

RESOLUTION NUMBER R-287750

ADOPTED ON AUGUST 5, 1996

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN  
DIEGO REGARDING A CONSERVATION/OPEN SPACE  
EASEMENT - TORREY HIGHLANDS PRESERVE SEGMENT.

WHEREAS, California Government Code section 51070 et seq. was enacted to provide a means whereby the City of San Diego may accept the grant of an open-space easement in perpetuity for the purpose of preserving and maintaining open space; and

WHEREAS, the growth and spread of urban development is encroaching upon, or eliminating open-space lands which are necessary not only for the maintenance of the economy of the state, but also for the assurance of the continued availability of land for the enjoyment of scenic beauty and for the use and conservation of natural resources; and

WHEREAS, open-space lands, if preserved and maintained, would constitute important physical or aesthetic assets to existing or pending urban development; and

WHEREAS, the owners of certain parcels, as listed in Attachment 1, are the owners in fee simple of certain real property in the City of San Diego, State of California (the "Properties"); and

WHEREAS, the Properties are located within the Torrey Highlands Subarea Plan for North City Future Urbanizing Area Subarea IV ("Torrey Highlands Subarea IV Plan") on file in the office of the City Clerk as Document No. RR-287749, adopted by Resolution No. R-287749 on August 5, 1996; and

WHEREAS, the Torrey Highlands Subarea IV Plan designates certain portions of the Properties (the "Designated Easement Area") as "Resource" ("Torrey Highlands Preserve

Segment"). The Designated Easement Area is generally depicted on Attachments 2-1 and 2-2; and

WHEREAS, the Torrey Highlands Preserve Segment provides a large contiguous area of natural open space supporting, or capable of supporting, quality habitat for native plants and animals which constitutes an important physical and aesthetic asset to the people of the City of San Diego ("habitat values"); and

WHEREAS, in order for a 1,134 acre portion of Subarea IV, which includes the Properties, to be developed consistent with the Torrey Highlands Subarea IV Plan, the City of San Diego voters must approve an amendment to the Official Phased Development Area, on file in the office of the City Clerk as Document No. RR-267565-1, adopted by Resolution No. R-267565 on January 27, 1987, as part of the Guidelines for Future Development Section in the General Plan, to change the designation of the 1,134 acres (as identified in Figure 1-2 of the Torrey Highlands Subarea IV Plan) from Future Urbanizing to Planned Urbanizing ("Change of Designation"); and

WHEREAS, this Change of Designation will be before the voters on November 5, 1996, as City of San Diego Proposition H ("Proposition H"); and

WHEREAS, the Property Owners have voluntarily and of their own free will proposed to grant to the City easements in perpetuity in a form substantially similar to the form of easement set forth in Attachment 3. The easements will convey to the City the right to preserve and protect the habitat values of the Designated Easement Area while reserving to the Property Owners all other rights associated with property ownership, including the right to sell the land for mitigation purposes. The easements will be submitted to the City Clerk prior to the election day for Proposition H and their effectiveness shall be contingent upon approval of Proposition H; and

WHEREAS, the Torrey Highlands Subarea IV Plan has been approved by the Council of The City of San Diego, contingent upon voter approval of Proposition H and, at the request of the Property Owners, contingent upon the granting of the easements for the Designated Easement Area; and

WHEREAS, the Property Owners would not grant to the City easements with the right to preserve and protect the habitat values of the Designated Easement Area if the Property Owners did not reserve the ability to use and/or sell the Designated Easement Area for mitigation of environmental impacts occurring elsewhere; and

WHEREAS, the City agrees by accepting the easements for the Designated Easement Area to honor the intentions and reservations of the Property Owners stated herein and to preserve and to protect the habitat values of the Designated Easement Area for the benefit of the people of the City of San Diego; and

WHEREAS, in granting the easements for the Designated Easement Area, the Property Owners have committed to preserve and to protect the habitat values of the Designated Easement Area for the benefit of the people of the City of San Diego; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, as follows:

