F/ETCA
Tesoro Extension (SR 241) Project
Order No. R9-2013-0007

June 19, 2013

ATTACHMENT F
CHIQUITA CANYON PERIMETER CONSERVATION EASEMENT

RECORDING REQUESTED BY
FIRST AMERICAN TITLE INSURANCE COMPANY

~~RECORDING REQUESTED BY~~
AND WHEN RECORDED MAIL TO:

Foothill/Eastern Transportation
201 E. Sandpointe, Suite 200
Santa Ana, California 92707

Attention: Ms. Kathy Besnard

Recorded in the County of Orange, California
Gary L. Granville, Clerk/Recorder
No Fee
19960269158 08:00AM 05/30/96
400 266053 15 27 FAT
E01 A04 27 55 0.00 14.00 0.00 78.00 0.00 0.00
0.00 0.00 0.00 0.00 0.00

CONFORMED COPY
Not Compared with Original

FA9636244 R.R

The undersigned declares that this document is recorded for the benefit of Foothill/Eastern Transportation Corridor Agency and is therefore exempt from the payment of the recording fee pursuant to Government Code Section 6103 and from the payment of the documentary transfer tax pursuant to Revenue and Taxation Code Section 11922.

COPY

By: Kathy Besnard
Authorized Representative for Agency

(Space above this line for Recorder's use only)

CHIQUITA CANYON PERIMETER CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (the "Easement Agreement") is made this 29 day of May, 1996 by and between San Juan Partnership No. I, a California limited partnership ("Grantor"), and The Foothill/Eastern Transportation Corridor Agency, a joint powers agency ("Grantee"), with reference to the following facts:

RECITALS:

A. Grantor is the sole owner in fee simple of certain real property in the County of Orange, State of California, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Conservation Easement Property"). The Conservation Easement Property (including the Reservoir Property defined herein), totals approximately 942 acres.

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COPY

B. The Conservation Easement Property possesses open space, coastal sage scrub and other habitat types which are important to the conservation of the coastal California gnatcatcher and other sensitive species and also possesses attributes which would allow for the restoration of coastal sage scrub habitat (collectively, "conservation values") of great importance to Grantor, Grantee, the people of Orange County, the people of the State of California and people of the United States of America. Such conservation values provide habitat for the coastal California gnatcatcher and other sensitive and rare species.

C. Grantee is a joint powers authority formed by the County of Orange and a number of cities within the County of Orange pursuant to Government Code sections 6500 et seq. and 66484.3 for the purpose of planning, financing, designing and constructing, in part, the North Segment of the Foothill Transportation Corridor which extends from Oso Parkway to the east leg of the Eastern Transportation Corridor (the "North Segment"). A portion of the "North Segment" is known as the "Oso Segment."

D. As part of planning, designing and constructing a portion of the Oso Segment and North Segment, the Grantee and United States Army Corps of Engineers have engaged in consultation with the United States Fish and Wildlife Service ("Service") pursuant to Section 7 of the Federal Endangered Species Act (26 U.S.C. §1531 et seq.) with regard to the effect of the construction of the Oso Segment on the coastal California gnatcatcher and its habitat. The Service has issued its Biological Opinion (pursuant to Section 7(b) of the Federal Endangered Species Act), concluding that construction and operation of portions of the Oso Segment are not likely to jeopardize the continued existence of the coastal California gnatcatcher.

E. Grantor intends to convey to Grantee the right to preserve, enhance and protect the conservation values of the Conservation Easement Property in perpetuity subject to the terms of this Easement Agreement.

F. A portion of The Conservation Easement Property will be used to mitigate for impacts of the Oso Segment, and Grantee desires to perform such mitigation

by acquiring an easement to use the Conservation Easement Property for the purposes of habitat preservation, replacement, enhancement, creation and maintenance and other environmental mitigation purposes.

G. Grantor and Grantee have agreed to participate in the processing and development of a Natural Communities Conservation Plan for the Southern Subregion of Orange County ("Plan"). In the event the Plan is approved and enacted, it is the intent of Grantor and Grantee that this easement shall be consistent with the Plan and become a part of the Plan.

NOW, THEREFORE, in consideration of the above and mutual covenants, terms, conditions and restrictions contained herein, Grantor and Grantee agree as follows, and Grantor hereby grants and conveys to Grantee an easement in perpetuity over the Conservation Easement Property of the nature and character and to the extent hereinafter set forth (the "Easement").

1. Purpose. It is the purpose of the Easement to assure that the Conservation Easement Property will be retained forever in an open space condition (subject to those uses permitted in Sections 2 and 4 of this Easement Agreement) and for coastal sage scrub preservation, revegetation and related purposes and to prevent any use of the Conservation Easement Property that will impair or interfere with the conservation values of the Conservation Easement Property other than as set forth herein. Grantor intends and agrees that the Easement shall limit the use of the Conservation Easement Property, subject to the uses permitted in this Easement Agreement, to such activities, including without limitation, those involving the preservation and enhancement of coastal sage scrub habitat.

2. Rights of Grantee and Character of Easement.

(a) To accomplish the purpose of the Easement, the following rights and obligations are hereby conveyed to and accepted by Grantee by the grant contained herein:

(i) To preserve, enhance and protect the conservation values of the Conservation Easement Property; and

(ii) To enter upon the Conservation Easement Property to carry out the purposes of the Easement.

(b) The use of the surface of the Conservation Easement Property for conservation values is the exclusive use for the Conservation Easement Property subject to those other purposes set forth in Section 4 below. With respect to the subsurface of the property comprising the Conservation Easement Property, Grantor retains the right to reasonable access to and use thereof for Grantor's existing wells and waterline, so long as Grantor's exercise of such retained rights does not materially disturb, disrupt or interfere with the Easement; provided, however, that any such access and use shall be consistent with the purposes set forth herein. Neither Grantor, Grantee nor any third party acting with the permission of Grantor or Grantee may drill, mine, store or explore through the current surface or the upper 300 feet of the subsurface of the Conservation Easement Property.

(c) No use of the Conservation Easement Property by the general public is authorized hereunder without the express prior written consent of Grantor and Grantee and their respective successors in interest in the Conservation Easement Property, and Grantor and Grantee shall not encourage or permit the general public to use or enter upon the Conservation Easement Property. For purposes of this subparagraph, the term "general public" shall not include persons accompanied by Grantor or Grantee or its employees, agents, representatives, contractors or subcontractors and entering onto the Conservation Easement Property for purposes related to the conservation value of the Conservation Easement Property and the purposes set forth in Section 4. Notwithstanding the foregoing, Grantor and Grantee acknowledge that the Service and CDFG are third party beneficiaries of this Easement Agreement and shall have a right of access onto the Conservation Easement Property

for purposes associated with the conservation value hereof upon 24 hours notice to Grantor and Grantee.

(d) Grantee's rights under this Easement are expressly made subject to Grantor's reserved right under Section 4 and all other easements, covenants, conditions, restrictions, reservations, rights and rights-of-way of record, apparent, or the wells and waterline of which Grantee is aware.

(e) If Grantee plans to transfer this easement interest to another entity, it shall provide a minimum of 45 days written notice to Grantor, the Service and CDFG and shall not transfer the easement interest without the prior written consent of each which consent shall not be unreasonably withheld. Grantee may assign its rights and obligations under this Easement Agreement only to an organization that is (1) approved by the Service, CDFG and Grantor which approval shall not be unreasonably withheld, and (2) a public agency or a qualified organization at the time of transfer under section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision applicable), and the applicable regulations thereunder, and (3) authorized to acquire and hold a conservation easement under California Civil Code Section 815 et seq. (or any successor provision then applicable).

(f) Grantee shall not abandon its rights and obligations under this Easement Agreement. In the event of the termination of Grantee's ability to hold and manage this easement, the rights and obligations of Grantee hereunder shall ipso facto, and without further action on the part of any entity be deemed assigned to CDFG 60 days after written notice to Grantor, Grantee, the Service and CDFG, unless Grantee in such 60 day period has cured its inability to hold and manage this easement. In the event CDFG is unwilling or unable to carry out Grantee's obligations under this Easement Agreement, then Grantee shall transfer the easement to a public entity or qualified organization, in accordance with Section 2(e)(1), (2) and (3).

(g) The easement rights granted herein shall include Grantee's right to use the Conservation Easement Property for fire management, including use of

prescribed fires, development, maintenance and relocation of access roads, irrigation related to restoration activities, revegetation and conservation of natural resource values as permitted in accordance with the Management Plan as defined in Section 4(d) hereof.

3. **Special Terms and Requirements Regarding Easement.**

(a) Encumbrances. Neither Grantor nor Grantee shall suffer or permit to be enforced against the Conservation Easement Property, or any portions thereof, any mechanics', materialmen's, contractors' or subcontractors' liens or any claim for damage arising from any services, supplies, labor or materials furnished or alleged to have been furnished to or for Grantor or Grantee at or for use on the Conservation Easement Property, and each party shall promptly pay or cause to be paid all of said liens, claims or demands caused by such party before any action is brought to enforce the same. Each party hereby agrees to and hereby does protect, defend, indemnify and hold harmless the other party and the Conservation Easement Property free from any and all losses, costs, demands, damages, claims and liabilities associated with or in any way related to any and all such liens, claims and demands, together with all costs and expenses incurred in connection therewith (including court costs and attorneys' fees). If any such lien shall at any time be recorded against the Conservation Easement Property as a result of the foregoing, and the party causing the same shall fail, within 60 days after such recording, to either (i) pay and discharge the underlying claim and cause a lien release to be recorded or (ii) furnish to the other party a surety bond or other security reasonably satisfactory to the other party protecting the other party against liability for such lien and holding the Conservation Easement Property free from the effect of such lien, then the other party may, but shall not be obligated to, take such action or pay such amounts as may be necessary to remove such lien, and the failing party shall immediately pay to the other party the amount so expended, together with interest thereon at the rate of 10% per annum accruing from the date of such payment until paid in full.

