands, actions or other proceedings, judgments, damages, liabilities, costs and expenses (including, but not limited to, attorney's fees and expenses) arising from or related to: (i) any claim, demand, action or other proceeding arising out of any sale of any portion of the Property to a Merchant Builder or other party; (ii) any claim, demand, action or other proceeding by a Merchant Builder or other purchaser of any portion of the Property arising out of the agreement for such purchase; or (iii) any claim, demand, action or other proceeding arising out of any other agreement between the Developer and any Merchant Builder or other party. The obligations of Developer set forth in this Section and Section 18 shall survive termination of this Mitigation Agreement.

Section 18. Defense of Hart, Payment of Judgments. Any defense of Hart conducted pursuant to the indemnity provisions of this Mitigation Agreement shall be conducted by qualified and appropriately-experienced legal counsel reasonably acceptable to Hart, but selected and retained by the Developer, at no cost to Hart. Without limiting anything else in any indemnity provision of this Mitigation Agreement, the Developer shall also pay the full cost to Hart of the monitoring of, and, if necessary, the participation in, such defense by Hart's legal counsel. The Developer shall pay all judgments, costs, expenses, and other amounts due to Hart pursuant to this Mitigation Agreement within thirty days of receipt of Hart's written invoice therefore. Any amounts not so paid when due shall accrue interest at the legal rate.

Section 19. Owners of Completed Property. Notwithstanding anything herein that may be construed to the contrary, this Mitigation Agreement shall not be binding upon or inure to the benefit of any individual owner or owners of a completed DU, or any completed C/I Development, constructed and sold within the Property (each an "Owner of Completed Property"). In no event may any Owner of Completed Property, in that capacity, be deemed or construed as a successor or assign of the Developer with respect to this Mitigation Agreement. Upon conveyance of all lots, parcels and/or DU within the Property (not including any lots or parcels held by any homeowner association, community association or similar entity as common or open-space area, or the lot to be conveyed or dedicated for purposes of a Fire Station) to Owners of Completed Property, this Mitigation Agreement shall automatically terminate and be of no further force or effect other than as described in Section 17, without the necessity for recordation or execution of any additional instrument.

Section 20. No Third Party Beneficiaries. This Mitigation Agreement is entered into solely for the benefit of Hart and Developer. Other than Hart and Developer, no third person shall be entitled, directly or indirectly, to base any claim or to have any right arising from, or related to, this Mitigation Agreement.

Section 21. Entire Agreement. This Mitigation Agreement contains the entire agreement and understanding concerning the funding of School Facilities as to the

Property, and this Mitigation Agreement supersedes and replaces all prior negotiations and proposed agreements, written or oral, except as they are included in this Mitigation Agreement. Hart and Developer acknowledge that neither the other Party nor its agents nor attorneys have made any promise, representation, or warranty whatsoever, express or implied, not contained herein to induce the execution of this Mitigation Agreement and acknowledge that this Mitigation Agreement has not been executed in reliance upon any promise, representation, or warranty not contained herein.

Section 22. Amendments Must Be In Writing. This Mitigation Agreement may not be modified except by a writing signed by Hart and Developer.

Section 23. Acknowledgment of Independent Investigation. Hart and Developer acknowledge that each has conducted an independent investigation of the facts concerning the development of the Property, the impacts that Project Students will have on Hart's School Facilities, and the costs of housing Project Students.

Section 24. Disputes To Be Arbitrated. Hart and Developer desire to resolve as quickly as possible any disputes as to the meaning of any portion of this Mitigation Agreement, the validity of any determination or calculation, or the rights or obligations of Hart or Developer pursuant thereto. Therefore, any such disputes shall be resolved by binding arbitration conducted by a retired judge of the Los Angeles Superior Court selected by the Parties. Either Party may initiate arbitration pursuant to this Section. If Hart and Developer are unable to agree on the arbitrator within thirty (30) days of the receipt of a request for arbitration, they shall request that the presiding judge of the Los Angeles Superior Court designate an arbitrator. The arbitrator shall establish procedures and rules to be followed in conducting the arbitration, which, at a minimum, shall specify that the arbitrator shall adhere to and apply all substantive statutory, regulatory, administrative and case law that is applicable to the dispute. Hart and Developer shall each pay one-half the cost of the arbitration and each shall be responsible for its own attorneys' fees and costs as to any such arbitration. If any Party petitions to confirm, correct, or vacate the award as provided by Chapter 4 of Title 9 of the Code of Civil Procedure (commencing with Section 1285), the prevailing Party shall be entitled as part of its costs to a reasonable attorney's fee to be fixed by the court.