1. The preservation of the Torrey Highlands Preserve Segment as open space is consistent with the City's Progress Guide and General Plan.
2. The preservation of the Torrey Highlands Preserve Segment as open space is in the best interest of the City and specifically because:
  - (a) The Torrey Highlands Preserve Segment is unimproved and if retained in its natural state has scenic value to the public and is valuable as a wildlife preserve, and the easements contain appropriate covenants to that end;

(b) In addition, it is in the public interest that the Torrey Highlands Preserve Segment be retained as open space because the land will help preserve the rural character of Torrey Highlands; and

(c) The public interest will otherwise be served in a manner recited in this Resolution and consistent with the purposes of this subdivision and Section 8 of Article XIII of the Constitution of the State of California.


3. The legal descriptions of the Designated Easement Area which is anticipated to be granted to the City are based on information used to delineate the Torrey Highlands Preserve Segment within the Torrey Highlands Subarea IV Plan. It is expected that more detailed information may be used to delineate the Designated Easement Area on future tentative maps submitted to the City in conjunction with development applications. Therefore, nothing herein is intended to preclude the Grantor and Grantee from amending the description of the Designated Easement Area upon the recording of a final map approved by the Grantee, provided that the amendment adjusting the boundary of the easement is not inconsistent with the purpose of Government Code section 51070 et seq., would not be incompatible with maintaining and preserving the natural character of the Torrey Highlands Preserve Segment, and would provide an easement of equivalent biological value to the satisfaction of the City.

4. The Council has received a report from the City Manager in accordance with Government Code section 51085 regarding the nature of these easements and hereby finds them to be consistent with the Progress Guide and General Plan of The City of San Diego.

BE IT FURTHER RESOLVED, that upon submittal of the fully executed easements to the City Clerk, which shall occur prior to the day of election for Proposition H, the City Clerk shall accept the easements contingent upon voter approval of Proposition H. The City Clerk is

hereby directed to thereafter record the easements in the office of the County Recorder and file copies thereof with the County Assessor. If Proposition H is not approved by the voters, the City Clerk shall not accept the easements and shall return the easements to their signators.