(b) Fencing of Conservation Easement Property. Until the Management Plan is approved in accordance with Section 4(d) hereof, Grantee shall maintain the existing fencing on the Conservation Easement Property. Upon approval of the Management Plan, fencing shall be installed and maintained only in accordance with the Management Plan. All fencing shall allow for the construction and operation of the Foothill Transportation Corridor. If Grantor grazes cattle pursuant to Section 4(c) hereof, Grantor shall be responsible for installing and maintaining fencing appropriate for its cattle operations in accordance with the Management Plan.

4. Reserved Rights and Uses and Responsibilities of Grantor.

(a) Utilities and Uses. The Easement is subject to the utility easements of record, apparent or of which Grantee has actual notice, and Grantor's use and maintenance of existing wells, appurtenant structures, waterlines and roadways as of the date this Easement Agreement is recorded in the Official Records of the County of Orange, and such additional easements as Grantor shall designate, subject to Grantee's, the Service's and CDFG's prior written approval, which approval shall not be unreasonably withheld. Prior to exercising any reserved right hereunder to enter onto the surface of the Conservation Easement Property, Grantor shall give Grantee 24 hours prior written notice except in the event of an emergency, in which event Grantor shall give notice as soon as possible. In exercising its reserved rights under Section 4(a), Grantor shall use its best efforts to limit disturbance of coastal sage scrub habitat and shall, to the extent feasible, promptly restore all disturbed habitat.

(b) Reservoir. Grantor reserves the right to use or subject to use, and/or grant to a third party, a portion of the Conservation Easement Property (the "Reservoir Property") for purposes associated with a reservoir for impounding imported waters. In the event that a reservoir is constructed, it shall be done so in accordance with all applicable laws and regulations and shall only be built within the Reservoir Property, which shall total 24 acres. A temporary construction easement abutting the reservoir perimeter will also be reserved, said easement shall not exceed fifty (50) feet in width and shall terminate automatically upon completion of construction of the reservoir. Grantor, or

Grantor's assigns, shall also have a private but not exclusive access through the Conservation Easement Property to the Reservoir Property from a public road for construction and maintenance vehicles and equipment. Upon completion of legal descriptions of the Reservoir Property, of the inlet and outlet water lines and of the access route, within 30 days after a written request from Grantor, Grantee shall execute and record a quitclaim deed in favor of Grantor as to the Reservoir Property and a subeasement for the access and waterline route. The quitclaim deed and subeasement may be recorded; and any such recordation, if at all, shall occur by a date thirty-five (35) years from the date of this Easement Agreement.

(c) Grazing. If allowed under the Management Plan, Grantor shall have the right to graze cattle on the Conservation Easement Property consistent with the Management Plan. The indemnification in Section 6(a) shall apply to grazing activities. If Grantor elects to graze cattle in accordance with the Management Plan, Grantor shall provide security for the Conservation Easement Property.

(d) Responsibility. Grantor and Grantee each hereby understand and agree that Grantor shall have no obligation whatsoever to maintain, restore or otherwise improve the Conservation Easement Property except for damage caused by Grantor's use of the Conservation Easement Property, and that Grantee accepts the Conservation Easement Property in its current "as is" condition. Subject to the review and the approval of the Service, the Grantee shall develop, fund and implement a Management Plan for the Conservation Easement Property ("Management Plan") that shall assure the protection and maintenance in perpetuity of the existing native plant and wildlife values of the area covered by this Easement Agreement. This plan shall be completed within six months of recording this Easement Agreement. The Management Plan shall identify responsible parties and measures for control of public access, fire management, invasive plant and feral animal control, resource monitoring, and other appropriate wildlife resource stewardship strategies. All agricultural activities, including grazing and farming activities, shall cease within the Conservation Easement Property unless approved by the Service and CDFG. Responsibility for funding and

implementation of the Management Plan shall reside with Grantee in perpetuity or until such time as the Service and CDFG concur with alternate arrangements. Grantee may transfer responsibility for such funding and implementation to a third party with the consent of the Service and CDFG. The Management Plan may be amended from time to time with the consent of the Service and CDFG.

(e) Condemnation. In the event of any condemnation or sale of the Reservoir Property, or any portion of the Conservation Easement Property for the widening of the Oso Parkway, Grantor shall be entitled to all proceeds therefrom. In addition, Grantor shall have the right to require Grantee to quitclaim to Grantor any portion of the Conservation Easement Property designated by Grantor for the construction and widening of Oso Parkway. For all other condemnations, Grantor and Grantee shall each be entitled to a share in any condemnation proceeds based on their interest in the Property. If any condemnation action, other than a condemnation of the Reservoir Property, results in a reduction of acreage covered by this Easement Agreement, and if the condemning agency or another party is not required to mitigate for the reduction in conservation values of the Conservation Easement Property, Grantee will compensate for the impacts to the conservation values of the Conservation Easement Property in a manner reasonably acceptable to the Service and CDFG, provided, however, that, except for a condemnation for the widening of Oso Parkway, Grantee shall not be required to expend more in connection with such mitigation than Grantee receives from the condemnation actions.

5. Sale of Fee Interest and Conservation Credits.

(a) Grantor may transfer the fee title interest in the Conservation Easement Property provided it gives Grantee, the Service and CDFG not less than 30 days prior written notice of its intent to transfer such fee title interest. Notice shall be given in the manner required in this Easement Agreement. Grantor agrees to incorporate the terms of this Easement Agreement in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Conservation Easement Property. The failure of Grantor to perform any act required by this section shall not

impair the viability of this Easement Agreement or limit its enforceability in any way. Grantor may only enter into leases of the fee title to the Conservation Easement Property and may convey other interests in such lands only as permitted by the Management Plan prepared and approved pursuant to Section 4(d) of this Easement Agreement.

(b) Grantee may transfer by sale or otherwise, in accordance with that certain Chiquita Canyon Conservation Bank Agreement among the Service, CDFG and Grantee dated May 24, 1996, credits associated with the Conservation Easement Property to offset impacts of development under the Federal and State endangered species laws. Grantee shall have the exclusive right to determine the price and other consideration concerning such transfer in accordance with the above-referenced Conservation Bank Agreement, and shall not be required to share any such consideration with Grantor.

(c) At Grantor's discretion, and so long as Grantee continues ownership of this easement, Grantor may, after 30 days written notice to Grantee, the Service and CDFG, quitclaim to Grantee the fee interest in the Conservation Easement Property reserving easements to continue existing uses provided for herein at the time of such transfer; and, in such event, Grantor shall no longer be responsible for all taxes and assessments on the Conservation Easement Property after such quitclaim. Concurrently with the quitclaim, Grantee shall grant a conservation easement in substantially the same terms set forth herein, to an entity as provided in Section 2(e)(1), (2) and (3) hereof. Grantor may not quitclaim its fee interest to Grantee until Grantee is prepared to record such conservation easement; Grantee will use its good faith efforts so that it will be prepared to record such conservation easement 30 days after written notice from Grantor to Grantee, the Service and CDFG.

(d) In the event of a quitclaim hereunder, Grantee shall not be obligated to maintain insurance as provided in Section 7.

6. Indemnification.

(a) Grantor's Indemnification. Grantor shall defend, indemnify, protect and hold harmless Grantee, and its directors, officers, employees and agents, and the respective employees thereof, from all losses, claims, suits, costs, damages, liabilities or actions of every name, kind, or description (including attorneys' fees) including those incurred or brought for or on account of injuries to or death of any person or damage to any property, resulting from (a) any negligent act or omission or intentional misconduct of Grantor, its officers, directors, employees, contractors, subcontractors and agents, and the respective employees thereof on the Conservation Easement Property, or (b) for breach of the terms of this Easement Agreement by Grantor, except to the extent as determined to have been caused by the negligent acts or omissions or intentional misconduct of Grantee, its officers, directors, employees, contractors, subcontractors and agents, and the respective employees thereof. Grantor's indemnity obligation shall survive until the lapse of the applicable statutory period for limitation of actions.

(b) Grantee's Indemnification. Grantee shall defend, indemnify, protect and hold harmless Grantor and its directors, officers, employees and agents, and the respective employees thereof, from all losses, claims, suits, costs, damages, liabilities or actions of every name, kind or description (including attorneys' fees), including those incurred or brought for or on account of injuries to or death of any person or damage to any property, resulting from (a) any negligent act or omission or intentional misconduct of Grantee, its officers, directors, employees, contractors, subcontractors and agents, and the respective employees thereof on the Conservation Easement Property, or (b) for breach of any of the terms of this Agreement by Grantee, except to the extent as determined to have been caused by the negligent acts or omissions or intentional misconduct of Grantor, its officers, directors, employees, contractors, subcontractors and agents, and the respective employees thereof. Grantee's indemnity obligation shall survive until the lapse of the applicable statutory period for limitation of actions.

