

**AGREEMENT FOR LONG TERM
MAINTENANCE AND MONITORING
(Casa Dorinda Open Space Easement)**

This Agreement for Long Term Monitoring (“Agreement”) is made this ___ day of March, 2017, by the MONTECITO RETIREMENT ASSOCIATION (also known as “Casa Dorinda”), a California non-profit public benefit corporation (referred to herein as “Permittee”) and the COUNTY OF SANTA BARBARA, a political subdivision of the State of California (referred to herein as “County”).

Recitals

A. Permittee is the owner in fee simple of certain real property located in the unincorporated area of the County of Santa Barbara, commonly known as 300 and 352 Hot Spring Road, Santa Barbara, California, currently identified as Assessor’s Parcel Nos. 009-640-013 and 009-640-014, consisting of approximately 48.31 acres, located in the unincorporated community of Montecito, State of California (“Property”); and

B. Permittee owns and operates a retirement community on the Property known as Casa Dorinda pursuant to a Conditional Use Permit issued by County (90-CP-091) (“1990 CUP”); and

C. Pursuant to conditions of approval imposed on the 1990 CUP, Permittee executed and conveyed to County a “Grant of Open Space Easement” dated November 24, 1992 and recorded in the Official Records of the County of Santa Barbara on January 26, 1993 as Document No. 93-006303 (“1992 Open Space Easement”) which dedicated approximately 18.6 acres on the Property for open space purposes and which required Permittee to prepare and implement an Open Space Management Plan (“1992 Open Space Management Plan”); and

D. Permittee executed and conveyed to County a “Modification of Open Space Easement” recorded in the Official Records of the County of Santa Barbara on June 12, 2001 as Document No. 2001-0047157 (“2001 Modification”), which document terminated Permittee’s obligations under the 1992 Open Space Easement with respect to approximately 95,000 square feet of the 18.6 acres described in the 1992 Open Space Easement because Permittee conveyed to the County the right to construct a debris basin thereon; and

E. Permittee has applied to the County for a Revision (Case No. 14RVP-00000-00005) to the 1990 CUP in order to construct improvements to the Casa Dorinda campus (“2016 CUP Revision”); and

F. On May 18, 2016, the Montecito Planning Commission approved Permittee’s application for the 2016 CUP Revision subject to certain conditions of approval, including (i) Condition No. 14, the text of which is attached hereto as **Attachment 1** (“Condition 14”), which condition requires that Permittee prepare revisions to the 1992 Open Space Management Plan and submit those revisions to the County for review and approval (which revisions shall, after County approval, be referred to as the “2017 Open Space Management Plan”), (ii) Condition No.

and submit those revisions to the County for review and approval (which revisions shall, after County approval, be referred to as the “2017 Open Space Management Plan”), (ii) Condition No. 36, the text of which is attached hereto as **Attachment 2** (“Condition 36”), which condition requires that Permittee grant a new open space easement for 21.73 acres of the Property in lieu of the 1992 Open Space Easement (“2016 Open Space Easement Area”), and (iii) Condition 54, the text of which is attached hereto as **Attachment 3** (“Condition 54), which condition requires that the Permittee post separate performance securities to cover the cost of installation and maintenance for five years of landscape and irrigation, tree replacement and habitat restoration; and

G. Pursuant to Condition 36, Permittee executed and recorded, in favor of the County, a “Grant of Open Space Easement and Agreement, recorded in the Official Records of the County of Santa Barbara on September 30, 2016 as Document No. 2016-0051449 (“2016 Open Space Easement”); and

H. Condition 36 requires that the Permittee enter into an agreement for long-term maintenance and monitoring of the 2016 Open Space Easement Area in compliance with the 2017 Open Space Management Plan, and to establish a fund for the costs related thereto.

Agreement

In consideration of the recitals set forth above, and in consideration of their mutual promises and covenants, Permittee and County agree as follows:

1. **Long Term Maintenance.** Permittee shall maintain the 2016 Open Space Area in a manner consistent with the 2017 Open Space Management Plan. For the first five years following the issuance of Zoning Clearance for the project authorized by the 2016 CUP Revision, this maintenance obligation shall be secured by means of performance security posted pursuant to Condition 54. In the event Permittee fails to discharge its obligations hereunder, and in addition to the County’s rights to draw on the securities cited in the preceding sentence, County is entitled to compel Permittee’s compliance through an action for specific performance or through any other remedies available to County.
2. **Long Term Monitoring.** County shall be entitled to monitor Permittee’s performance of its obligations under the 2017 Open Space Management Plan and the 2016 Open Space Easement, and Permittee shall be obligated to reimburse the County’s expenses (including staff time) for said monitoring. County shall present to Permittee, at least quarterly, an invoice with detail as to (i) the dates on which monitoring occurred, (ii) the County personnel performing the monitoring, with each such person’s hourly rate, and (iii) the number of hours (to the nearest 1/10th hour) incurred in the monitoring activity, and (iv) the total amount due. Permittee shall pay each such invoice in accordance with the billing cycle contained in the Board-adopted Land Development Fee Schedule Resolution. Permittee shall maintain on deposit with the County a fund in the amount of Five Thousand Dollars (\$5000) with written instructions authorizing the County to draw on said funds in the event the Permittee does not pay when due any invoice delivered by the County pursuant to this paragraph.