APPROVED: JOHN W. WITT, City Attorney

By   
Richard A. Duvernay  
Deputy City Attorney

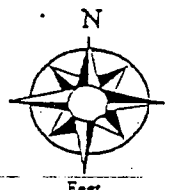
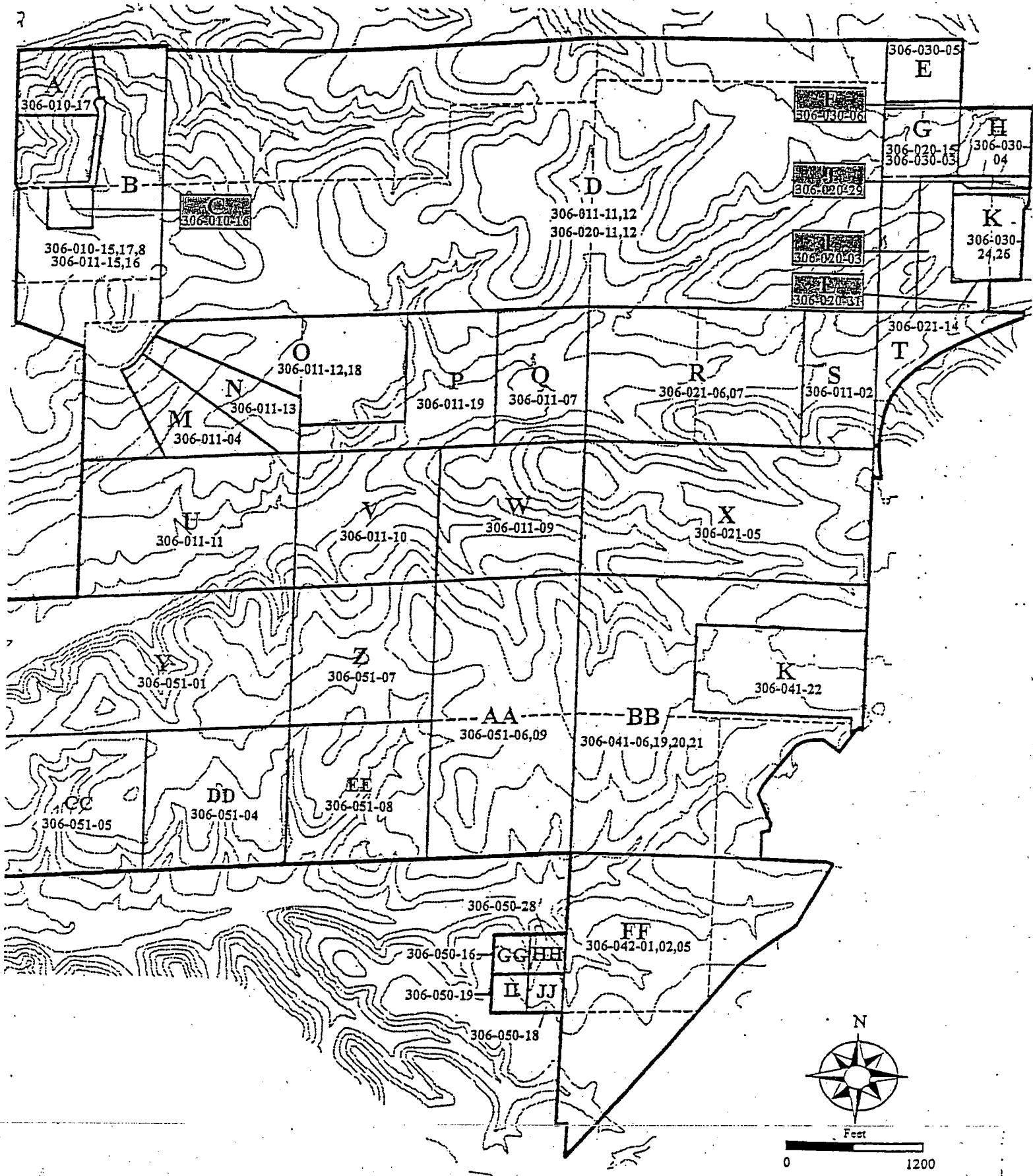
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**Attachment 1**  
**Conservation/Open Space Easement - Property Ownership Information**

<b>Property Name/ Property Owner</b>	<b>Plan Alpha Reference</b>	<b>APN</b>	<b>Acres</b>	<b>Contact Information</b>
Kirwin-Mundy KMC II	W	306-011-09	38.3	Pete Mundy and Bill Kirwin P. O. Box 334 Three Forks, MT 59752 Phone: (406) 285-3947 also David Santisteven Iloff, Thorne 4660 La Jolla Village Dr., #200 San Diego, CA 92122 Phone: (619) 677-5314
BMR Partnership	P	306-011-19	30.2	David Goodell Del Mar Land Mgt P. O. Box 609 Del Mar, CA 92014 (619) 481-2626
Penasquitos West	Q	306-011-07	24	David Goodell Del Mar Land Mgt P. O. Box 609 Del Mar, CA 92014 (619) 481-2626
Horseshoe	V	306-011-10	38.6	David Goodell Del Mar Land Mgt P. O. Box 609 Del Mar, CA 92014 Phone: (619) 481-2626
Apogee	U	306-011-11	58.6	David Goodell Del Mar Land Mgt P. O. Box 609 Del Mar, CA 92014 Phone: (619) 481-2626
West Heights Properties	Z	306-051-07	39.4	Rhett Shaw 4545 Saddle Mtn. Ct. San Diego, CA 92130 Phone: (619) 553-3230
Scarcia/Reed	Y	306-051-01	78.4	Bob Scarcia, Jr. 570 Hermes Carlsbad, CA 92024 Phone: (619) 943-0245
BMR	O	306-011-12/18	36.6	Frank Anderson Anderson Properties 9471 Black Mtn Rd San Diego, CA 92126 Phone: (619) 578-4160