7. Insurance.

(a) Requisite Coverages. Grantee shall, at all times during Grantor's ownership of the Conservation Easement Property, at its sole cost and expense, obtain and thereafter maintain comprehensive general liability and automobile insurance (including non-owned auto), which shall provide a 30-day notice to Grantor in the event of cancellation or any material change in coverage. The foregoing insurance policies shall reflect that the policy is primary insurance as respects any claim, loss or liability arising directly or indirectly from any of Grantee's activities on the Conservation Easement Property, and any other insurance maintained by Grantor shall be considered noncontributing. This liability insurance must be in a form satisfactory to Grantor and written with limits of liability not less than $1,000,000 combined single limit bodily injury and property damage liability per occurrence covering the activities and obligations contemplated of Grantee under this Easement Agreement. Grantee shall furnish a Certificate of Insurance (or, if requested by Grantor, copy of the policy) evidencing the foregoing coverage to Grantor for approval. Grantee shall also maintain worker's compensation insurance in an amount required by law, together with employers' liability insurance. Grantee shall provide Grantor with evidence of the worker's compensation and employer's liability insurance coverage, with a waiver of subrogation agreement by the insurance carrier as respects Grantor. Nothing in this paragraph shall limit Grantee's obligations under the other provisions of this Easement Agreement. Grantee shall not self-insure any portion of the insurance required under this paragraph without the express written consent of Grantor, which consent may be withheld by Grantee in its sole and absolute discretion. Any policies required hereunder may be made a part of a blanket policy of insurance, so long as such blanket policy contains all of the provisions required herein and does not in any way reduce the coverage, impair the rights of Grantor hereunder or negate the requirements of this Easement Agreement.

(b) Additional Insureds. All policies required to be maintained pursuant to this Section 7 shall contain a provision naming Grantor and any other parties hereafter requested in writing by Grantor as an additional insured ("Additional Insureds").

For purposes of naming Grantee as an additional insured, the following provisions shall be included within each applicable policy:

> It is understood and agreed that coverage afforded by this Policy shall also apply to San Juan Partnership No. I, and its officers, directors, agents, employees, divisions, subsidiaries, partners and affiliated companies as additional insureds.

In addition, all policies of insurance required hereunder shall contain a provision that the naming of an additional insured shall not negate any right that additional insured would have had as claimant under the policy if not so named.

(c) Mutual Release/Waiver of Subrogation. Grantee, for itself and its successors, hereby mutually releases and discharges Grantor and the other Indemnitees from all claims and liabilities arising from or caused by any hazard covered by the insurance coverage required herein in connection with the activities conducted on the Conservation Easement Property pursuant to this Easement Agreement, regardless of the cause of the damage or loss. The insurance policies described herein shall contain a waiver by the applicable insurance company of such company's right of subrogation.

(d) Obligations. Nothing herein shall limit Grantee's obligations under the other provisions of this Easement Agreement. The insurance required to be maintained hereunder shall insure against any acts or omissions of Grantee, provided nothing herein shall be interpreted to waive any rights Grantor may have as to any of Grantee's insurance nor shall Grantor be required to make a claim against any such Grantor's insurance.

(e) Grantee's Obligations. To the extent Grantor enters the Conservation Easement Property under the Easement, then Grantor shall comply with the insurance provisions of this section 6 applicable to Grantee prior to its entry onto the Conservation Easement Property.

8. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Conservation Easement Property by competent authority (collectively "taxes"), except that Grantor shall have no obligation to pay any taxes or assessments which may be levied against the Easement itself, as opposed to the underlying fee and Grantor shall furnish Grantee with satisfactory evidence of payment of taxes and assessments upon request. Grantee shall be responsible regarding the imposition of any taxes or assessments levied against the Easement itself, it being understood that while the Easement is held by a governmental entity for public benefit purposes, such Easement should be exempt from all such taxes and assessments.

9. **Notices.** Any notice, demand, request, covenant, approval, or other communication to be given by one party to the others shall be given by personal service, telegram, or express mail, Federal Express, DHL or any other similar form of airborne/overnight delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, addressed to the parties at their respective addresses as follows:

To Grantor:
San Juan Partnership No. I
28811 Ortega Highway
P.O. Box 9
San Juan Capistrano, California 92693
Attn: Anthony R. Moiso and Richard Broming

With a copy to:
Stephen R. Finn, Esq.
Brobeck Phleger & Harrison
One Market, 24th Floor
San Francisco, California 94105

To Grantee:
Foothill/Eastern Transportation Corridor Agency
201 E. Sandpointe, Suite 200
Santa Ana, California 92707
Attention: Ms. Kathy Besnard

With a copy to: Nossaman, Guthner, Knox & Elliott
Lakeshore Towers, Suite 1800
18101 Von Karman Avenue
Irvine, California 92715-1007
Attn: Robert D. Thornton, Esq.

To the Service: Regional Director
U.S. Fish and Wildlife Service
Portland Eastside Federal Complex
911 N.E. 11th Avenue
Portland, Oregon 97232-4181

With a copy to: Field Supervisor
U.S. Fish and Wildlife Service
Carlsbad Field Office
2730 Loker Avenue West
Carlsbad, California 92008

To CDFG: California Department of Fish and Game
1416 Ninth Street, Room 1341
Sacramento, California 95814

Any such notice shall be deemed to have been given upon delivery or forty-eight (48) hours after deposit in the mail as aforesaid. Either party may change the address at which it desires to receive notice upon given written notice of such request to the other parties.

10. Recordation. Grantor shall promptly record this instrument in the official records of Orange County, California, and shall rerecord it on its own, or at the request of Grantee, the Service or CDFG, at any time as may be required to preserve its own, Grantee's, the Service's or CDFG's rights under this Easement Agreement.

11. Miscellaneous Provisions.

(a) Controlling Law. This Easement Agreement shall be governed by and interpreted in accordance with the laws of the State of California and applicable federal law.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement Agreement shall be liberally construed in favor of the grant to effect the purpose of this Easement Agreement and the policy and purpose of Civil Code Section 815, et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Easement Agreement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Easement Agreement, 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.

(d) No Rights in Public. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Conservation Easement Property to or for the general public, it being the intention of the parties hereto that this Easement Agreement shall be strictly limited to and for the purposes herein expressed.

(e) Attorneys' Fees. In any proceeding between the parties hereto seeking enforcement of or attempting to construe any of the terms and provisions of this Easement Agreement, including, without limitation, declaratory relief or other litigation, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses and reasonable attorneys' fees, except, any fees or costs recoverable against the United States shall be determined by applicable federal law and except any fees or costs recoverable against CDFG shall be determined in accordance with California law.

(f) Waiver; Remedies. No delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single

or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

(g) Successors. The covenants, terms, conditions and restrictions of this Easement Agreement shall be binding upon and inure to the benefit of the parties hereto and each of their respective successors and assigns, and shall continue as a servitude running in perpetuity with the Conservation Easement Property. This Easement Agreement shall be binding upon and shall inure to the benefit of Grantor and its successors and assigns and Grantee and its assigns.

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

(i) Counterparts. The parties may execute this Easement Agreement in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original.

(j) No Other Obligations. This Easement Agreement implores no other obligations or restrictions on Grantor and neither its successors nor any person or entity claiming under them shall be in any way restricted from using the Conservation Easement Property in a customary manner except as provided herein.

(k) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the grant of easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the grant.

(l) Third Party Beneficiaries. The Service and CDFG are third party beneficiaries to this Easement Agreement and shall have the independent right to enforce the terms and conditions of this Easement Agreement.

12. Remedies. If Grantee determines that Grantor is in violation of the terms of this Easement Agreement or that a violation is threatened, Grantee shall give written notice to Grantor or its successors and assigns of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to

the easement resulting from any use or activity inconsistent with the purpose of this Easement Agreement, to restore the portion of the easement so injured. Grantee shall also notify the Service and CDFG. If Grantor fails to cure the violation within 15 days, or fails to continue diligently to cure such violation until finally cured, Grantee, or the Service or CDFG as third party beneficiaries, may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement Agreement, to enjoin the violation ex parte as necessary, by temporary or permanent injunction to recover any damages to which Grantee may be entitled for violation of the terms of this Easement Agreement, or injury to any conservation values protected by this Easement Agreement, including adverse impacts to any threatened or endangered species, and to require the restoration of the easement to the condition that existed prior to any such injury. If Grantee, the Service or CDFG, or any of them, determines that circumstances require immediate action to prevent or to mitigate significant damage to the conservation values of the easement, Grantee, the Service or CDFG 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, the Service's and CDFG's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement Agreement, and Grantor agrees that Grantee's, the Service's and CDFG's remedies at law of any violation of the terms of this Easement Agreement are inadequate and that Grantee, the Service or CDFG shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee, the Service or CDFG may be entitled, including specific performance of the terms of this Easement Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's, the Service's and CDFG's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provision of Civil Code Section 815 et seq. are incorporated herein by this reference and this Easement Agreement is made subject to all of the rights and remedies set forth therein. If at any time in the future, Grantor or its successors and assigns or any subsequent transferee uses or threatens to use such lands for purposes not in conformance with the stated conservation purposes contained herein, notwithstanding Civil Codes Section 815 et seq.,

California Attorney General, CDFG or the Service have standing as interested parties in any proceeding affecting this Easement Agreement. In the event that a dispute arises between Grantee and Grantor that results in litigation, the prevailing party shall be entitled to recover reasonable attorneys' fees and litigation costs from the losing party. If Grantor or if Grantee fails to exercise any right or fails to enforce any obligation of this Easement Agreement, such failure shall not be deemed to waive any other right which Grantor or Grantee may hold, including subsequent exercise of the same right to subsequent enforcement of the same obligation. Nothing contained in this Easement Agreement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the easement resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, earth movement or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the easement resulting from such causes.

IN WITNESS WHEREOF, Grantor and Grantee have entered into this Easement Agreement as of the day and year first above written.