Section 25. Enforcement of Terms. Except as provided in Section 24 above, the prevailing Party in any proceedings before a court or other body of competent jurisdiction, and in any appeal, therefrom shall be entitled to reasonable attorneys' fees and other costs of litigation in addition to any other relief to which it may be entitled.

Section 26. Venue for Resolving Disputes. Any arbitration, litigation or other proceeding arising out of this Mitigation Agreement shall be initiated and conducted only in the County.

Section 27. Interpretation Guides. In interpreting this Mitigation Agreement, it shall be deemed to have been prepared by the Parties jointly, and no ambiguity shall be resolved against either Party on the premise that it was, or its attorneys were, responsible for drafting this Mitigation Agreement or any provision hereof. The captions or headings set forth in this Mitigation Agreement are for convenience only and in no way define, limit, or describe the scope or intent or any Sections, Subsections, or other provisions of this Mitigation Agreement. Any reference in this Mitigation Agreement to a Section or to a Subsection, unless specified otherwise, shall be a reference to a Section or Subsection of this Mitigation Agreement.

Section 28. Notices. All notices, demands, and communications between Hart and Developer shall be duly addressed as indicated below and given by personal delivery, registered or certified mail (postage prepaid and return receipt requested), Federal Express or other reliable private express delivery, or by facsimile transmission. Such notices, demands, or communications shall be deemed received (i) upon delivery if personally served or sent by facsimile, or (ii) after three business days if given or sent by any other approved manner specified above. Any Party to this Mitigation Agreement may change its below-specified name, address, facsimile number, or person to whom attention should be directed by giving notice as specified in this Section. A copy of any notice, demand, or communication sent to Hart pursuant to this Mitigation Agreement shall be sent to Hart's legal counsel, and a copy of any notice, demand, or communication sent to Developer pursuant to this Mitigation Agreement shall be sent to Developer's legal counsel. Notices, demands, and communications shall be duly addressed and sent as follows:

To Hart:

William S. Hart Union High School District
Attention: Asst. Superintendent, Business
21515 Centre Pointe Parkway
Santa Clarita, CA 91350
Fax No. (661) 259-4762

To Hart's Legal Counsel:

Bowie, Arneson, Wiles & Giannone
Attention: Brian W. Smith
4920 Campus Drive
Newport Beach, CA 92660
Fax No. (949) 851-2014

To Developer:

DR Horton
Attention: Rick Coop
21300 Victory Blvd., Suite 700
Woodland Hills, CA 91367
Fax No. (818) 251-5719

To Developer's Legal Counsel:

Stowell, Zeilenga, Ruth, Vaughn &
Treiger, LLP
Attention: Richard S. Zeilenga
2815 Townsgate Road, Suite 330
Westlake Village, CA 91361
Fax No. (805) 446-1490

If sent to Developer, copy to:
Western Pacific Housing, Inc.
Attention: William B. Mayer
5790 Fleet Street, Suite 200
Carlsbad, CA 92008
Fax No. (760) 804-0308

Section 29. California Law Governs. This Mitigation Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California.

Section 30. Counterparts. This Mitigation Agreement may be signed in one or more counterparts, which, taken together, shall constitute one original document.

Section 31. Exhibits. All Exhibits attached hereto or referenced herein are incorporated into this Mitigation Agreement.

Section 32. Incorporation Into Subsequent Approvals. These obligations shall be deemed to be obligations that relate to the Property and shall run with the land as obligations of its future development.