CORRECTED 10/07/96

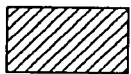
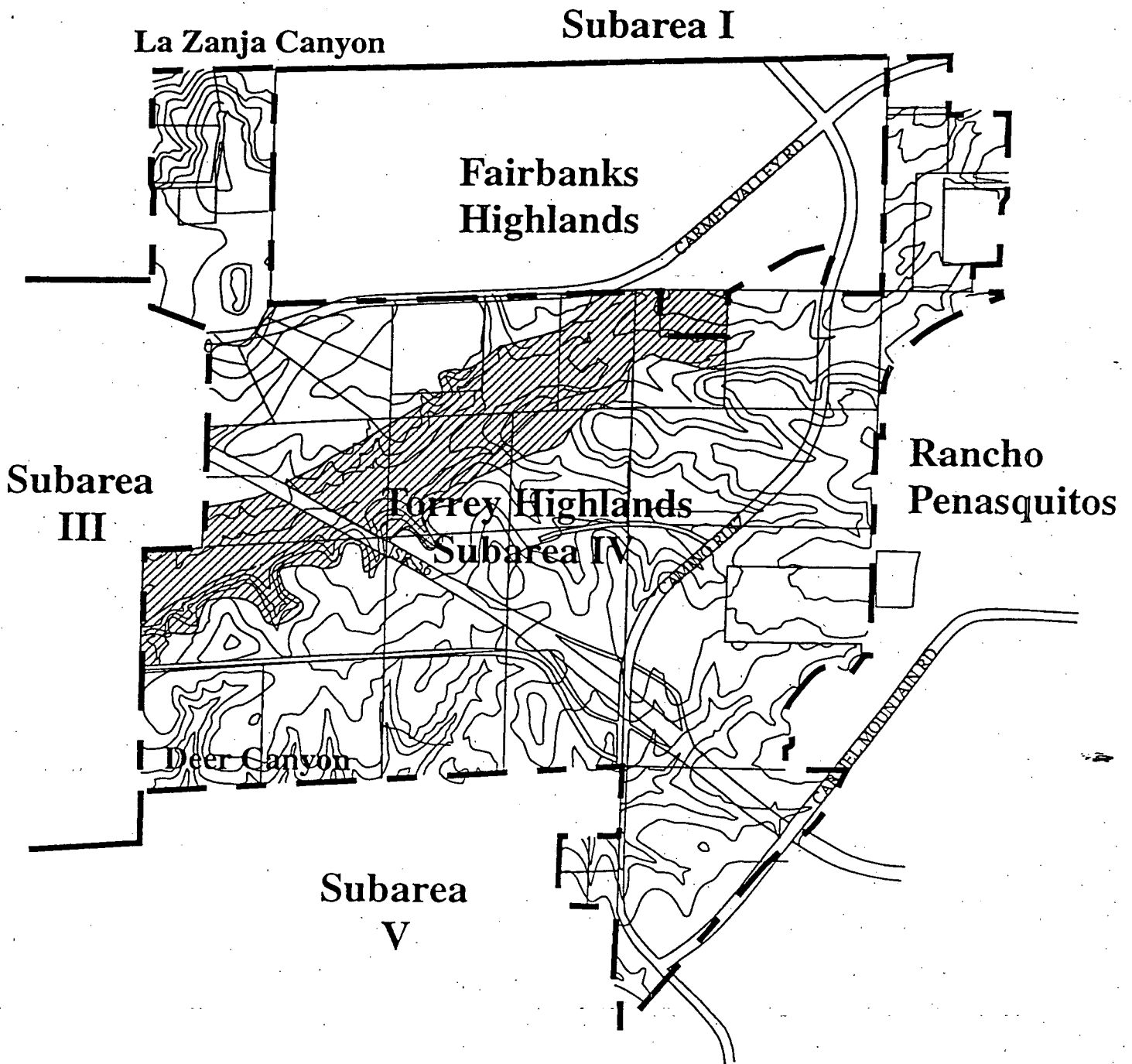
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Property Ownership Pattern