3. **Term.** This Agreement shall be effective upon execution by both parties and shall remain in full force and effect until terminated by the earlier of (i) written consent of the parties, or (ii) termination of the 2016 Open Space Easement.

4. **Successors and Assigns.** All representations, promises, and covenants set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

5. **Miscellaneous Provisions.**

A. **Severability.** If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

B. **Venue.** This Agreement shall be construed and interpreted in accordance with the laws of the State of California and venue shall be in the state courts in the County of Santa Barbara.

C. **Execution of Counterparts.** This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

D. **Authority.** All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(ies), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with.

E. **Remedies Not Exclusive.** No remedy herein conferred upon or reserved to either party is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

F. **Notices.** Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by personal delivery or facsimile, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

To County:

Joyce Gerber, Senior Planner
Development Review
Planning & Development Department
County of Santa Barbara
123 E. Anapamu Street
Santa Barbara, CA 93101
Fax Number: 805 568-3518

To Permittee:

Casa Dorinda, Attn: Executive Director
300 Hot Spring Road
Santa Barbara, CA 93108
Fax Number: 805 969-8686

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices paragraph. If sent by first class mail, notices and consents under this paragraph shall be deemed to be received five (5) days following their deposit in the United States Mail. This Notices paragraph shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

IN WITNESS WHEREOF, the parties have executed this Agreement for Long Term Maintenance and Management by the respective authorized signatories as set forth below to be effective upon final execution by all parties hereto.

COUNTY OF SANTA BARBARA

By: _____
Chair, Board of Supervisors

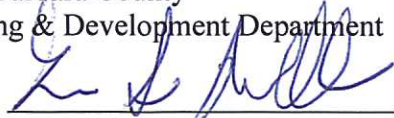
ATTEST: Date: _____

Mona Miyasato
County Executive Officer
Clerk of the Board

By: _____
Deputy Clerk


RECOMMENDED FOR APPROVAL:

Santa Barbara County
Planning & Development Department

By: 
Department Head


APPROVED AS TO FORM:

Risk Management

By: 

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By: 
Deputy County Counsel

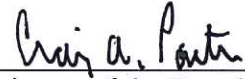
APPROVED AS TO ACCOUNTING FORM:

Theodore A. Fallati, CPA
Auditor-Controller

By: _____
Deputy

“CASA DORINDA”

MONTECITO RETIREMENT ASSOCIATION

By: 
Chairman of the Board

ATTEST:

By: 
Secretary of the Board

Attachments:

1. Condition 14
2. Condition 36
3. Condition 54

ATTACHMENT 1

14-RVP-000005; 14 CUP-00002
Condition #14

Bio-Sp1 – Open Space Management Plan. The Open Space Management Plan prepared by Watershed Environmental dated March 24, 2009 shall be completely revised and updated to correspond to the modified open space easement boundaries and to define immediate and future management actions within the open space area to promote long term and sustainable ecological functions including specific habitat restoration and management requirements to address, at a minimum, hand or other removal techniques of invasive and non-native plants, restoration of at least five (5) acres of oak woodland habitat, and maintenance of vegetation to achieve screening and buffering for surrounding residences and public views and roadways, and to achieve fuel management mandates. The use of goats or other livestock for fuel management or any other purpose shall be prohibited. This prohibition shall not apply to equestrian use of the trails. The management goal is to restore and enhance oak woodland habitat and improve wildlife habitat quality for birds and small mammals. The management objectives are: 1) to attain 80 percent native vegetation cover after five years beneath the tree canopy where habitat restoration/enhancement occurs and 2) Remove existing nonnative vegetation including understory groundcover, shrubs, and trees within the entire dedicated open space area. The Open Space Management Plan shall include the following:

- (i) A Wildlife Management Plan that assesses wildlife use and includes specific measures for protecting and promoting wildlife use of the open space areas such as:
 - Improving habitat for target wildlife species such as bobcats, brush rabbits and California quail,
 - Improving the ability for terrestrial wildlife to move through the open space areas by providing appropriate groundcover, shelter, and respite areas, and
- (ii) A Tree Management Plan applicable during and after construction that provides for the monitoring, management, and care for the oaks as well as all specimen eucalyptus and olive trees in the Open Space Easement Area, and
- (iii) Specific and measurable performance standards similar to those used in the riparian restoration area (Condition #9) to be used in determining the extent to which the goals and objectives of the Plan(s) are being achieved, and
- (iv) A protocol for annual inspections to be performed at least twice a year for five years and status reports to be submitted by May 15th of each year to the Director of Planning and Development and the Montecito Planning Commission for the first five years after Plan approval (similar to those used in the riparian restoration area -Condition 9), a protocol for ongoing inspections and reports following the end of the initial five-year period, and a

protocol for periodic review and update of the Plan, including, as needed, revisions to address changed circumstances, subject to review and comment by the MPC and the review and approval of the Director of Planning and Development. These reports can be provided to the Montecito Planning Commission upon their request following the initial five-year period.