GRANTOR: SAN JUAN PARTNERSHIP NO. I, a California limited partnership

By: Anthony R. Morso
GENERAL PARTNER

GRANTEE: FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY, a joint powers agency

By: _____
William Woollett, Jr.
Chief Executive Officer

APPROVED AS TO FORM:

By: _____
Agency Counsel

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the within Conservation Easement to the Foothill/Eastern Transportation Corridor Agency, a California joint powers agency, is hereby accepted by the undersigned officer on behalf of the Board of Directors of the Grantee, pursuant to authority conferred by resolutions of said Board of Directors adopted on May 14, 1992 as Resolution Nos. 92F-06, 92F-07 and 92F-08, and the Grantee consents to recordation thereof by its duly authorized officer.

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY,
a California joint powers agency

By: _____
William Woollett, Jr.
Chief Executive Officer

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On May 28, 1996, before me Emmy Lou Jolly-Vann Notary Public, personally appeared Anthony R. Moiso personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

EMMY LOU JOLLY-VANN
COMM. # 1031895
Notary Public — California
ORANGE COUNTY
My Comm. Expires JUL 7, 1998

Emmy Lou Jolly-Vann

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On May 29, 1996, before me Terrea Yamanaha Notary Public, personally appeared William Woollett, Jr. personally known to me ~~(or proved to me on the basis of satisfactory evidence)~~ to be the person whose name is subscribed to the within instrument and acknowledged to me that he/~~she~~ executed the same in his/~~her~~ authorized capacity, and that by his/~~her~~ signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

TERREA TAMANAHA
Comm. # 988136
NOTARY PUBLIC - CALIFORNIA
Orange County
My Comm. Expires Mar. 17, 1997

Terrea Yamanaha

EXHIBIT 'A'

THAT PORTION OF PARCELS 1 AND 2 OF CERTIFICATE OF COMPLIANCE NO. 95-01 IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF ORANGE, STATE OF CALIFORNIA, RECORDED MARCH 21, 1995 AS INSTRUMENT NO. 95-0112516 OF OFFICIAL RECORDS IN THE OFFICE OF THE SAID COUNTY RECORDER, DESCRIBED AS FOLLOWS:

~~BEING ALL OF PARCEL 1 AND PARCEL 2 OF SAID CERTIFICATE OF COMPLIANCE NO. 95-01, EXCEPTING THEREFROM THAT PORTION DESCRIBED AS FOLLOWS ON EXHIBIT A-1 and A-2.~~

SAID EXHIBIT A-1 and A-2 / ATTACHED HERETO AND MADE APART HEREOF.

EXHIBIT A-1

THAT PORTION OF PARCEL 7 OF CERTIFICATE OF COMPLIANCE NO. CC82-2 IN THE UNINCORPORATED TERRITORY OF THE COUNTY OF ORANGE, STATE OF CALIFORNIA RECORDED SEPTEMBER 3, 1982 AS INSTRUMENT NO. 82-313505 OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL 1 OF CERTIFICATE OF COMPLIANCE NO. 90-02 AS RECORDED APRIL 10, 1990 AS INSTRUMENT NO. 90-206547 OF OFFICIAL RECORDS OF SAID COUNTY, SAID POINT ALSO BEING A POINT ON THE WESTERLY LINE OF SAID PARCEL 7 AND A POINT ON THE EASTERLY LINE OF SAID PARCEL 1; THENCE ALONG SAID WESTERLY AND EASTERLY LINE THE FOLLOWING COURSES:

SOUTH 05°54'05" WEST, 616.84 FEET;

SOUTH 19°01'57" WEST, 463.40 FEET;

THENCE LEAVING SAID WESTERLY AND EASTERLY LINES, THE FOLLOWING COURSES:

SOUTH 47°46'38" EAST, 55.46 FEET;

SOUTH 57°30'33" EAST, 208.00 FEET;

SOUTH 72°27'10" EAST, 201.53 FEET;

SOUTH 57°46'45" EAST, 80.14 FEET;

SOUTH 11°22'46" EAST, 172.49 FEET;

SOUTH 15°43'27" EAST, 268.38 FEET;

SOUTH 24°05'09" EAST, 286.88 FEET;

SOUTH 28°31'11" WEST, 222.14 FEET;

SOUTH 40°56'25" EAST, 273.25 FEET;

SOUTH 05°06'07" EAST, 307.26 FEET;

LEGAL DESRIPTION

SOUTH 27°08'03" EAST, 365.64 FEET;

SOUTH 04°41'17" EAST, 167.53 FEET;

SOUTH 13°43'20" EAST, 184.02 FEET;

SOUTH 02°14'58" EAST, 102.39 FEET;

SOUTH 04°00'15" WEST, 264.19 FEET;

SOUTH 15°44'59" EAST, 457.40 FEET;

SOUTH 06°25'55" WEST, 246.12 FEET;

SOUTH 12°22'59" WEST, 920.60 FEET;

SOUTH 26°15'35" EAST, 247.07 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 1659.87 FEET, A RADIAL LINE TO SAID BEGINNING BEARS SOUTH 26°15'35" EAST; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°51'35" AN ARC LENGTH OF 140.79 FEET;

NORTH 58°52'50" EAST, 1022.67 FEET;

NORTH 31°07'10" WEST, 170.00 FEET;

NORTH 73°34'53" WEST, 71.10 FEET;

NORTH 29°10'28" WEST, 197.30 FEET;

NORTH 24°30'20" WEST, 344.17 FEET;

NORTH 18°53'40" WEST, 58.24 FEET;

NORTH 60°40'02" EAST, 167.54 FEET;

NORTH 10°58'39" WEST, 66.23 FEET;

NORTH 55°51'05" WEST, 182.25 FEET;

NORTH 13°07'31" WEST, 1241.15 FEET;

NORTH 06°59'28" WEST, 698.24 FEET;

LEGAL DESRIPTION

NORTH 15°01'43" WEST, 1095.49 FEET;

NORTH 00°29'18" WEST, 966.23 FEET;

NORTH 01°49'49" WEST, 681.18 FEET;

NORTH 30°30'09" EAST, 383.02 FEET;

NORTH 04°22'26" EAST, 641.35 FEET;

NORTH 37°45'15" WEST, 62.48 FEET;

NORTH 06°01'42" EAST, 962.58 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF PARCEL 1 OF SAID CERTIFICATE OF COMPLIANCE NO. CC82-2;

THENCE ALONG SAID SOUTHEASTERLY LINE, THE FOLLOWING COURSES:

SOUTH 33°57'59" WEST, 1013.29 FEET;

SOUTH 08°45'48" WEST, 1578.34 FEET,

SOUTH 44°49'29" WEST, 269.66 FEET TO THE POINT OF BEGINNING.

CONTAINING 102.43 ACRES, MORE OR LESS.

HORIZONTAL CONTROL DATUM IS BASED ON THE CALIFORNIA STATE PLANE COORDINATE SYSTEM, ZONE 6, NORTH AMERICAN DATUM OF 1983, 1988 ORANGE COUNTY ADJUSTMENT. DISTANCES SHOWN HEREON ARE GRID. TO OBTAIN GROUND DISTANCES DIVIDE GRID DISTANCES BY THE COMBINATION FACTOR OF 0.99991929.

EXHIBIT A-2

Those portions of Parcel 2 of Certificate of Compliance No. CC 95-01 in the Unincorporated Territory of the County of Orange, State of California, recorded March 21, 1995 as Instrument No. 95-0112516 of Official Records in the office of the County Recorder of said County, described in parcels as follows:

PARCEL 1

Commencing at a point on the Southerly line of said Parcel 2, said point being also Point "B" on the centerline of Oso Parkway, of variable width, as described in Parcel No. 120 of the easement deed to the County of Orange recorded November 22, 1994 as Instrument No. 94-0674748 of said Official Records; thence leaving said Southerly line and said centerline, North 31°07'08" West 60.00 feet to a point on the Northerly line of said Oso Parkway and the TRUE POINT OF BEGINNING; thence South 58°52'52" West 237.54 feet along said Northerly line to the Easterly line of the proposed Foothill Transportation Corridor; thence along said Easterly line, the following courses: North 31°07'10" West 49.94 feet, North 73°34'53" West 71.11 feet, North 29°10'28" West 197.32 feet, North 24°30'20" West 344.20 feet, North 18°53'40" West 58.24 feet, North 60°40'02" East 167.55 feet, North 10°58'39" West 66.24 feet, North 55°51'05" West 182.26 feet, North 13°07'31" West 1241.25 feet and North 6°59'28" West 288.98 feet; thence leaving said Easterly line, North 23°22'15" East 251.37 feet; thence North 73°14'58" East 187.93 feet; thence South 27°47'02" East 257.78 feet; thence North 38°39'27" East 1346.15 feet; thence North 16°52'32" East 359.20 feet; thence North 79°29'36" West 565.00 feet; thence North 5°13'56" West 246.31 feet; thence North 52°09'29" East 1034.97 feet; thence North 20°46'31" West 695.29 feet; thence North 9°44'26" East 480.51 feet; thence North 57°15'24" East 473.98 feet; thence North 8°34'51" East 853.83 feet; thence North 63°55'26" East 267.68 feet; thence South 67°42'09" East 469.54 feet; thence North 14°12'56" West 784.86 feet; thence North 28°38'06" East 639.15 feet; thence North 74°34'59" East 242.75 feet; thence South 61°12'37" East 323.45 feet; thence South 26°50'06" East 426.50 feet; thence South 6°05'07" East 361.80 feet; thence South 68°43'59" East 133.89 feet; thence North 45°49'34" East 603.92 feet; thence South 59°25'25" East 492.32 feet; thence South 29°17'47" West 489.80 feet; thence South 38°01'16" West 752.15 feet; thence North 64°09'51" West 364.67 feet; thence South 63°13'18" West 540.05 feet; thence South 59°00'00" East 388.60 feet; thence South 24°28'09" West 374.26 feet; thence North 72°56'13" West 353.83 feet; thence South

