

**AGREEMENT BETWEEN THE COUNTY OF SANTA BARBARA
AND THE CITY OF GOLETA
AND ESCROW INSTRUCTIONS**

This Agreement is made on this 17th day of December, 2019, by and between the City of Goleta, a general law city within the County of Santa Barbara, California (hereinafter referred to as "GRANTEE"), and the County of Santa Barbara, a political subdivision of the State of California (hereinafter referred to as "COUNTY"), wherein COUNTY agrees to grant certain funds to GRANTEE for the purposes and on the conditions specified herein.

RECITALS

WHEREAS, GRANTEE submitted an application to the Coastal Resource Enhancement Fund ("CREF"), seeking money to purchase a 0.25-acre parcel from a private party located at the south end of Mathilda Drive, adjoining the Sperling Preserve, currently shown as APN No. 079-554-031 in the official records of Santa Barbara County (herein referred to as PROPERTY); and

WHEREAS, COUNTY has chosen to award GRANTEE an \$80,000 grant to be paid towards acquisition of PROPERTY once GRANTEE secured all funds necessary to purchase and hold sole interest in PROPERTY; and

WHEREAS, GRANTEE has submitted a certified appraisal dated April 23, 2015 for PROPERTY, with a fair market value of \$80,000; and

WHEREAS, GRANTEE has submitted a copy of a letter from the landowner, stating the landowner was a willing seller of PROPERTY for \$80,000.

GRANT TERMS AND CONDITIONS

Now, therefore, in consideration of the mutual promises hereinafter set forth, it is agreed as follows:

1. PURPOSE:

The purpose of this Agreement is to award GRANTEE a grant of CREF funds and Planning & Development mitigation funds towards purchase of the fee interest in PROPERTY and subsequently upon close of escrow convey a perpetual Conservation Easement over PROPERTY to COUNTY for the protection of plants, animals, and other natural resources and habitat, and to provide public access. The Conservation Easement shall be the "Conservation Easement Deed and Agreement" attached hereto as Exhibit "B", incorporated herein by reference.

(a) **CREF GRANT FOR ACQUISITION:** COUNTY shall pay a total of eighty thousand dollars (\$80,000) towards the purchase of fee interest of PROPERTY as stipulated herein:

i. sixty-six thousand and four hundred and thirty dollars (\$66,430) from the Coastal Resource Enhancement Fund (Fund #0063, Dept. #053, Program #5090, Account #7863, Project #1803);

ii. ten thousand seven hundred and fifty dollars (\$10,750) from the Coastal Resource Enhancement Fund (Fund #0063, Dept. #053, Program #5090, Account #7863, Project #1706); and

iii. two thousand and eight hundred and twenty dollars (\$2,820) from the Planning & Development Mitigation Fund (Fund 1392) in accordance with permit conditions on development projects.

Hereinafter referred to as “Grant Funds” towards the purchase of fee interest of PROPERTY as stipulated herein.

(b) **DEFINITION OF PROPERTY**: The PROPERTY purchased with this grant is defined as Assessor Parcel Number Book 79, Page 554, Parcel 31, in the County of Santa Barbara, State of California, inclusive of maps in the office of the County Recorder of said County. The property is described as “Lot 27 in Block 4 of Ellwood Acres No. 2, in the City of Goleta, County of Santa Barbara, State of California, as shown on a map recorded June 16, 1927, in Map Book 15, at Pages 155 and 156, records of Santa Barbara County, California” as shown in Exhibit “A,” attached hereto and incorporated herein by reference.

(c) **CONSERVATION EASEMENT AREA**: The PROPERTY’s 0.25 acres of open space has natural resources and recreational value. The Conservation Easement area shall include the entire PROPERTY. The easement boundary is legally described and shown on Exhibit “A” of this Agreement.

The land use restrictions and management measures applied to the Conservation Easement area shall be recorded through the Conservation Easement.