Section 33. Recording of Mitigation Agreement. On or after the Effective Date, Hart shall record this Mitigation Agreement in the official records of the County, and the Developer shall reasonably cooperate in that regard, including, without limitation, execution and delivery of any documentation that may be necessary to so record this Mitigation Agreement. Concurrent with execution and delivery of this Mitigation Agreement to Hart, the Developer shall have provided to Hart all such documents, in recordable form, as are necessary to, and that do, subordinate all monetary liens and encumbrances and option agreements of record relating to the Property, if any, to the terms of this Mitigation Agreement. Upon recording of this Mitigation Agreement in the official records of the County, the obligations herein shall thereafter be deemed to be obligations that relate to the Property and shall run with the land as obligations of whatever development may occur on the Property.

Section 34. Right to Cure. If a Party not then in default of its obligations under this Mitigation Agreement (“Non-Defaulting Party”) asserts that the other Party is in default of its obligations under this Mitigation Agreement, the Non-Defaulting Party shall provide written notice to the Defaulting Party specifying the nature of such default (“Notice of Default”). The Defaulting Party shall have ten (10) business days after its receipt of the Notice of Default to cure such default or to provide notice to the Non-Defaulting Party if the Defaulting Party reasonably disputes the alleged default. Any dispute as to the existence of an alleged default shall be resolved in accordance with the dispute resolution provisions of this Mitigation Agreement. In the case of a non-monetary breach or default that reasonably can not be cured within ten (10) days, the

Defaulting Party shall have a reasonable time to cure the default, not to exceed thirty days, provided that the Defaulting Party commenced reasonable efforts to cure the default within such ten (10) day period and has thereafter diligently pursued completion of the cure.

Section 35. Due Authority of Signatories. Each individual signing this Mitigation Agreement warrants and represents that he or she has been authorized by appropriate action of the Party which he or she represents to enter into, and thereby bind such Party to, this Mitigation Agreement.

In Witness Whereof, the undersigned execute this Mitigation Agreement on behalf of the Parties.

William S. Hart Union High School District

By: _____
Rory Livingston, Assistant Superintendent of Business

Western Pacific Housing, Inc.,
a Delaware corporation, formerly known as Schuler Homes, Holdco, Inc., successor by merger to Western Pacific Housing Development Limited, a California limited partnership

By: _____
Rick Coop, Vice President

Approved as to Form:
Bowie, Arneson, Wiles & Giannone

By: _____
Brian W. Smith, Attorneys for the William S. Hart Union High School District

Approved as to Form:
Stowell, Zeilenga, Ruth, Vaughn and Treiger

By: _____
Richard S. Zeilenga, Attorneys for Western Pacific Housing, Inc.

Note: Please Notarize Signatures of All Parties

State of _____)
) ss.
County of _____)

On _____ before me, _____, personally appeared _____, personally known to me, or 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.

WITNESS by hand and official seal.

Signature of Notary

State of _____)
) ss.
County of _____)

On _____ before me, _____, personally appeared _____, personally known to me, or 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.

WITNESS by hand and official seal.

Signature of Notary

EXHIBIT A

Legal Description and Depiction of Property

LA County Fire Department Fire Station Site 179 Agreement

1 **AGREEMENT BETWEEN THE CONSOLIDATED FIRE PROTECTION**
2 **DISTRICT OF LOS ANGELES COUNTY AND WESTERN PACIFIC HOUSING – LYONS**
3 **CANYON PARTNERS, LLC FOR DEVELOPMENT IMPACT MITIGATION MEASURES**
4

5 This Agreement is made and entered into this _____ day of _____,
6 _____, by and between the CONSOLIDATED FIRE PROTECTION DISTRICT OF
7 LOS ANGELES COUNTY, hereinafter referred to as “DISTRICT”, and Western Pacific
8 Housing – Lyons Canyon Partners, LLC, hereinafter referred to as “DEVELOPER”.