22°46'28" West 928.43 feet; thence South 69°14'50" West 277.50 feet; thence South 52°51'27" East 520.60 feet; thence South 32°29'16" West 153.76 feet; thence North 83°07'37" West 400.35 feet; thence South 11°05'02 East 299.94 feet; thence North 77°03'52" East 759.41 feet; thence South 38°44'19" East 199.50 feet; thence South 33°50'35" West 469.31 feet; thence South 19°35'21" East 550.73 feet; thence South 36°43'03" West 379.86 feet; thence North 86°31"31' West 856.44 feet; thence South 34°24'38" West 470.97 feet; thence South 62°56'18" East 669.47 feet; thence South 28°59'03" East 275.00 feet; thence South 22°36'32" West 190.82 feet; thence North 85°49'41" West 147.85 feet; thence North 50°46'51" West 356.99 feet; thence North 60°44'46" West 265.50 feet; thence South 75°51'17" West 367.48 feet; thence South 22°35'18" West 1653.30 feet; thence South 40°46'02" East 200.00 feet; thence North 68°58'37" East 441.26 feet; thence North 38°27'03" East 417.59 feet; thence North 48°25'20" East 659.92 feet to Point "A"; thence South 22°30'49" West 341.69 feet; thence South 27°02'46" East 252.87 feet; thence South 46°35'55" West 155.00 feet; thence South 78°22'58" West 318.28 feet; thence South 29°19'21" West 265.78 feet; thence South 74°31'10" East 806.50 feet to said Northerly line of Oso Parkway; thence along said Northerly line, the following courses: South 84°10'00" West 226.65 feet to the beginning of a tangent curve concave Southerly having a radius of 2410.00 feet and Westerly 1063.57 feet along said curve through a central angle of 25°17'08" to the true point of beginning.

Containing an area of 240.027 acres, more or less.

PARCEL 2

Beginning at Point "A" described above; thence leaving the boundary of Parcel 1 described above, North 25°38'32" East 540.01 feet to a point on that certain course described above as "North 85°49'41" West 147.85 feet" for a portion of said boundary, distant South 85°49'41" East 30.00 feet from the Westerly terminus thereof; thence along said boundary, the following courses: North 85°49'41" West 30.00 feet and North 50°46'51" West 33.00 feet to a line parallel with and Northwesterly 60.00 feet from that certain course described above as "North 25°38'32" East 540.01 feet"; thence South 25°38'32" West 679.65 feet along said parallel line to said boundary; thence North 48°25'20" East 154.96 feet along said boundary to the point of beginning.

Containing an area of 0.833 acres, more or less.

Recorded in the County of Orange, California
Gary L. Granville, Clerk/Recorder
No Fee
19960493716 11:10am 09/27/96
005 9013327 09 30
E01 23 7.00 66.00 0.00 0.00 0.00 0.00

FIRST AMERICAN TITLE INSURANCE COMPANY

F. 963624 5 R&R

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Foothill/Eastern Transportation Corridor Agency
201 E. Sandpointe, Suite 200
Santa Ana, California 92707

Attention: Ms. Kathy Besnard

The undersigned declares that this document is recorded for the benefit of Foothill/Eastern Transportation Corridor Agency and is therefore exempt from the payment of the recording fee pursuant to Government Code Section 6103 and from the payment of the documentary transfer tax pursuant to Revenue and Taxation Code Section 11922.

By: Kathy Besnard
Authorized Representative for Agency

(Space above this line for Recorder's use only)

CHIQUITA CANYON CENTER CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (the "Easement Agreement") is made this 27 day of SEPTEMBER 1996 by and between San Juan Partnership No. I, a California limited partnership ("Grantor"), and The Foothill/Eastern Transportation Corridor Agency, a joint powers agency ("Grantee"), with reference to the following facts:

RECITALS:

A. Grantor is the sole owner in fee simple of certain real property in the County of Orange, State of California, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Conservation Easement Property"). The Conservation Easement Property totals approximately 240 acres.

B. The Conservation Easement Property possesses open space, coastal sage scrub and other habitat types which are important to the conservation of the

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RECORDING REQUESTED BY
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By:_____
Authorized Representative for Agency

_____

(Space above this line for Recorder's use only)

CHIQUITA CANYON CENTER CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (the "Easement Agreement") is made this __ day of _____, 1996 by and between San Juan Partnership No. I, a California limited partnership ("Grantor"), and The Foothill/Eastern Transportation Corridor Agency, a joint powers agency ("Grantee"), with reference to the following facts:

R E C I T A L S:

A. Grantor is the sole owner in fee simple of certain real property in the County of Orange, State of California, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Conservation Easement Property"). The Conservation Easement Property totals approximately 240 acres.

B. The Conservation Easement Property possesses open space, coastal sage scrub and other habitat types which are important to the conservation of the

coastal California gnatcatcher and other sensitive species and also possesses attributes which would allow for the restoration of coastal sage scrub habitat (collectively, "conservation values") of great importance to Grantor, Grantee, the people of Orange County, the people of the State of California and people of the United States of America. Such conservation values provide habitat for the coastal California gnatcatcher and other sensitive and rare species.

C. Grantee is a joint powers authority formed by the County of Orange and a number of cities within the County of Orange pursuant to Government Code sections 6500 et seq. and 66484.3 for the purpose of planning, financing, designing and constructing, in part, the North Segment of the Foothill Transportation Corridor which extends from Oso Parkway to the east leg of the Eastern Transportation Corridor (the "North Segment"). A portion of the "North Segment" is known as the "Oso Segment."

D. As part of planning, designing and constructing a portion of the Oso Segment and North Segment, the Grantee and United States Army Corps of Engineers have engaged in consultation with the United States Fish and Wildlife Service ("Service") pursuant to Section 7 of the Federal Endangered Species Act (26 U.S.C. §1531 et seq.) with regard to the effect of the construction of the Oso Segment on the coastal California gnatcatcher and its habitat. The Service has issued its Biological Opinion (pursuant to Section 7(b) of the Federal Endangered Species Act), concluding that construction and operation of portions of the Oso Segment are not likely to jeopardize the continued existence of the coastal California gnatcatcher.

E. Grantor intends to convey to Grantee the right to preserve, enhance and protect the conservation values of the Conservation Easement Property in perpetuity subject to the terms of this Easement Agreement.

F. A portion of The Conservation Easement Property will be used to mitigate for impacts of the Oso Segment, and Grantee desires to perform such mitigation by acquiring an easement to use the Conservation Easement Property for the purposes

of habitat preservation, replacement, enhancement, creation and maintenance and other environmental mitigation purposes.

G. Grantor and Grantee have agreed to participate in the processing and development of a Natural Communities Conservation Plan for the Southern Subregion of Orange County ("Plan"). In the event the Plan is approved and enacted, it is the intent of Grantor and Grantee that this easement shall be consistent with the Plan and become a part of the Plan.

NOW, THEREFORE, in consideration of the above and mutual covenants, terms, conditions and restrictions contained herein, Grantor and Grantee agree as follows, and Grantor hereby grants and conveys to Grantee an easement in perpetuity over the Conservation Easement Property of the nature and character and to the extent hereinafter set forth (the "Easement").

1. Purpose. It is the purpose of the Easement to assure that the Conservation Easement Property will be retained forever in an open space condition (subject to those uses permitted in Sections 2 and 4 of this Easement Agreement) and for coastal sage scrub preservation, revegetation and related purposes and to prevent any use of the Conservation Easement Property that will impair or interfere with the conservation values of the Conservation Easement Property other than as set forth herein. Grantor intends and agrees that the Easement shall limit the use of the Conservation Easement Property, subject to the uses permitted in this Easement Agreement, to such activities, including without limitation, those involving the preservation and enhancement of coastal sage scrub habitat.

2. Rights of Grantee and Character of Easement.

(a) To accomplish the purpose of the Easement, the following rights and obligations are hereby conveyed to and accepted by Grantee by the grant contained herein:

(i) To preserve, enhance and protect the conservation values of the Conservation Easement Property; and

(ii) To enter upon the Conservation Easement Property to carry out the purposes of the Easement.

(b) The use of the surface of the Conservation Easement Property for conservation values is the exclusive use for the Conservation Easement Property subject to those other purposes set forth in Section 4 below. With respect to the subsurface of the property comprising the Conservation Easement Property, Grantor retains the right to reasonable access to and use thereof for Grantor's existing wells and waterline, so long as Grantor's exercise of such retained rights does not materially disturb, disrupt or interfere with the Easement; provided, however, that any such access and use shall be consistent with the purposes set forth herein. Neither Grantor, Grantee nor any third party acting with the permission of Grantor or Grantee may drill, mine, store or explore through the current surface or the upper 300 feet of the subsurface of the Conservation Easement Property.

(c) No use of the Conservation Easement Property by the general public is authorized hereunder without the express prior written consent of Grantor and Grantee and their respective successors in interest in the Conservation Easement Property, and Grantor and Grantee shall not encourage or permit the general public to use or enter upon the Conservation Easement Property. For purposes of this subparagraph, the term "general public" shall not include persons accompanied by Grantor or Grantee or its employees, agents, representatives, contractors or subcontractors and entering onto the Conservation Easement Property for purposes related to the conservation value of the Conservation Easement Property and the purposes set forth in Section 4. Notwithstanding the foregoing, Grantor and Grantee acknowledge that the Service and CDFG are third party beneficiaries of this Easement Agreement and shall have a right of access onto the Conservation Easement Property

for purposes associated with the conservation value hereof upon 24 hours notice to Grantor and Grantee.