2. **GRANTEE’S RESPONSIBILITY**: The GRANTEE hereby agrees to acquire the fee interest in said PROPERTY and further agrees to convey a Conservation Easement over said PROPERTY substantially in the form attached hereto as Exhibit “B.”

Provided the COUNTY meets its funding and escrow obligations described herein, GRANTEE shall pay to PROPERTY owner the necessary consideration for the purchase of the PROPERTY and grant the Conservation Easement to COUNTY.

(a) GRANTEE is purchasing PROPERTY from a private party for \$80,000.00. Upon close of escrow, GRANTEE shall obtain a California Land Title Association owner’s policy of title insurance covering GRANTEE’s interest in the Property. Upon the conveyance of the Conservation Easement to COUNTY, COUNTY will obtain a California Land Title Association owner’s policy of title insurance covering COUNTY’s interest in the Conservation Easement. Costs of each such policy shall be paid by GRANTEE.

(b) GRANTEE guarantees that, in the event a loan is obtained as partial purchase money for the PROPERTY, GRANTEE shall use other assets as collateral for the loan and shall not encumber the PROPERTY.

(c) The COUNTY must provide the certificate of acceptance of the COUNTY Board of Supervisors of the Conservation Easement and deposit the same into escrow for recording.

(d) GRANTEE shall request the Escrow Officer to release a certified copy of the PROPERTY Grant Deed, as executed by the property owner, prior to the close of escrow in order to receive “acceptance” by the GRANTEE’s City Council Board. GRANTEE shall provide the

COUNTY prior to the close of escrow a GRANTEE executed Conservation Easement in order to receive "acceptance" by COUNTY's Board of Supervisors.

(e) GRANTEE represents and warrants to the County that to the best of GRANTEE's knowledge, after appropriate due diligence, including a title report, that there are no outstanding monetary or mechanic's liens to which the Conservation Easement will be subject, the foreclosure of which would cause the Conservation Easement to be extinguished.

(f) GRANTEE shall hold COUNTY harmless and reimburse COUNTY for any and all of COUNTY's losses and expenses occasioned by reason of any easements, contracts, leases, agreements, permits, and voluntary or involuntary liens encumbering said PROPERTY which causes the Conservation Easement not to be held in perpetuity.

(g) GRANTEE shall ensure sufficient financial resources to retain fee ownership and manage PROPERTY. Any transfer of ownership shall be limited to governmental entities or financially solvent, non-profit organizations mutually agreeable to GRANTEE and COUNTY to assure sufficient financial responsibility associated with post-acquisition management and use.

3. COUNTY'S RESPONSIBILITY: COUNTY agrees to deposit into escrow the Grant Funds (\$80,000) to fund the purchase of the PROPERTY. At least one (1) day prior to the close of escrow, COUNTY shall deposit in escrow the Grant Funds. If for any reason COUNTY shall have deposited the Grant Funds into escrow, and escrow shall have failed to close, the Grant Funds shall be returned in its entirety to COUNTY within thirty (30) days of the date escrow was to have closed.

Notwithstanding any other provision of the Agreement, the maximum contribution of the COUNTY with regard to the CREF award and the terms of this Agreement shall not, under any circumstances, exceed the Grant Funds sum of \$80,000, which may only be used toward the purchase price of the PROPERTY. GRANTEE shall be responsible for all costs of acquisition, including escrow and title insurance fees and any portion of the purchase price in excess of the CREF Grant Funds.

4. ESCROW INSTRUCTIONS AND FEES:

(a) Opening of Escrow:

Upon execution of this Agreement by all parties, GRANTEE shall open an escrow, and shall deliver to the Escrow Officer a copy of this fully executed Agreement along with the fully-executed Purchase Contract for the PROPERTY. This Agreement shall become a part of the Escrow and shall constitute the basic instructions between the COUNTY and GRANTEE to the Escrow Officer.