9
10
11 **WITNESSETH:**

12 WHEREAS, DEVELOPER is the owner of real property presently located in the
13 unincorporated Santa Clarita area of Los Angeles County, commonly known as Vesting
14 Tentative Tract Map 53653 (VTTM 53653), which includes the construction of 93 single-
15 family residences and 93 senior housing units, hereinafter referred to as “PROJECT AREA”;
16 and

17 WHEREAS, DEVELOPER desires to mitigate the impact of DEVELOPER’s proposed
18 development of the PROJECT AREA on services provided by the DISTRICT; and

19 WHEREAS, DEVELOPER has agreed to dedicate to the DISTRICT a fire station site
20 with a minimum net buildable pad area of 1.26 acres within the PROJECT AREA in
21 exchange for developer fee credit to be applied toward development in the Developer Fee
22 Program Area 1 – Santa Clarita Valley; and

23 WHEREAS, DISTRICT and DEVELOPER have mutually agreed to a 1.26 acre fire
24 station site on proposed “A” Street at The Old Road within the PROJECT AREA; and

25 WHEREAS, the DISTRICT desires to recognize the dedication of a fire station site
26 made by DEVELOPER to DISTRICT as set forth herein for credits against the developer fee
27 program adopted for the DISTRICT and implemented in the Santa Clarita Valley for the
28 development of PROJECT AREA; and

1 WHEREAS, the DISTRICT and the DEVELOPER have worked together to address
2 the impact of development of the PROJECT AREA on services provided by the DISTRICT;
3 and

4 WHEREAS, this Agreement is authorized by Chapter 22.68 of the Los Angeles
5 County Code.

6 NOW, THEREFORE, IN CONSIDERATION of the promises, covenants,
7 representations and agreements set forth herein, the parties mutually agree as follows:

8 **SECTION I. FIRE STATION SITE**

9 1. DEVELOPER shall convey to the DISTRICT an improved rough-graded legal
10 parcel as depicted on Exhibit "A", which Exhibit "A" is attached hereto and incorporated
11 herein by this reference, with a minimum buildable pad area of 1.26 acres suitable for a fire
12 station facility, hereinafter referred to as "FIRE STATION SITE". The FIRE STATION SITE
13 shall be a buildable lot at the time of conveyance as determined by the DISTRICT. Title to
14 the FIRE STATION SITE shall be conveyed in fee simple absolute to the DISTRICT after
15 completion of the improvements and other requirements as indicated in Section II herein.
16 DEVELOPER shall convey title of the FIRE STATION SITE to the DISTRICT prior to the
17 issuance of the 50th building permit within the PROJECT AREA.

18 2. The FIRE STATION SITE is located within VTTM 53653 on the northwest corner of
19 The Old Road and proposed "A" Street as depicted on Exhibit "A".

20 3. The FIRE STATION SITE shall have a pad area configured in conformance with
21 Exhibit "A", and shall be graded in relation to the street or streets which front the FIRE
22 STATION SITE.

23 4. The FIRE STATION SITE shall be free of any soils and geological hazards and
24 must be located outside of the Los Angeles County 50-year capital flood zone. The soils and
25 geology reports must include language that states that the site has met the requirements of
26 the California Geological Survey (CGS) – Note 48 "Checklist for the Review of Engineering
27 Geology and Seismology Reports for California Public Schools, Hospitals, and Essential
28 Services Buildings".

1 5. The FIRE STATION SITE shall be free of easements for the proper development
2 of the FIRE STATION SITE except as otherwise mutually agreed to in writing by the parties
3 hereto.

4 6. The FIRE STATION SITE shall not contain slopes or hillsides for the DISTRICT to
5 maintain. The DEVELOPER must arrange for any sloped areas or hillsides to be maintained
6 by a third party, such as a landscaping / maintenance district, at no cost to the DISTRICT.

7 7. DISTRICT shall be responsible for construction and design of the fire station
8 structure, which is not subject to approval by DEVELOPER.

9 **SECTION II. IMPROVEMENTS**

10 1. A fire station is an Essential Public Services Building. All improvements and
11 grading specified in this Agreement must meet the California Geological Survey – Note 48
12 pertaining to Essential Public Services Buildings.