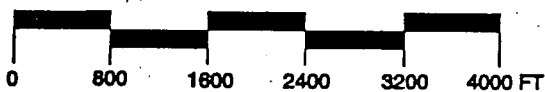
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Torrey Highlands Preserve Segment/Designated Easement Area

### TORREY HIGHLANDS ALTERNATIVE 2A

Torrey Highlands Preserve Segment/Designated Easement Area



July 19, 1996

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Attachment 2-2



RECORDING REQUESTED BY AND )  
WHEN RECORDED MAIL TO: )  
)  
)  
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Above Space for Recorder's Use

CONSERVATION/OPEN SPACE EASEMENT GRANT  
TORREY HIGHLANDS PRESERVE SEGMENT

THIS CONSERVATION/OPEN SPACE EASEMENT ("Easement") GRANT is made this  
\_\_\_\_ day of \_\_\_\_\_, 1996, by \_\_\_\_\_, a [\_\_\_\_\_  
\_\_\_\_\_] ("Grantor"), in favor of the City of San Diego, a municipal corporation,  
("Grantee"). This Easement shall become effective, valid and binding concurrent with, and  
expressly conditioned upon, voter approval of City of San Diego Proposition \_\_\_\_ on  
November 5, 1996. In the event that Proposition \_\_\_\_ is not voter approved on November 5,  
1996, this Easement shall be invalid, non-binding and of no effect.

1. Grant. In consideration of the mutual covenants, terms conditions, restrictions and  
reservations contained herein, and pursuant to the laws of California and Government Code  
Section 51070, et seq. (or any successor statute thereto) and expressly conditioned upon voter  
approval of Proposition \_\_\_\_, Grantor hereby grants to Grantee a conservation/open space  
easement over property more particularly described in Exhibit \_\_\_\_ ("the Designated Easement  
Area") of the nature and character and to the extent hereinafter set forth.

2. Amendment. The Grantor and Grantee acknowledge that the description of the  
Designated Easement Area is based on information used to delineate the Torrey Highlands

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Preserve Segment within the Torrey Highlands Subarea Plan for North City Future Urbanizing Area Subarea IV ("Torrey Highlands Subarea IV Plan") on file in the City Clerk's office as Document No. \_\_\_\_\_ adopted by Resolution No. \_\_\_\_\_ on \_\_\_\_\_, 1996. It is expected that more detailed information may be used to delineate the Designated Easement Area on future tentative maps submitted to the City in conjunction with development applications. Therefore, nothing herein is intended to preclude the Grantor and Grantee from amending the description of the Designated Easement Area upon the recording of a final map approved by the Grantee, provided that any amendment adjusting the boundary of the easement is not inconsistent with the purpose of Government Code section 51070 et seq., would not be incompatible with maintaining and preserving the natural character of the Torrey Highlands Preserve Segment, and would provide an easement of equivalent biological value to the satisfaction of the City.

3. Purpose. It is the purpose of this Easement to assure that the Designated Easement Area will be retained in a natural condition and to prevent any use of the Designated Easement Area that will significantly impair or interfere with the habitat values of the Designated Easement Area. Grantor intends that this Easement will confine the use of the Designated Easement Area to such activities and uses as are specifically reserved below in Paragraph 6, including without limitation, those uses and activities involving the preservation and enhancement of native species and their habitat in a manner consistent with the habitat conservation purposes of this Easement.