The parties agree to execute such additional instructions and documents as are reasonably required to complete the closing of the transaction contemplated herein in accordance with the terms and conditions of this Agreement. On behalf of the COUNTY, the Director of General Services Department, or designee, shall execute the necessary escrow instructions and/or additional instructions, which may be required to complete the closing of this real property transaction. On behalf of the GRANTEE, the City Manager, or designee, shall execute the necessary escrow instructions and/or additional instructions, which may be required to complete the closing of this real property transaction. In case of conflict between this Agreement and any such escrow documents, the terms of this Agreement shall govern.

(b) Close of Escrow and Payment Obligations:

Escrow shall close concurrently with GRANTEE's close of escrow for the PROPERTY, or on such other date as the parties may mutually agree in writing. The close of escrow shall occur upon the recordation of:

- i. The Grant Deed vesting fee title to the PROPERTY in GRANTEE,
- ii. The Conservation Easement Deed and Agreement vesting title to the Conservation Easement in COUNTY,
- iii. Release of purchase funding for the PROPERTY to the property owner, and
- iv. Payment of all escrow-related fees and costs, including title insurance.

GRANTEE shall pay or cause to be paid all escrow and recording fees as well as the documentary stamp tax, if any, incurred in the conveyance of the Conservation Easement to the COUNTY. Said escrow and recording charges shall include any partial reconveyance and subordination fees as may be required. GRANTEE shall pay all escrow fees in the event that this escrow is canceled prior to the conveyance of the Conservation Easement to COUNTY.

(c) Escrow Officer's Obligations:

The escrow officer shall be responsible for the following:

- i. To obtain subordination or full reconveyance agreements from any holders of liens against the PROPERTY, provided that OWNER shall cooperate with the Escrow Officer in obtaining such documents from any and all such creditors; and
- ii. To record the executed documents described in Section 4 (b) above, with the Santa Barbara County Recorder's Office, and deliver the recorded documents to COUNTY upon close of escrow; and
- iii. To deliver the Grant Funds to GRANTEE prior to the close of escrow of the PROPERTY; and
- iv. To issue a California Land Title Association owner's policy of title insurance covering County.

5. GOOD FAITH DISCLOSURES BY GRANTEE: GRANTEE shall make a good faith disclosure to COUNTY of any and all facts, findings, and information concerning the PROPERTY in GRANTEE's knowledge or possession, including without limitation historical uses; prior permitted uses; current uses including, but not limited to, express or implied contracts, leases and/or permits; geological conditions; biological conditions; archaeological sites; flood hazard area(s); special studies zones; zoning report; environmentally hazardous material such as asbestos, dioxins, oils, PCB's, solvents, waste disposal, gasoline tank leakage, pesticide use and spills, herbicide use or spills or any other substances and/or products of environmental contamination. Any and all facts or information known by GRANTEE concerning the condition of the PROPERTY shall be delivered to COUNTY no later than thirty (30) days following COUNTY'S execution of this Agreement.

If such facts, findings or information provided by GRANTEE disclose conditions that adversely affect the continued or contemplated use of the PROPERTY and that COUNTY reasonably deems unacceptable, or if COUNTY otherwise discovers such facts or information through tests and/or surveys conducted pursuant to COUNTY'S authority, as hereinabove provided, which disclose such conditions, and GRANTEE is unwilling or unable to correct such conditions to the reasonable satisfaction of COUNTY or any governmental body having jurisdiction over the Property, then COUNTY, in its sole option, may terminate this Agreement. Within ten (10) business days of actual receipt of GRANTEE'S disclosure information, COUNTY shall notify GRANTEE of any condition it deems unacceptable and the correction desired and shall ask GRANTEE, at GRANTEE'S expense, to correct the identified condition(s) to the reasonable satisfaction of COUNTY or any governmental body having jurisdiction over the PROPERTY. GRANTEE'S failure to make the requested corrections shall be grounds for termination of this Agreement.

Upon the close of escrow, copies of any and all original documents and/or information relating to the PROPERTY, to the extent they exist and are in GRANTEE'S custody, shall be delivered by GRANTEE to COUNTY. Nothing will obligate GRANTEE to provide any privileged documents or information or attorney work product.