13 2. The FIRE STATION SITE shall be improved by DEVELOPER as set forth in this
14 paragraph 2, of this Section II, at DEVELOPER's sole cost and expense, to the satisfaction
15 of DISTRICT as follows:

- 16 a. A two-inch diameter domestic water line installed to a DISTRICT approved
17 meter location with a jumper and meter box. Point of connection shall extend
18 into the FIRE STATION SITE a minimum of 5'0" from Back of Curb (BOC).
19 DEVELOPER will obtain and provide the DISTRICT with a Will Serve letter
20 from the water purveyor;
- 21 b. Installation of a fire hydrant(s) as required by the Los Angeles County Fire
22 Department Prevention Bureau;
- 23 c. A one-inch irrigation water line (reclaimed if available) installed to a DISTRICT
24 approved meter location with a jumper and meter box. Point of connection
25 shall extend into the FIRE STATION SITE a minimum of 5'0" from BOC.
26 DEVELOPER will obtain and provide the DISTRICT with a Will Serve letter
27 from the water purveyor;

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- 1 d. A six-inch diameter fire sprinkler service line installed to a DISTRICT approved
2 location. Point of connection shall extend into the FIRE STATION SITE a
3 minimum of 5'0" from the BOC, with a shut-off valve located within a public
4 street;
- 5 e. A sewer lateral (fixture count to be provided by the DISTRICT) installed to a
6 DISTRICT approved location. Point of connection shall extend into the FIRE
7 STATION SITE a minimum of 5'0" from the BOC. DEVELOPER will obtain and
8 provide the DISTRICT with a Will Serve letter from the permitting agency;
- 9 f. Electric (loading to be provided by the DISTRICT), telephone (number of pairs
10 to be provided by the DISTRICT), television cable, fiber optics (if available) and
11 gas connections stubbed to DISTRICT approved locations. Points of
12 connections shall extend into the FIRE STATION SITE a minimum of 5'0" from
13 the BOC;
- 14 g. A storm drain connection (sized to accommodate both onsite and offsite
15 drainage) installed at a DISTRICT approved location. The invert of the storm
16 drain pipe must be at an elevation that allows for collection of all surface flows
17 and piped drainage systems. Point of connection shall extend into the FIRE
18 STATION SITE a minimum of 5'0" behind the BOC;
- 19 h. All offsite street improvements adjacent to the FIRE STATION SITE, which at a
20 minimum shall include curbs, gutters, sidewalks, driveway approaches
21 (maximum of three), traffic signs, street lights and median breaks with turn
22 lanes at both the emergency vehicle egress driveway and the emergency
23 vehicle ingress driveway;
- 24 i. Installation of two traffic signals that allow for safe access from the emergency
25 egress driveway onto the adjacent public roadways. Traffic signal number one
26 will be installed on proposed "A" Street fronting the FIRE STATION SITE, and
27 signal number two will be installed at the intersection of proposed "A" Street
28 and The Old Road. Both signals will be designed to include interconnects to

1 the fire station that allow for an emergency override of the signal controllers.
2 Traffic signals must be installed by the time the FIRE STATION SITE is
3 operational;

4 j. Grading of the FIRE STATION SITE must meet the following minimum
5 requirements: a level pad that measures 225' (width, fronting a public street) X
6 242' (depth). The pad shall be graded to +/- 0.1 and tops and toes of slopes to
7 +/- 0.3. The minimum pad dimensions shall be free of any easements, building
8 setbacks (front, rear and sides), slopes or any other conditions that would
9 restrict full use of the net pad area. The gross acres of 2.05 acres is
10 calculated based on the net pad requirements outlined above and any
11 additional property that will be conveyed to the DISTRICT. The FIRE
12 STATION SITE is to be graded in relation to the street or streets which front the
13 site such that the emergency vehicle egress driveway can be constructed with
14 a maximum 2% slope and the return driveway can be constructed with a
15 maximum 5% slope. The above driveways begin at the fronting public street
16 and become level at an imaginary 40-foot setback;

17 k. The completion of a Phase I Environmental Site Assessment, and if warranted,
18 a Phase II Environmental Site Assessment, and the removal or remediation of
19 any hazardous materials located in, upon or on the FIRE STATION SITE, as
20 required by all applicable federal, state and local laws (to be provided at the
21 completion of all required site improvements);

22 l. Proof of full compliance with the California Environmental Quality Act for the
23 development and operational impacts of a first responder fire station.

24 m. Preparation of a preliminary title report, parcel soils report, a current American
25 Land Title Association (ALTA) survey, topographic map, and remediation of
26 any defects of the FIRE STATION SITE to the satisfaction of the Fire District.