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

(a) To preserve and protect the habitat values of the Designated Easement Area;

(b) To enter upon the Designated Easement Area at reasonable times in order to monitor Grantor's compliance with and to otherwise enforce the terms of this Easement, provided that Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Designated Easement Area; and

(c) To prevent any activity on or use of the Designated Easement Area that is inconsistent with this easement and to require the restoration of such areas or features of the Designated Easement Area that may be damaged by any wilful or negligent act of Grantor in violation of the terms of this Easement; and

(d) To amend the description of the Designated Easement Area upon the recordation of a final subdivision map approved by the Grantee, subject to the restrictions delineated in paragraph 2 above.

5. Prohibited Uses. Any activity on or use of the Designated Easement Area inconsistent with the habitat conservation purposes of this Easement and not specifically reserved as a right of Grantor pursuant to Paragraph 6 below is prohibited.

6. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Designated Easement Area, including:

(a) The right to engage in or permit or invite others to engage in all uses of the Designated Easement Area that are not prohibited herein and are not inconsistent with the

purpose of this Easement;

(b) The specific rights to use the Designated Easement Area consistent with Chapter Two of the Torrey Highlands Subarea IV Plan (such Chapter and the Appendix referenced therein are incorporated herein by reference);

(c) The right to use and/or sell the Designated Easement Area for mitigation of environmental impacts occurring elsewhere as may be legally permitted subject to the terms of this Easement; and

(d) The right to amend the description of the Designated Easement Area upon the recordation of a final subdivision map approved by the Grantee, subject to the restrictions delineated in paragraph 2 above.

7. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of the Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation. Where the violation involves injury to the Designated Easement Area resulting from a willful or negligent act of the Grantor, Grantor shall restore the portion of the Designated Easement Area so injured. If Grantor fails to cure the violation within fifteen (15) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a fifteen (15) days period, fails to begin curing such violation with the fifteen (15) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action in equity in a court of competent jurisdiction to enforce the terms of the Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction. If Grantee, in its sole discretion,

determines that circumstances require immediate action to prevent or mitigate significant damage to the habitat values of the Designated Easement Area, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor and Grantee agree that Grantee's sole remedy for any violation of the terms of this Easement is the injunctive relief described in this paragraph, both prohibitive and mandatory, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

7.1 Costs of Enforcement. Grantee and Grantor shall each bear its own costs associated with enforcing or defending itself from any action brought by each other or any person or entity to enforce the terms of this Easement. However, any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, shall be borne by Grantor when a court of competent jurisdiction determines that Grantor has willfully or negligently violated the terms of this Easement and any costs incurred by Grantor in defending itself from an action of Grantee to enforce the terms of this Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, shall be borne by Grantee when a court of competent jurisdiction determines that Grantor has not violated the terms of this Easement.

7.2 Enforcement Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee and Grantor, and any forbearance by Grantee or Grantor to exercise its rights under this Easement shall not be deemed or construed to be a waiver by Grantee or Grantor of such term or of any subsequent breach of the same or any other term of this Easement

or of any of Grantee's or Grantor's rights under this Easement. No delay or omission by Grantee or Grantor in the exercise of any right shall be construed as a waiver.

7.3 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Designated Easement Area resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or for acts of third parties not under Grantor's control, and which could not have been prevented by the exercising of reasonable diligence in preserving the Designated Easement Area in its natural condition, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Designated Easement Area resulting from such causes.

8. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind, including transfer costs, costs of title and documentation review, expenses incurred from other state agency reviews, and costs related to the ownership, operation, upkeep, and maintenance of the Designated Easement Area so long as Grantor remains fee title owner of Designated Easement Area.

8.1. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Designated Easement Area by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request so long as Grantor remains fee title owner of Designated Easement Area.