6. TERMINATION: COUNTY shall have the right to terminate this Agreement only following GRANTEE'S failure to cure a material breach following ten (10) days written notice. GRANTEE shall have the right to terminate this Agreement at any time prior to the close of escrow upon the terms herein. Should GRANTEE terminate this Agreement, it shall within thirty (30) days of notice of termination return all GRANT FUNDS to COUNTY, if such GRANT FUNDS were previously disbursed to GRANTEE, and pay COUNTY an additional sum of SEVEN THOUSAND FIVE HUNDRED AND 00/100 DOLLARS (\$7,500.00) as partial reimbursement of COUNTY'S professional staff costs accrued in the preparation of this Agreement and its attachments.

7. TIME OF PERFORMANCE: This Agreement shall expire July 1, 2020 unless GRANTEE enters into a binding escrow agreement as discussed in Article 4b and such escrow closes no later than 60 days thereafter. COUNTY'S Director of Planning & Development Department may extend the time of performance by up to one year for good cause.

8. DISCLAIMER BY COUNTY: Nothing in this Agreement is intended to nor does it commit the COUNTY with regard to the approval or disapproval of any future land use, Comprehensive Plan, Zoning, CEQA, or their discretionary review or approval, in which the COUNTY as a governmental entity may be involved.

9. FINAL REPORT: GRANTEE agrees to provide within 45 days of the acquisition, a final report that includes the following:

- (a) brief summary of PROJECT'S objectives and how these objectives were accomplished,
- (b) itemize list and support documentation of all expenses (including transaction costs) incurred to complete PROJECT, and
- (c) photographs showing PROJECT.

10. PERIOD FOR WHICH RECORDS ARE AVAILABLE: GRANTEE shall maintain all records regarding performance of this contract for a minimum of four years after the close of escrow on PROPERTY. GRANTEE agrees that the COUNTY may, at any time during normal working hours and up to four years after the full performance or termination of this contract, review or audit all records regarding performance of this contract.

11. INDEMNIFICATION: COUNTY shall have no authority or control over completion of PROJECT except as stipulated herein. GRANTEE shall defend, indemnify, and save harmless COUNTY, its agents, employees and officers from any and all claims, demands, damages, costs, and expenses (including attorneys' fees), judgments or liabilities arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of GRANTEE or its agents or employees or other independent contractors directly responsible to it; except those claims, demands, damages, costs, expenses (including attorneys' fees), judgments or liabilities resulting solely from the negligent acts or omissions or willful misconduct of COUNTY. GRANTEE shall notify COUNTY immediately in the event of any accident or injury arising out of or in connection with the Agreement.

12. ALIENATION OR ASSIGNMENT: Neither party shall assign, subordinate, or transfer this Agreement or any right or duty hereunder without the other party's prior written consent. Any attempt to assign, sublet, subordinate or transfer in violation of this provision shall be void and without legal effect.

13. NOTICES: Any notice or consent required or permitted to be given under this Agreement shall be given to the respective parties in writing, by first class mail, postage prepaid, or otherwise delivered as follows:

To COUNTY: County of Santa Barbara
Planning & Development, Energy & Minerals Division
123 E. Anapamu Street
Santa Barbara, CA 93101
Attn: Kathy McNeal Pfeifer, 568-2507
kathypm@countyofsb.org

AND

For all escrow related matters:

General Services Department
Real Property Division
1105 Santa Barbara Street, East Courthouse Wing, 2nd Floor
Santa Barbara, CA. 93101
Attn: Carlo Achdjian
dgrady@co.santa-barbara.ca.us
(805) 568-3065

To GRANTEE: The City of Goleta
Michelle Greene, City Manager
130 Cremona Drive, Suite B

Goleta, CA 93117
mgreene@cityofgoleta.org
(805) 961-7501

Either party may change its point of contact by providing 30 days written notice to the other party. The Director or Deputy Director may designate a new point of contact for COUNTY.