27 Improvements described in a–m above are hereinafter collectively referred to as
28 “Improvements”.

1 3. DEVELOPER shall provide to DISTRICT all required reports, information and/or
2 documents listed under the "Requested Information" column on the DISTRICT's Request for
3 Information (RFI) form dated January 17, 2006, except those items marked as not applicable
4 (attached hereto and incorporated herein by this reference as Exhibit "B"). These reports,
5 plans, documents and other information have been deemed necessary before construction of
6 a fire station can begin on the FIRE STATION SITE.

7 **SECTION III. DEVELOPMENT IMPACT MITIGATION**

8 1. DISTRICT shall grant DEVELOPER a developer fee credit equal to the value of the
9 FIRE STATION SITE with Improvements, as determined in paragraph 3 of this Section III.

10 2. The Improvements to the FIRE STATION SITE shall be deemed completed after
11 DEVELOPER has obtained written approvals, authorizations, or releases by all government
12 officials, including but not limited to utility companies and building officials. DEVELOPER
13 shall submit to DISTRICT within forty-five (45) days of completion of FIRE STATION SITE
14 Improvements copies of all building permits, plan check fees, and inspection notices.

15 3. After the Improvements and Documents are completed as required by Section II
16 above, an appraiser chosen by the DISTRICT and agreed to by the DEVELOPER and paid
17 equally (one-half each) by the DEVELOPER and the DISTRICT, shall determine the value
18 of the FIRE STATION SITE with the Improvements based on current zoning as of the date
19 of values of the appraisal. Within 15 business days of conveyance of the FIRE STATION
20 SITE to the DISTRICT by the DEVELOPER, DEVELOPER shall be granted developer fee
21 credit equal to the value of the FIRE STATION SITE as determined by the appraiser.

22 4. DISTRICT will apply the developer fee credit granted herein to DEVELOPER using
23 the then current developer fee rate at the time of building permit application for the
24 development for which the developer fee credit shall apply. The developer fee rate is
25 reviewed annually and may be updated depending on the DISTRICT's current costs of fire
26 station construction and equipment.

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1 5. Developer fee credit granted for the value of the FIRE STATION SITE may be
2 applied to any development by DEVELOPER in the PROJECT AREA prior to the issuance of
3 building permit(s). DEVELOPER may be granted developer fee credit as stated in this
4 Section III until that credit is exhausted in the PROJECT AREA. Thereafter, the then current
5 developer fee rate at the time of building permit application will be applied to any additional
6 development within the PROJECT AREA in accordance with the DISTRICT'S approved
7 developer fee program. If the developer fee credit exceeds the DEVELOPER'S developer
8 fee obligation for the PROJECT AREA, the excess developer fee credit may be transferred
9 or sold by DEVELOPER, or assigned to any successor or DEVELOPER selected party or to
10 any other development project within the designated Santa Clarita Valley Area of Benefit
11 (Area 2). Any excess developer fee credit transferred to a successor or DEVELOPER
12 selected party may only be applied towards development projects within Area 2. However, in
13 the event the developer fee credit granted for the FIRE STATION SITE is not exhausted or
14 used up before the DISTRICT has made a finding of build-out in Area 2, the unused
15 developer fee credit shall expire and DEVELOPER will not be entitled to any further
16 developer fee credit of any kind.

17 6. In the event that a physical, geological or topographical defect is discovered on the
18 FIRE STATION SITE that cannot be mitigated within reasonable physical and economic
19 limits as determined by the DISTRICT (e.g., an earthquake fault line, a large land slide,
20 major flood hazard, or endangered species or other environmental constraint), or VTTM
21 53653 is not approved by the County of Los Angeles, DEVELOPER shall no longer be
22 required to provide the FIRE STATION SITE for development impact mitigation for VTTM
23 53653, but shall pay the then current developer fee rate in accordance with the County of
24 Los Angeles Developer Fee Program for the Benefit of the DISTRICT as mitigation of the
25 development impact of VTTM 53653.

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1 **SECTION IV. SERVICES**

2 DISTRICT shall provide to PROJECT AREA fire protection and emergency medical
3 and related services at a level consistent with its service level provided to the remainder of
4 its jurisdiction.