(d) Grantee's rights under this Easement are expressly made subject to Grantor's reserved right under Section 4 and all other easements, covenants, conditions, restrictions, reservations, rights and rights-of-way of record, apparent, or the wells and waterline of which Grantee is aware.

(e) If Grantee plans to transfer this easement interest to another entity, it shall provide a minimum of 45 days written notice to Grantor, the Service and CDFG and shall not transfer the easement interest without the prior written consent of each which consent shall not be unreasonably withheld. Grantee may assign its rights and obligations under this Easement Agreement only to an organization that is (1) approved by the Service, CDFG and Grantor which approval shall not be unreasonably withheld, and (2) a public agency or a qualified organization at the time of transfer under section 170(h) of the Internal Revenue Code of 1954, as amended (or any successor provision applicable), and the applicable regulations thereunder, and (3) authorized to acquire and hold a conservation easement under California Civil Code Section 815 et seq. (or any successor provision then applicable).

(f) Grantee shall not abandon its rights and obligations under this Easement Agreement. In the event of the termination of Grantee's ability to hold and manage this easement, the rights and obligations of Grantee hereunder shall ipso facto, and without further action on the part of any entity be deemed assigned to CDFG 60 days after written notice to Grantor, Grantee, the Service and CDFG, unless Grantee in such 60 day period has cured its inability to hold and manage this easement. In the event CDFG is unwilling or unable to carry out Grantee's obligations under this Easement Agreement, then Grantee shall transfer the easement to a public entity or qualified organization, in accordance with Section 2(e)(1), (2) and (3).

(g) The easement rights granted herein shall include Grantee's right to use the Conservation Easement Property for fire management, including use of

prescribed fires, development, maintenance and relocation of access roads, irrigation related to restoration activities, revegetation and conservation of natural resource values as permitted in accordance with the Management Plan as defined in Section 4(c) hereof.

3. Special Terms and Requirements Regarding Easement.

(a) Encumbrances. Neither Grantor nor Grantee shall suffer or permit to be enforced against the Conservation Easement Property, or any portions thereof, any mechanics', materialmen's, contractors' or subcontractors' liens or any claim for damage arising from any services, supplies, labor or materials furnished or alleged to have been furnished to or for Grantor or Grantee at or for use on the Conservation Easement Property, and each party shall promptly pay or cause to be paid all of said liens, claims or demands caused by such party before any action is brought to enforce the same. Each party hereby agrees to and hereby does protect, defend, indemnify and hold harmless the other party and the Conservation Easement Property free from any and all losses, costs, demands, damages, claims and liabilities associated with or in any way related to any and all such liens, claims and demands, together with all costs and expenses incurred in connection therewith (including court costs and attorneys' fees). If any such lien shall at any time be recorded against the Conservation Easement Property as a result of the foregoing, and the party causing the same shall fail, within 60 days after such recording, to either (i) pay and discharge the underlying claim and cause a lien release to be recorded or (ii) furnish to the other party a surety bond or other security reasonably satisfactory to the other party protecting the other party against liability for such lien and holding the Conservation Easement Property free from the effect of such lien, then the other party may, but shall not be obligated to, take such action or pay such amounts as may be necessary to remove such lien, and the failing party shall immediately pay to the other party the amount so expended, together with interest thereon at the rate of 10% per annum accruing from the date of such payment until paid in full.

(b) Fencing of Conservation Easement Property. Until the Management Plan is approved in accordance with Section 4(d) hereof, Grantee shall maintain the existing fencing on the Conservation Easement Property. Upon approval of the Management Plan, fencing shall be installed and maintained only in accordance with the Management Plan. All fencing shall allow for the construction and operation of the Foothill Transportation Corridor. If Grantor grazes cattle pursuant to Section 4(c) hereof, Grantor shall be responsible for installing and maintaining fencing appropriate for its cattle operations in accordance with the Management Plan.

4. Reserved Rights and Uses and Responsibilities of Grantor.

(a) Utilities and Uses. The Easement is subject to the utility easements of record, apparent or of which Grantee has actual notice, and Grantor's use and maintenance of existing wells, appurtenant structures, waterlines and roadways as of the date this Easement Agreement is recorded in the Official Records of the County of Orange, and such additional easements as Grantor shall designate, subject to Grantee's, the Service's and CDFG's prior written approval, which approval shall not be unreasonably withheld. Prior to exercising any reserved right hereunder to enter onto the surface of the Conservation Easement Property, Grantor shall give Grantee 24 hours prior written notice except in the event of an emergency, in which event Grantor shall give notice as soon as possible. In exercising its reserved rights under Section 4(a), Grantor shall use its best efforts to limit disturbance of coastal sage scrub habitat and shall, to the extent feasible, promptly restore all disturbed habitat.

(b) Grazing. If allowed under the Management Plan, Grantor shall have the right to graze cattle on the Conservation Easement Property consistent with the Management Plan. The indemnification in Section 6(a) shall apply to grazing activities. If Grantor elects to graze cattle in accordance with the Management Plan, Grantor shall provide security for the Conservation Easement Property.

(c) Responsibility. Grantor and Grantee each hereby understand and agree that Grantor shall have no obligation whatsoever to maintain, restore or

otherwise improve the Conservation Easement Property except for damage caused by Grantor's use of the Conservation Easement Property, and that Grantee accepts the Conservation Easement Property in its current "as is" condition. Subject to the review and the approval of the Service, the Grantee shall develop, fund and implement a Management Plan for the Conservation Easement Property ("Management Plan") that shall assure the protection and maintenance in perpetuity of the existing native plant and wildlife values of the area covered by this Easement Agreement. This plan shall be completed within six months of recording this Easement Agreement. The Management Plan shall identify responsible parties and measures for control of public access, fire management, invasive plant and feral animal control, resource monitoring, and other appropriate wildlife resource stewardship strategies. All agricultural activities, including grazing and farming activities, shall cease within the Conservation Easement Property unless approved by the Service and CDFG. Responsibility for funding and implementation of the Management Plan shall reside with Grantee in perpetuity or until such time as the Service and CDFG concur with alternate arrangements. Grantee may transfer responsibility for such funding and implementation to a third party with the consent of the Service and CDFG. The Management Plan may be amended from time to time with the consent of the Service and CDFG.

(d) Condemnation. In the event of any condemnation or sale of any portion of the Conservation Easement Property for the widening of the Oso Parkway, Grantor shall be entitled to all proceeds therefrom. In addition, Grantor shall have the right to require Grantee to quitclaim to Grantor any portion of the Conservation Easement Property designated by Grantor for the construction and widening of Oso Parkway. For all other condemnations, Grantor and Grantee shall each be entitled to a share in any condemnation proceeds based on their interest in the Property. If any condemnation action results in a reduction of acreage covered by this Easement Agreement, and if the condemning agency or another party is not required to mitigate for the reduction in conservation values of the Conservation Easement Property, the Conservation Credits under and as defined in the Conservation Bank Agreement referenced in Section 5(b) hereof shall be reduced by a number equal to the reduction in acreage covered by this

Easement Agreement caused by the condemnation. Conservation Credits shall not be reduced to the extent they have been transferred to third parties. If, at the time the condemnation action is filed, Grantee retains insufficient Conservation Credits and Additional Conservation Credits (as defined in the Conservation Bank Agreement) to cover the reduction in Conservation Credits caused by the condemnation, Grantee will compensate for the impacts to the conservation values of the Conservation Easement Property (unless the condemning agency or another party is required to mitigate for the reduction in conservation values) in a manner reasonably acceptable to the Service and CDFG, provided, however, that, except for a condemnation for the widening of Oso Parkway, Grantee shall not be required to expend more in connection with the mitigation than Grantee receives from the condemnation action.

5. <u>Sale of Fee Interest and Conservation Credits</u>.

(a) Grantor may transfer the fee title interest in the Conservation Easement Property provided it gives Grantee, the Service and CDFG not less than 30 days prior written notice of its intent to transfer such fee title interest. Notice shall be given in the manner required in this Easement Agreement. Grantor agrees to incorporate the terms of this Easement Agreement in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Conservation Easement Property. The failure of Grantor to perform any act required by this section shall not impair the viability of this Easement Agreement or limit its enforceability in any way. Grantor may only enter into leases of the fee title to the Conservation Easement Property and may convey other interests in such lands only as permitted by the Management Plan prepared and approved pursuant to Section 4(c) of this Easement Agreement.

(b) Grantee may transfer by sale or otherwise, in accordance with that certain Chiquita Canyon Conservation Bank Agreement among the Service, CDFG and Grantee dated May 24, 1996 ("Conservation Bank Agreement"), credits associated with the Conservation Easement Property to offset impacts of development under the Federal and State endangered species laws. Grantee shall have the exclusive right to determine the price and other consideration concerning such transfer in accordance with

the above-referenced Conservation Bank Agreement, and shall not be required to share any such consideration with Grantor.

(c) At Grantor's discretion, and so long as Grantee continues ownership of this easement, Grantor may, after 30 days written notice to Grantee, the Service and CDFG, quitclaim to Grantee the fee interest in the Conservation Easement Property reserving easements to continue existing uses provided for herein at the time of such transfer; and, in such event, Grantor shall no longer be responsible for all taxes and assessments on the Conservation Easement Property after such quitclaim. Concurrently with the quitclaim, Grantee shall grant a conservation easement in substantially the same terms set forth herein, to an entity as provided in Section 2(e)(1), (2) and (3) hereof. Grantor may not quitclaim its fee interest to Grantee until Grantee is prepared to record such conservation easement; Grantee will use its good faith efforts so that it will be prepared to record such conservation easement 30 days after written notice from Grantor to Grantee, the Service and CDFG.