14. SECTION HEADINGS: The headings of the several sections shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

15. ACKNOWLEDGMENT: GRANTEE shall publicly identify on press releases to the public that the acquisition is partially financed by the "County of Santa Barbara's Coastal Resource Enhancement Fund (CREF), a partial mitigation of impacts from the following offshore oil and gas projects: Point Arguello, Point Pedernales, and Santa Ynez Unit." In addition, GRANTEE shall post the acknowledgment on GRANTEE's homepage in the News section and identify the acknowledgment in an article in GRANTEE's Monarch Press.

16. NON-PARTNERSHIP: This Agreement is not intended by the parties to constitute or create a joint venture, pooling arrangement, or formal business organization of any kind. The rights and obligations of the parties shall be only those expressly set forth herein.

17. 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.

18. NO WAIVER OF DEFAULT: No delay or omission of either party to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to either party shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of that party.

19. ENTIRE AGREEMENT AND AMENDMENT: In conjunction with the matters considered herein, this Agreement contains the entire understanding and agreement of the parties and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Agreement and by no other means. Each party waives their future right to claim, contest or assert that this Agreement was modified, canceled superseded or changed by any oral agreements, course of conduct, waiver or estoppel.

20. SUCCESSORS AND ASSIGNS: The provision of this Agreement shall be fully binding on all successors and assigns of the parties.

21. CALIFORNIA LAW: This Agreement shall be governed by the laws of the State of California. Any litigation regarding this Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in southern California, if in federal court.

22. **NONDISCRIMINATION CLAUSE:** GRANTEE shall abide by the Unlawful Discrimination Ordinance, Article XIII of Chapter 2 of the Santa Barbara County Code, as it may be amended from time to time, as if set forth fully herein.

23. **TAXES:** GRANTEE shall be responsible for payment of all taxes due as a result of the Agreement. GRANTEE's Federal Tax Identification Number is 77-0590291.

24. **EXECUTION IN 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.

25. **CERTIFICATION OF SIGNATORY:** The signatory of this Agreement represents and warrants that he/she is authorized by the GRANTEE to execute this Agreement and that no additional signatures are required to bind GRANTEE to its terms and conditions or to carry out the duties contemplated herein.

26. **FACSIMILE SIGNATURES:** In the event that the parties hereto utilize facsimile or electronically transmitted documents which include signatures, such documents shall be accepted as if they bore original signatures provided that documents bearing ORIGINAL SIGNATURES are provided within seventy-two (72) hours of the electronic or facsimile transmission , except that funds shall not be released upon a scanned or facsimile signature nor shall scanned or facsimile signed documents be accepted for recordation by the Clerk Recorder of the County.

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This Agreement between the COUNTY and GRANTEE is executed on the dates shown below and shall be effective when signed by all parties.

COUNTY OF SANTA BARBARA

ATTEST:

CLERK OF THE BOARD

By _____
Deputy Clerk of the Board

Chair, Board of Supervisors

COUNTY APPROVAL AS TO FORM

MICHAEL C. GHIZZONI
COUNTY COUNSEL

BETSY SCHAFFER, CPA
AUDITOR-CONTROLLER

By: _____

By: _____

REAL PROPERTY

RISK MANAGEMENT

By: _____
Carlo Achdjian,
Real Property Manager

By: _____
Ray Aromatorio, ARM, AIC
Risk Manager

CITY OF GOLETA

GRANTEE

ATTEST:
DEBORAH LOPEZ
CITY CLERK

BY: _____
Paula Perotte, Mayor
City of Goleta

By _____
Deputy

Date: _____

APPROVED AS TO FORM:
City Attorney

By _____
MIKE JENKINS

Exhibit A
**LEGAL DESCRIPTION AND MAP
OF EASEMENT BOUNDARY**

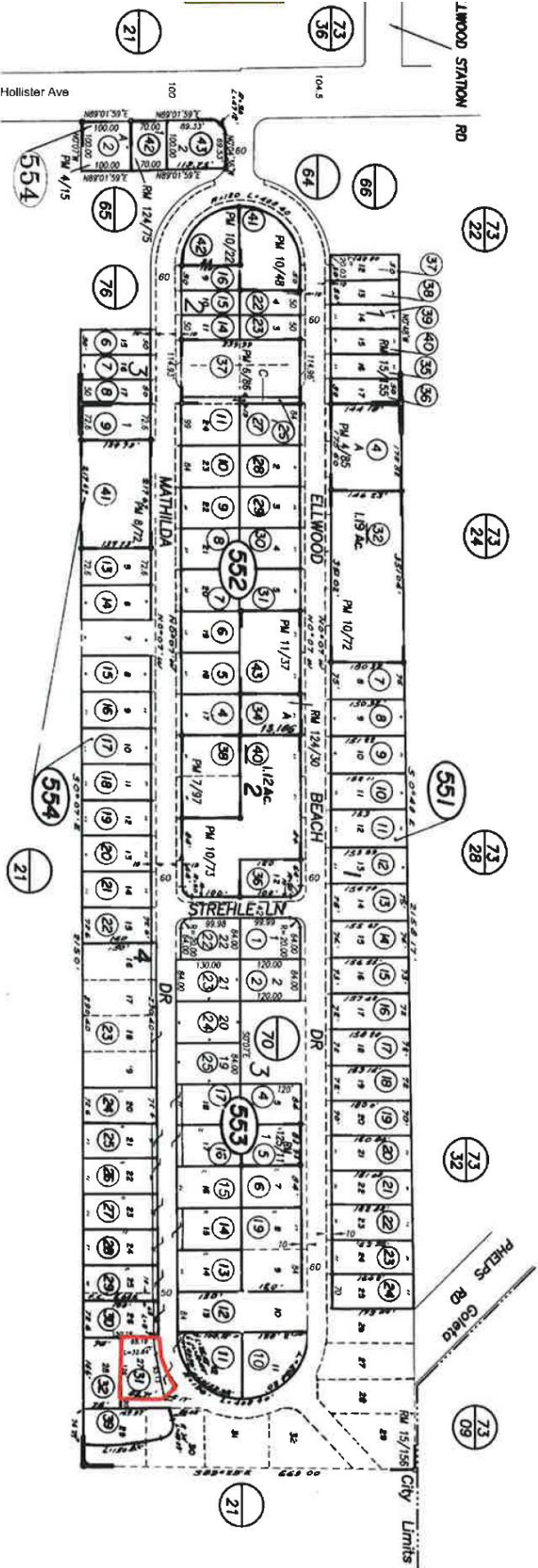
That certain real property in the City of Goleta, County of Santa Barbara, State of California described as follows:

The subject conservation easement is defined as Lot 27 in Block 4 of Ellwood Acres No. 2, in the County of Santa Barbara, State of California, according to the map thereof recorded in Book 15, at Pages 155 and 156, records of Santa Barbara, County.

APN: 079-554-031

POR. RANCHO LOS DOS PUEBLOS

079-55



- 6/16/1927 R.M. Bk. 15, Pg. 155, Tract "Elwood Acres No. 1"
- 6/16/1927 R.M. Bk. 15, Pg. 156, Tract "Elwood Acres No. 2"
- 7/7/1983 R.M. Bk. 124, Pg. 30-31, Tract 13186
- 10/5/1983 R.M. Bk. 124, Pg. 75-76, Tract 13409
- 11/18/1983 R.M. Bk. 125, Pg. 11-12, Tract 13091

N O T I C E
 Assessor Parcels are for tax assessment purposes only and do not indicate either partial legality or a valid building site.

City of Goleta
 Assessor's Map Bk. 079-Pg. 55
 County of Santa Barbara, Calif.

(10/06) 553-20 Map 553-22 & 23
 553-21 Map 553-24 & 25

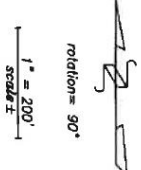


Exhibit B

**CONSERVATION EASEMENT
DEED and AGREEMENT**