5 **SECTION V. GENERAL PROVISIONS**

6 Prior Agreements – This Agreement contains all of the agreements of the parties
7 hereto with respect to any matter covered or mentioned in this Agreement and no prior
8 agreements or understandings pertaining to any such matter shall be effective for any
9 purpose. No provisions of this Agreement may be amended or added to except by an
10 agreement in writing signed by the parties hereto. This Agreement shall not be effective or
11 binding on any party until fully executed by both parties hereto.

12 Force Majeure – In the event that either party is delayed or hindered from the
13 performance of any act required hereunder by reason of strikes, lockouts, labor troubles,
14 inability to procure materials not related to the price thereof, failure of power, restrictive
15 governmental laws and regulations, riots, insurrection, war or other reasons of a like nature
16 beyond the control of such party, then performance of such acts shall be excused for the
17 period of the delay, and the period for the performance of any such act shall be extended for
18 the period equivalent to the period of such delay provided the party asserting a force majeure
19 event gives written notice to the other party within fifteen (15) days of the commencement of
20 the period of delay.

21 Severability – Any provision of this Agreement which shall prove to be invalid, void or
22 illegal shall in no way affect, impair, or invalidate any other provision hereof and such other
23 provisions shall remain in full force and effect, provided that the deletion of such provisions
24 does not materially change this Agreement.

25 Entire Agreement – This Agreement together with its Exhibits “A” and “B” constitutes
26 the entire understanding and agreement of the parties hereto.

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1 Interpretation – No provision of this Agreement is to be interpreted for or against
2 a party because that party drafted such provision, but this Agreement is to be construed as if
3 it were drafted by all parties hereto.

4 Waiver – Failure or inability of any party to enforce any right hereunder shall not waive
5 any right to enforce said right in the future.

6 Assignability – This Agreement shall be assignable by DEVELOPER only if
7 DEVELOPER obtains the prior express written consent of the Fire Chief of the DISTRICT,
8 which consent shall not be unreasonably withheld, if the assignee is shown to be capable of
9 fulfilling the terms of this Agreement to the reasonable satisfaction of the DISTRICT. Subject
10 to the provisions of the preceding sentence, this Agreement shall inure to the benefit of and
11 be binding upon the parties and their respective heirs, representatives, successors and
12 assigns.

13 Third-Party Beneficiary – This Agreement is not intended, nor shall it be construed, to
14 create any third-party beneficiary rights for any person who is not a party hereto, unless
15 expressly provided otherwise.

16 Headings – The headings of this Agreement are inserted for convenience and are not
17 part of this Agreement.

18 Governing Law – This Agreement shall be governed by and construed under the laws
19 of the State of California.

20 **SECTION VI. WARRANT OF AUTHORITY**

21 The undersigned signatory for DEVELOPER hereby personally covenants,
22 represents, and warrants that he has the power and authority to execute this Agreement
23 upon the terms and conditions stated herein on behalf of DEVELOPER, and agrees to
24 indemnify and hold harmless the DISTRICT from all damages, costs and expenses which
25 result from a breach of this material representation.

26 The undersigned signatory for DISTRICT hereby personally covenants, represents,
27 and warrants that he has the power and authority to execute this Agreement upon the terms
28 and conditions stated herein for the DISTRICT, and agrees to indemnify and hold harmless

1 the DEVELOPER from all damages, costs and expenses which result from a breach of this
2 material representation.

3
4 IN WITNESS WHEREOF, DEVELOPER has caused this Agreement to be executed by its
5 Vice President and the DISTRICT has caused this Agreement to be executed by its Fire
6 Chief on the day, month and year noted herein below.

7
8 WESTERN PACIFIC HOUSING
9 A Delaware Corporation, formerly
10 known as Schuler Homes, Holdco, Inc.,
11 successor by merger to Western Pacific
12 Housing Development Limited Partnership,
13 a California Limited Partnership

CONSOLIDATED FIRE PROTECTION
DISTRICT OF LOS ANGELES COUNTY

14 By: _____
Rick Coop, Vice President

Fire Chief

15
16 _____
Date

Date

17
18
19 APPROVED AS TO FORM:

20 RAYMOND G. FORTNER, JR.
21 County Counsel

22
23 By _____
Deputy