(d) In the event of a quitclaim hereunder, Grantee shall not be obligated to maintain insurance as provided in Section 7.

6. Indemnification.

(a) Grantor's Indemnification. Grantor shall defend, indemnify, protect and hold harmless Grantee, and its directors, officers, employees and agents, and the respective employees thereof, from all losses, claims, suits, costs, damages, liabilities or actions of every name, kind, or description (including attorneys' fees) including those incurred or brought for or on account of injuries to or death of any person or damage to any property, resulting from (a) any negligent act or omission or intentional misconduct of Grantor, its officers, directors, employees, contractors, subcontractors and agents, and the respective employees thereof on the Conservation Easement Property, or (b) for breach of the terms of this Easement Agreement by Grantor, except to the extent as determined to have been caused by the negligent acts or omissions or intentional misconduct of Grantee, its officers, directors, employees, contractors, subcontractors and

agents, and the respective employees thereof. Grantor's indemnity obligation shall survive until the lapse of the applicable statutory period for limitation of actions.

(b) Grantee's Indemnification. Grantee shall defend, indemnify, protect and hold harmless Grantor and its directors, officers, employees and agents, and the respective employees thereof, from all losses, claims, suits, costs, damages, liabilities or actions of every name, kind or description (including attorneys' fees), including those incurred or brought for or on account of injuries to or death of any person or damage to any property, resulting from (a) any negligent act or omission or intentional misconduct of Grantee, its officers, directors, employees, contractors, subcontractors and agents, and the respective employees thereof on the Conservation Easement Property, or (b) for breach of any of the terms of this Agreement by Grantee, except to the extent as determined to have been caused by the negligent acts or omissions or intentional misconduct of Grantor, its officers, directors, employees, contractors, subcontractors and agents, and the respective employees thereof. Grantee's indemnity obligation shall survive until the lapse of the applicable statutory period for limitation of actions.

7. Insurance.

(a) Requisite Coverages. Grantee shall, at all times during Grantor's ownership of the Conservation Easement Property, at its sole cost and expense, obtain and thereafter maintain comprehensive general liability and automobile insurance (including non-owned auto), which shall provide a 30-day notice to Grantor in the event of cancellation or any material change in coverage. The foregoing insurance policies shall reflect that the policy is primary insurance as respects any claim, loss or liability arising directly or indirectly from any of Grantee's activities on the Conservation Easement Property, and any other insurance maintained by Grantor shall be considered noncontributing. This liability insurance must be in a form satisfactory to Grantor and written with limits of liability not less than $1,000,000 combined single limit bodily injury and property damage liability per occurrence covering the activities and obligations contemplated of Grantee under this Easement Agreement. Grantee shall furnish a Certificate of Insurance (or, if requested by Grantor, copy of the policy) evidencing the

foregoing coverage to Grantor for approval. Grantee shall also maintain worker's compensation insurance in an amount required by law, together with employers' liability insurance. Grantee shall provide Grantor with evidence of the worker's compensation and employer's liability insurance coverage, with a waiver of subrogation agreement by the insurance carrier as respects Grantor. Nothing in this paragraph shall limit Grantee's obligations under the other provisions of this Easement Agreement. Grantee shall not self-insure any portion of the insurance required under this paragraph without the express written consent of Grantor, which consent may be withheld by Grantee in its sole and absolute discretion. Any policies required hereunder may be made a part of a blanket policy of insurance, so long as such blanket policy contains all of the provisions required herein and does not in any way reduce the coverage, impair the rights of Grantor hereunder or negate the requirements of this Easement Agreement.

(b) Additional Insureds. All policies required to be maintained pursuant to this Section 7 shall contain a provision naming Grantor and any other parties hereafter requested in writing by Grantor as an additional insured ("Additional Insureds"). For purposes of naming Grantee as an additional insured, the following provisions shall be included within each applicable policy:

> It is understood and agreed that coverage afforded by this Policy shall also apply to San Juan Partnership No. I, and its officers, directors, agents, employees, divisions, subsidiaries, partners and affiliated companies as additional insureds.

In addition, all policies of insurance required hereunder shall contain a provision that the naming of an additional insured shall not negate any right that additional insured would have had as claimant under the policy if not so named.

(c) Mutual Release/Waiver of Subrogation. Grantee, for itself and its successors, hereby mutually releases and discharges Grantor and the other Indemnitees from all claims and liabilities arising from or caused by any hazard covered by the insurance coverage required herein in connection with the activities conducted on

the Conservation Easement Property pursuant to this Easement Agreement, regardless of the cause of the damage or loss. The insurance policies described herein shall contain a waiver by the applicable insurance company of such company's right of subrogation.

(d) Obligations. Nothing herein shall limit Grantee's obligations under the other provisions of this Easement Agreement. The insurance required to be maintained hereunder shall insure against any acts or omissions of Grantee, provided nothing herein shall be interpreted to waive any rights Grantor may have as to any of Grantee's insurance nor shall Grantor be required to make a claim against any such Grantor's insurance.

(e) Grantee's Obligations. To the extent Grantor enters the Conservation Easement Property under the Easement, then Grantor shall comply with the insurance provisions of this section 6 applicable to Grantee prior to its entry onto the Conservation Easement Property.

8. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Conservation Easement Property by competent authority (collectively "taxes"), except that Grantor shall have no obligation to pay any taxes or assessments which may be levied against the Easement itself, as opposed to the underlying fee and Grantor shall furnish Grantee with satisfactory evidence of payment of taxes and assessments upon request. Grantee shall be responsible regarding the imposition of any taxes or assessments levied against the Easement itself, it being understood that while the Easement is held by a governmental entity for public benefit purposes, such Easement should be exempt from all such taxes and assessments.

9. Notices. Any notice, demand, request, covenant, approval, or other communication to be given by one party to the others shall be given by personal service, telegram, or express mail, Federal Express, DHL or any other similar form of airborne/overnight delivery service, or mailing in the United States mail, postage prepaid,

certified and return receipt requested, addressed to the parties at their respective addresses as follows:

To Grantor:	San Juan Partnership No. I 28811 Ortega Highway P.O. Box 9 San Juan Capistrano, California 92693 Attn: Anthony R. Moiso and Richard Broming
With a copy to:	Stephen R. Finn, Esq. Brobeck Phleger & Harrison One Market, 24th Floor San Francisco, California 94105
To Grantee:	Foothill/Eastern Transportation Corridor Agency 201 E. Sandpointe, Suite 200 Santa Ana, California 92707 Attention: Ms. Kathy Besnard
With a copy to:	Nossaman, Guthner, Knox & Elliott Lakeshore Towers, Suite 1800 18101 Von Karman Avenue Irvine, California 92715-1007 Attn: Robert D. Thornton, Esq.
To the Service:	Regional Director U.S. Fish and Wildlife Service Portland Eastside Federal Complex 911 N.E. 11th Avenue Portland, Oregon 97232-4181

With a copy to: Field Supervisor
U.S. Fish and Wildlife Service
Carlsbad Field Office
2730 Loker Avenue West
Carlsbad, California 92008

To CDFG: California Department of Fish and Game
1416 Ninth Street, Room 1341
Sacramento, California 95814

Any such notice shall be deemed to have been given upon delivery or forty-eight (48) hours after deposit in the mail as aforesaid. Either party may change the address at which it desires to receive notice upon given written notice of such request to the other parties.

10. Recordation. Grantor shall promptly record this instrument in the official records of Orange County, California, and shall rerecord it on its own, or at the request of Grantee, the Service or CDFG, at any time as may be required to preserve its own, Grantee's, the Service's or CDFG's rights under this Easement Agreement.

11. Miscellaneous Provisions.

(a) Controlling Law. This Easement Agreement shall be governed by and interpreted in accordance with the laws of the State of California and applicable federal law.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement Agreement shall be liberally construed in favor of the grant to effect the purpose of this Easement Agreement and the policy and purpose of Civil Code Section 815, et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Easement Agreement, or the application thereof to any person or circumstances, is found to be invalid, the

remainder of the provisions of this Easement Agreement, 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.

(d) No Rights in Public. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Conservation Easement Property to or for the general public, it being the intention of the parties hereto that this Easement Agreement shall be strictly limited to and for the purposes herein expressed.

(e) Attorneys' Fees. In any proceeding between the parties hereto seeking enforcement of or attempting to construe any of the terms and provisions of this Easement Agreement, including, without limitation, declaratory relief or other litigation, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses and reasonable attorneys' fees, except any fees or costs recoverable against the United States shall be determined by applicable federal law and except any fees or costs recoverable against CDFG shall be determined in accordance with California law.

(f) Waiver; Remedies. No delay on the part of any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party hereto of any right, power or privilege hereunder operate as a waiver of any other right, power or privilege hereunder, nor shall any single or partial exercise of any right, power or privilege hereunder, preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

(g) Successors. The covenants, terms, conditions and restrictions of this Easement Agreement shall be binding upon and inure to the benefit of the parties hereto and each of their respective successors and assigns, and shall continue as a servitude running in perpetuity with the Conservation Easement Property. This Easement Agreement shall be binding upon and shall inure to the benefit of Grantor and its successors and assigns and Grantee and its assigns.

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

(i) Counterparts. The parties may execute this Easement Agreement in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original.

(j) No Other Obligations. This Easement Agreement implores no other obligations or restrictions on Grantor and neither its successors nor any person or entity claiming under them shall be in any way restricted from using the Conservation Easement Property in a customary manner except as provided herein.

(k) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the grant of easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the grant.

(l) Third Party Beneficiaries. The Service and CDFG are third party beneficiaries to this Easement Agreement and shall have the independent right to enforce the terms and conditions of this Easement Agreement.