8.2 Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractor and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Grantee Parties") from and against all liabilities, penalties, costs, losses, damages, expense, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any of the Designated Easement Area, resulting from any omission, condition, or other matter related to or occurring on or about the Designated Easement Area, regardless of cause, unless due to any act or omission of any of the Indemnified Grantee Parties and except for: (a) any cause of action arising from the exercise of rights reserved to Grantee in Paragraphs 4(b) of this Easement, or (b) the acts referred to in Paragraph 7.3 of this Easement. Grantee shall hold harmless, indemnify, and defend Grantor and its members, directors, officers, employees, agents, and contractor and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Grantor Parties") from and against all liabilities, penalties, costs, losses, damages, expense, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any of the Designated Easement Area, resulting from any omission, condition, or other matter related to or occurring on or about the Designated Easement Area, regardless of cause, unless due to any act or omission of any of the Indemnified Grantor Parties and except for: (a) any cause of action arising from the exercise of rights reserved to Grantor in Paragraph 6 of this Easement, or (b) the acts referred to in Paragraph 7.3 of this Easement.

9. Assignment. This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time

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of transfer under Section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under Government Code Section 51070 et seq. (or any successor provision then applicable). As a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out and notice of such restrictions shall be recorded in the county where the property is located.

10. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Designated Easement Area, including, without limitation, a leasehold interest.

11. Condemnation. Should all or any part of the Designated Easement Area described herein be taken by any public or quasi-public agency or entity under the power of eminent domain, any and all damages and compensation awarded or paid because of the taking shall belong to Grantor or any subsequent transferee retaining fee title to the respective Designated Easement Area at the time of the taking.

12. Termination. This Easement shall be terminated in the event that Proposition \_\_\_\_\_ is successfully challenged in a court of law resulting in the Official Phased Development Area in the Progress Guide and General Plan of the City of San Diego for the Designated Easement Area to have a designation of Future Urbanizing.

13. Estoppel Certificates. Upon request by Grantor, Grantee shall within fifteen (15) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies



Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement and any transfer by Grantor as may be requested by Grantor.

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

To Grantor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Grantee:

City of San Diego  
202 "C" Street  
San Diego, CA 92101

or to such other address as either party from time to time shall designate by written notice to the other.

15. Recordation. Grantee shall record this instrument in the official records of San Diego County, California, upon or after voter approval of Proposition \_\_\_\_ and immediately notify the Grantor through the mailing of a conformed copy of the recorded easement. Grantee may rerecord it at any time as may be required to preserve its rights in this Easement.

16. General Provisions.

(a) Controlling Law. The interpretation and performance of this Easement shall

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be governed by the laws of the State of California and Government Code Section 51070, et seq.

(b) Severability. With the exception described herein, if any provision of this Easement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby. Because paragraphs 5, 6 and 12 of this Easement go to the essence of this Easement, in the event that either, any, or all of paragraphs 5, 6, or 12 of this Easement are found to be invalid, illegal or unenforceable, this Easement, in its entirety, will be void, unless both parties agree otherwise in writing.

(c) Entire Agreement. This instrument set forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. This instrument may be modified only by a written amendment, signed and acknowledged by Grantee and Grantor (or their respective successors), and duly recorded in the office of the San Diego County Recorder.

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

(e) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Designated Easement Area.

(f) Captions. The captions in this instrument have been inserted solely for the convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

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

(h) Prior Agreements. The execution and enforcement of this Easement shall in no way interfere or conflict with, or constitute a default under, any existing contract, agreement, indenture, mortgage, lease or other instrument to which the Grantor and/or the Designated Easement Area is subject or by which it is bound.

IN WITNESS WHEREOF, Grantor and Grantee have entered into this Easement the day and year first above written. This Easement shall become effective, valid and binding concurrent with, and expressly conditioned upon, voter approval of City of San Diego Proposition \_\_\_\_ on November 5, 1996. In the event that Proposition \_\_\_\_ is not voter approved on November 5, 1996, this Easement shall be invalid, non-binding and of no effect.

GRANTOR:  
(Name and Address)

GRANTEE:  
City of San Diego

By: \_\_\_\_\_  
(TITLE)

By: \_\_\_\_\_  
(TITLE)

Approved as to form:

By: \_\_\_\_\_