

## **AMENDED AND RESTATED CONCESSIONAIRE AGREEMENT**

This AMENDED AND RESTATED CONCESSIONAIRE AGREEMENT (the "Agreement") is entered into effective as of May \_\_, 2015, by and between Fallen Leaf Lake Community Services District, a public agency, organized and existing pursuant to California Government Code, Section 61000 *et. seq.* ("District") and California Land Management Services Corporation, a California corporation ("Contractor") (hereinafter collectively, the "Parties").

### **RECITALS**

A. The activities of District are directed by a board of Directors elected by the registered voters within the boundaries of the Fallen Leaf Lake (CA) Community Services District. Districted is chartered by the State to provide public services to its constituency.

B. District is the owner of that certain real property and improvements thereon located in El Dorado County, State of California as generally delineated on Exhibit C attached hereto (hereinafter the "Community Area"). Community Area means the property owned by and/or under the direction of the District at Fallen Leaf Lake, specifically the 2.4 acres of land at the south end of Fallen Leaf Lake where the New Store Building, (the "New Store Building"), a Community Building (the "Old Store Building"), the Marina and associated facilities and contiguous parking, pedestrian easements and grounds are situated. Improvements located on the property include the Old Store Building, the New Store Building, the Marina area, including boat launch ramp, docks, floats, the breakwater components, a small building, gasoline storage tanks and pumps, and various other areas including paved areas for vehicle use and parking. The Old Store Building, the New Store Building, the Marina area, including boat launch ramp, docks, floats, the breakwater components, a small building, gasoline storage tanks and pumps, and various of her areas including paved areas for vehicle use and parking are referred to collectively herein as "District Facilities".

C. District Facilities are to be open and operated annually from approximately the middle of May to approximately the end of September, weather permitting ("Open Season").

D. Contractor is experienced in providing hospitality services for governmental entities and providing the Services described herein for the benefit of the Fallen Leaf Lake Community.

E. District desires to engage Contractor to provide the following on behalf of District: (i) maintain the entire Community Area and improvements located therein in a safe and serviceable manner; (ii) open, operate and close the District Facilities as further described herein; (iii) provide the services that the District is obligated to provide by the various agreements governing the CSD's responsibilities; and (iv) provide additional services in the District Facilities, such as operating the general store and café (hereinafter, collectively, the "Services").

F. Contractor acknowledges that it is knowledgeable and familiar with the District Facilities and their condition and with the existing agreements and regulations that govern the District Facilities and the District's obligations to provide the services required under this Agreement.

G. Contractor and District entered into a Concessionaire Agreement, dated as of May \_\_, 2011 (the "Original Agreement"). The Original Agreement was amended in May, 2014. The Original Agreement provided for a mutual extension of the Original Agreement for a subsequent five-year period, subject to agreement on terms and conditions.

H. The Parties wish to extend the Original Agreement for an additional five-year term and accordingly desire to enter into this Amended and Restated Concessionaire Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## **AGREEMENT**

1. **Engagement of Contractor.** District hereby engages Contractor to provide the Services under this Agreement, and Contractor hereby agrees to provide such Services in accordance with the terms and conditions of this Agreement. Specifically, Contractor shall: (i) maintain the entire Community Area in a safe and serviceable manner; (ii) open, operate and close the District Facilities as further described herein; (iii) provide the services that the District is obligated to provide by the various agreements governing the CSD's responsibilities; and (iv) provide additional services in the District Facilities, such as operating the general store and cafe all as set forth in this Agreement. In performing the Services hereunder, Contractor and all of Contractor's staff members, employees and personnel shall be independent contractors of District and not employees of District.

2. **Definitions.**

(a) Board shall mean the Board of Directors of the Fallen Leaf Lake Community Services District.

(b) Community Building shall mean the west-most building in the Community Area that currently is divided into two meeting activity spaces. It is sometimes referred to as the Old Store Building.

(c) District Facilities shall mean and include the New Store Building, the Community Building (the Old Store Building), the Marina (as defined below), including all associated marina components and facilities, the paved and unpaved roadways and parking areas, pedestrian easements and grounds situated in the Community Area.

(d) General Manager shall mean the person designated or hired by the District to carry out day-to-day management and operating responsibilities of the District at Fallen Leaf Lake.

(e) General Store Building shall mean the new store building completed in 2001, which contains the store/cafe space and related storage area, public restrooms, the post office, the fire chief's apartment, an unfinished apartment, and District work spaces. The store/cafe will be referred to herein as the General Store. The General Store Building is sometimes referred to herein as the General Store Building, the New Store or the New Store Building. The small building located next to the marina gas dock and storage located on the lake

side of the General Store sometimes is included in the reference to General Store when appropriate to the context.

(f) Marina shall mean the lakeside area and includes the boat launch ramp, docks, floats, the breakwater components, a small building, storage tanks and pumps, and the beach as shown on Exhibit C.

(g) All definitions in the initial paragraph of this document and in the Recitals, above, are incorporated herein by this reference.