PLAN REQUIREMENTS: The Owner/Applicant shall update the Open Space Management Plan and submit it to P&D for review and approval.

TIMING: The Open Space Management Plan shall be submitted to the MPC for review and comment prior to P&D's review and approval. P&D shall review and approve the Open Space Management Plan prior to Zoning Clearance issuance.

MONITORING: P&D shall confirm that the Open Space Management Plan has been updated in accordance with these requirements prior to Zoning Clearance issuance. Compliance monitoring staff shall review the annual reports as set forth in the Plan and conduct site inspections as necessary to ensure compliance with the approved Plan, and shall respond to complaints.

ATTACHMENT 2
14-RVP-000005; 14 CUP-00002
Condition #36

SpBio-06 Open Space Easement. The Owner/Applicant shall complete a real property exchange pursuant to Government Code Section 25365, wherein the County would exchange approximately 18.6 acres of existing, dedicated open space easement located on APN 009-640-001 shown in Attachment 9 of the Montecito Planning Commission memorandum dated November 12, 2015, for 18.6 acres of open space easement in a different configuration on the same parcel. The Owner/Applicant shall also offer to dedicate to the County of Santa Barbara an additional 3.13 acres of open space adjacent to the reconfigured 18.6 acres. The new easement area, consisting of the 18.6 acres of exchanged land and the additional 3.13 acres, is shown in Attachment 9 of the Montecito Planning Commission memorandum dated November 12, 2015. As part of the exchange, the Owner/Applicant shall record an easement for the entire 21.73-acre open space easement. The easement shall contain the following language: *The easement may be dedicated to, or transferred to a qualified non-profit organization upon approval of the Director of P&D and acceptance by the qualified non-profit organization's Board of Directors, subject to the approval of the Owner/Applicant which may not be unreasonably withheld.* In addition, the Owner/Applicant shall provide an agreement for long-term monitoring and establish a fund for monitoring costs reviewed and approved by P&D and County Counsel and docketed with the Board of Supervisors prior to issuance of the first Zoning Clearance for any development under 14RVP-00000-00005. The easement shall also state that management of the open space easement area shall be the responsibility of the Owner and shall follow the stewardship and management practices specified in the revised Open Space Management Plan required by Condition 14 of 15RVP-00000-00005. In addition to the elements described in Condition 14 of 15RVP-00000-00005, the revised Open Space Management Plan shall include a component addressing restoration and continued protection of the native understory for the life of the project. Restrictions in the current recorded easement agreement shall be incorporated into the new easement agreement. The owner shall allow County staff or designees to inspect and photo document the condition of the easement area, fencing, signs, plantings at least once per year and the owner must complete any repairs or restoration required by the County or designees.

TIMING: Not more than six months prior to acceptance of the easement, the Owner/Applicant shall provide a current Title Report. The easement shall be accepted by the Board of Supervisors and recorded on the title, and the endowment established, prior to issuance of the first Zoning Clearance for any development permitted as part of 14RVP-00000-00005.

MONITORING: P&D compliance monitoring staff or designees shall:

- (a) inspect and photo document the condition of easement area, fencing, signs, plants, etc prior to Final Building Inspection Clearance and ANNUALLY or as often as deemed necessary by the County thereafter; and
- (b) Review the reports submitted to the Director of Planning and Development pursuant to Bio-Sp1 (Condition No. 14) and conduct site inspections as necessary to confirm compliance.

ATTACHMENT 3
14-RVP-000005; 14 CUP-00002
Condition #54

Rules-26 Performance Security Required. Prior to Zoning Clearance, the Owner/Applicant shall post separate performance securities, the amounts and form of which shall be approved by P&D, to cover the full cost of installation and maintenance of landscape and irrigation, stormwater control plan, tree replacement, and habitat restoration. Installation securities shall be equal to the value of a) all materials listed or noted on the approved referenced plan, and b) labor to successfully install the materials. Maintenance securities shall be equal to the value of maintenance and/or replacement of the items listed or noted on the approved referenced plan(s) for five years of maintenance of the items. The installation security shall be released when P&D determines that the Owner/Applicant has satisfactorily installed of all approved landscape and irrigation, stormwater control, tree replacement, and habitat restoration plan elements per those condition requirements. Maintenance securities shall be released after the specified maintenance time period and when all approved landscape and irrigation, stormwater control, tree replacement, and habitat restoration plan elements have been satisfactorily maintained. If they have not been maintained, P&D may retain the maintenance security until satisfied. If at any time the Owner fails to install or maintain the approved landscape and irrigation, stormwater control elements, tree replacement, and habitat restoration plan elements, P&D may use the security to complete the work.