12. Remedies. If Grantee determines that Grantor is in violation of the terms of this Easement Agreement or that a violation is threatened, Grantee shall give written notice to Grantor or its successors and assigns of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the easement resulting from any use or activity inconsistent with the purpose of this Easement Agreement, to restore the portion of the easement so injured. Grantee shall also notify the Service and CDFG. If Grantor fails to cure the violation within 15 days, or fails to continue diligently to cure such violation until finally cured, Grantee, or the Service or CDFG as third party beneficiaries, may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement Agreement, to enjoin the violation ex parte as necessary, by temporary or permanent injunction to recover any damages to which Grantee may be entitled for violation of the terms of this Easement

Agreement, or injury to any conservation values protected by this Easement Agreement, including adverse impacts to any threatened or endangered species, and to require the restoration of the easement to the condition that existed prior to any such injury. If Grantee, the Service or CDFG, or any of them, determines that circumstances require immediate action to prevent or to mitigate significant damage to the conservation values of the easement, Grantee, the Service or CDFG 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, the Service's and CDFG's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement Agreement, and Grantor agrees that Grantee's, the Service's and CDFG's remedies at law of any violation of the terms of this Easement Agreement are inadequate and that Grantee, the Service or CDFG shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee, the Service or CDFG may be entitled, including specific performance of the terms of this Easement Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's, the Service's and CDFG's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provision of Civil Code Section 815 et seq. are incorporated herein by this reference and this Easement Agreement is made subject to all of the rights and remedies set forth therein. If at any time in the future, Grantor or its successors and assigns or any subsequent transferee uses or threatens to use such lands for purposes not in conformance with the stated conservation purposes contained herein, notwithstanding Civil Codes Section 815 et seq., California Attorney General, CDFG or the Service have standing as interested parties in any proceeding affecting this Easement Agreement. In the event that a dispute arises between Grantee and Grantor that results in litigation, the prevailing party shall be entitled to recover reasonable attorneys' fees and litigation costs from the losing party. If Grantor or if Grantee fails to exercise any right or fails to enforce any obligation of this Easement Agreement, such failure shall not be deemed to waive any other right which Grantor or Grantee may hold, including subsequent exercise of the same right to subsequent enforcement of the same obligation. Nothing contained in this Easement Agreement shall

be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the easement resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, earth movement or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the easement resulting from such causes.

IN WITNESS WHEREOF, Grantor and Grantee have entered into this Easement Agreement as of the day and year first above written.

GRANTOR: SAN JUAN PARTNERSHIP NO. I, a California limited partnership

By: _____

GRANTEE: FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY, a joint powers agency

By: _____
William Woollett, Jr.
Chief Executive Officer

APPROVED AS TO FORM:

By: _____
Agency Counsel

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the within Conservation Easement to the Foothill/Eastern Transportation Corridor Agency, a California joint powers agency, is hereby accepted by the undersigned officer on behalf of the Board of Directors of the Grantee, pursuant to authority conferred by resolutions of said Board of Directors adopted on May 14, 1992 as Resolution Nos. 92F-06, 92F-07 and 92F-08, and the Grantee consents to recordation thereof by its duly authorized officer.

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY,
a California joint powers agency

By: _____
William Woollett, Jr.
Chief Executive Officer

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On _____, 1996, before me _____, Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

_____

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

On _____, 1996, before me _____, Notary Public, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

_____

PROMISSORY NOTE

$2,000,000

Newport Beach, California
_____, 1996

FOR VALUE RECEIVED, the undersigned, **THE FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY** ("Maker"), a joint powers agency, hereby promises to pay **SAN JUAN PARTNERSHIP NO. 1** ("Payee"), a California limited partnership, or order, at 28811 Ortega Highway, San Juan Capistrano, California 92693, or at such other place as the holder hereof may from time to time designate by written notice to Maker, in lawful money of the United States of America, the sum of TWO MILLION DOLLARS ($2,000,000).

1. **Payment.** Maker shall make payments of principal as follows: all principal payable on or prior to January 1, 1999.

2. **Prepayment.** Maker may prepay this Promissory Note at any time without prepayment penalty.

3. **Default Interest.** If Maker shall fail to pay the entire unpaid balance of the principal amount of this Promissory Note when due, then interest shall accrue on the unpaid balance from the date of such default at a rate equal to the lesser of the maximum amount permitted under California law or the prime rate of

EXHIBIT C

Wells Fargo Bank plus two percent (2%) until the entire principal amount of this Promissory Note and all accrued interest, costs and fees are paid hereunder.

4. **Absolute Obligation**. Maker shall pay principal and default interest, if applicable, without presentment, demand, protest, notice of dishonor, notice of nonpayment or notice of protest of any kind, all of which are hereby expressly waived by Maker.

5. **No Waiver**. No waiver of any default hereunder shall be implied for any failure on the part of the holder hereof to take, or any delay by the holder hereof in taking, any action with respect thereto or from any previous waiver of any similar or unrelated default. The waiver of any term of this Promissory Note shall be limited to the express written terms of such waiver and must be in writing.

6. **Costs and Attorneys' Fees**. In the event of any failure on the part of Maker to make any payment of interest or principal when the same is due, the holder hereof shall be entitled to recover from Maker all costs of affecting collection of the same (including, but not limited to, reasonable attorneys' fees and costs of suit).

7. **Time**. Time is of the essence with respect to every provision hereof.

8. **Choice of Law.** This Promissory Note shall be construed and enforced in accordance with the laws of State of California.

9. **Notices.** Any notice, demand, request, covenant, approval, or other communication to be given by one party to the other shall be given by personal service, telegram, or express mail, federal express, DHL, UPS or any other similar form of airborne/overnight delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, addressed to the parties of the respective addresses as follows:

Maker: The Foothill/Eastern Transportation Corridor Agency
201 East Sandpointe Avenue, Suite 200
Santa Ana, California 92707
Attn: Walter D. Kreutzen, Executive Vice President, Finance & Administration

Payee: San Juan Partnership No. 1
28811 Ortega Highway
San Juan Capistrano, California 92693
Attn: Anthony R. Moiso

IN WITNESS WHEREOF, Maker has executed this Promissory Note as of the day and year first above written.

"Maker"

_____
Foothill/Eastern Transportation Corridor Agency, a joint powers agency

By:_____
William Woollett, Jr.
Chief Executive Officer

APPROVED AS TO FORM:

By:_____
Agency's Counsel

PROMISSORY NOTE

$1,000,000

Newport Beach, California
_____, 1996

FOR VALUE RECEIVED, the undersigned, **THE FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY** ("Maker"), a joint powers agency, hereby promises to pay **SAN JUAN PARTNERSHIP NO. 1** ("Payee"), a California limited partnership, or order, at 28811 Ortega Highway, San Juan Capistrano, California 92693, or at such other place as the holder hereof may from time to time designate by written notice to Maker, in lawful money of the United States of America, the sum of ONE MILLION DOLLARS ($1,000,000).

1. **Payment.** Maker shall make payments of principal as follows: all principal shall be paid on or prior to thirty (30) days after sale of bonds for the acquisition and development of the Foothill Transportation Corridor south of Oso Parkway, Orange County, California; provided, however, that if the bond sale does not occur by July 1, 2007, the Maker shall have no obligation to make any payment hereunder.

2. **Prepayment.** Maker may prepay this Promissory Note at any time without prepayment penalty.

EXHIBIT D

3. **Default Interest.** If Maker shall fail to pay the entire unpaid balance of the principal amount of this Promissory Note when due, then interest shall accrue on the unpaid balance from the date of such default at a rate equal to the lesser of the maximum amount permitted under California law or the prime rate of Wells Fargo Bank plus two percent (2%) until the entire principal amount of this Promissory Note and all accrued interest and costs and fees are paid hereunder.

4. **Absolute Obligation.** Maker shall pay principal and default interest, if applicable, without presentment, demand, protest, notice of dishonor, notice of nonpayment or notice of protest of any kind, all of which are hereby expressly waived by Maker.

5. **No Waiver.** No waiver of any default hereunder shall be implied for any failure on the part of the holder hereof to take, or any delay by the holder hereof in taking, any action with respect thereto or from any previous waiver of any similar or unrelated default. The waiver of any term of this Promissory Note shall be limited to the express written terms of such waiver and must be in writing.

6. **Costs and Attorneys' Fees.** In the event of any failure on the part of Maker to make any payment of interest or principal when the same is due, the holder hereof shall be entitled to recover from Maker all costs of affecting collection of the same (including, but not limited to, reasonable attorneys' fees and costs of suit).

7. **Time**. Time is of the essence with respect to every provision hereof.

8. **Choice of Law**. This Promissory Note shall be construed and enforced in accordance with the laws of State of California.

9. **Notices**. Any notice, demand, request, covenant, approval, or other communication to be given by one party to the other shall be given by personal service, telegram, or express mail, federal express, DHL, UPS or any other similar form of airborne/overnight delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, addressed to the parties of the respective addresses as follows:

Maker: The Foothill/Eastern Transportation Corridor Agency
201 East Sandpointe Avenue, Suite 200
Santa Ana, California 92707
Attn: Walter D. Kreutzen, Executive Vice President, Finance & Administration

Payee: San Juan Partnership No. 1
28811 Ortega Highway
San Juan Capistrano, California 92693
Attn: Anthony R. Moiso

IN WITNESS WHEREOF, Maker has executed this Promissory Note as of the day and year first above written.

"Maker"

_____
Foothill/Eastern Transportation Corridor Agency, a joint powers agency

By:_____
William Woollett, Jr.
Chief Executive Officer

APPROVED AS TO FORM:

By:_____
Agency's Counsel