3. **Term.** This Agreement shall be effective upon action by the Board adopting the Agreement and shall end on December 31, 2020 ("Term").

4. **District's Right to Terminate.** District reserves the right to terminate this Agreement due to a Default, as determined by District in good faith, under the Agreement by Contractor that has not been corrected by Contractor after Notice of Default is delivered to Contractor and Contractor fails to remedy or correct the deficient performance within the time provided in this Agreement for cure of such Default.

5. **Obligations of Contractor.**

(a) **Fee.** Contractor shall pay to District during the Term hereof an annual fee in the amounts and on the dates specified on Exhibit H ("Compensation Form") to this Agreement (the "Fee"). If not previously provided, each Fee payment shall be accompanied with financial reports detailing the operations during the prior period as set forth in paragraph 5(h).

(b) **Security Deposit.** Contractor has previously delivered to District a Security Deposit of \$35,000. District has deposited the Security Deposit in an interest bearing account, with interest accruing to the benefit of Contractor. In the event of Contractor's uncured material default as provided in Section 18 ("Default"), District, may apply the Security Deposit or any portion thereof to indemnify District for actual damages incurred by District as a result of such uncured material default. Any unused Security Deposit shall be returned to Contractor at the end of this Agreement. Earned interest shall be returned to the Contractor each January following the year in which it was earned.

(c) **Control of District Facilities.** Contractor shall have access to the District Facilities commensurate with and subject to the terms of this Agreement and in accordance with Exhibit B (Policies and Procedures) which are in effect at the commencement of this Agreement, and which may be modified from time to time throughout the Term of the Agreement by the Board in a public meeting. If any modification of the Policies and Procedures materially affects Contractor's obligations under the Agreement, District and Contractor will attempt to negotiate an equitable adjustment to the Agreement. If the Parties cannot reach agreement, Contractor may elect to terminate the Agreement. For purposes of this paragraph, "material" shall mean causing a foreseeable reduction of Contractor's annual Gross Revenues of at least \$25,000.

(d) Legal Requirements. Contractor shall provide the Services under this Agreement and manage the District Facilities in accordance with and subject to all applicable legal requirements, including, without limitation, the following:

(i) *TRPA.* Contractor shall use and administrate the District Facilities to provide the services required by the Tahoe Regional Planning Agency (TRPA) Agreement attached hereto as Exhibit B (“TRPA Agreement”);

(ii) *Fallen Leaf Fire Department.* Contractor shall adhere to and execute directives from the Fallen Leaf Fire Department that relate to fire safety in and about the District Facilities under control of Contractor;

(iii) *Associates Agreement.* Contractor shall operate in accordance with the constraints of District’s Agreement with the Fallen Leaf Lake Associates, Exhibit A (“Associates Agreement”); and

(iv) *Federal, State, County and Local Law.* Contractor shall comply with all laws applicable to operation of District Facilities, including, without limitation, the Clean Water Act, California Endangered Species Act, El Dorado County Public Health Rules and Regulations, the Occupational Safety and Health Act (OSHA), DFEH, and California law applicable to sale and service of alcoholic beverages.

(e) Condition of District Facilities. Contractor is responsible to maintain the District Facilities in useable, safe, sanitary and healthy condition throughout the Term of the Agreement. Such responsibility includes, without limitation, regular inspection and maintenance of the parking areas, beach and recreation areas (including the volleyball court), sweeping of pedestrian areas such as walkways, patios and stairways, trash clean-up, watering and maintenance of landscaped areas and regular inspection and service of public restrooms, etc. Contractor shall inspect the District Facilities regularly for possible hazards, correct simple problems and report significant issues immediately to the General Manager. Subject to the Contractor’s limited obligations as provided in paragraph 5(r) (Maintenance and Minor Repairs) below, Contractor shall maintain the District Facilities in good working order, safe for use and secure from foreseeable hazards.

(f) Parking. One space is reserved for the fire department, two spaces are reserved for vehicles with proper Disabled Placards, a tandem space is reserved for Marina staff, and a tandem space is reserved for store/cafe staff. People launching boats must arrange to have their trailers stored off site. See Exhibit E (Fallen Leaf Policies and Procedures) for further explanation of parking opportunities/restrictions.

(g) Key Personnel. Contractor’s day-to-day operations shall be supervised by Contractor’s designated employee (hereinafter “Operations Manager”), whom Contractor will designate at the commencement of this Agreement. The Operations Manager will be the point of contact between District’s General Manager and Contractor. It is the mutual intent of the Parties that the Operations Manager shall be closely involved and continuously responsible for the conduct of the Marina and Store/Cafe operation and be on site daily during

some portion of operating hours between July 1 and Labor Day. Contractor may for commercially reasonable business necessity designate a different individual to serve as Operations Manager. Contractor will endeavor to avoid replacing the Operations Manager between May 1 and September 30 of any year during the Term of this Agreement.

(h) Contractor's Employees. Contractor is responsible for hiring, training and supervising sufficient employees to fulfill Contractor's obligations under this Agreement. Employee training should include an emphasis on safety, courtesy, neat appearance, and hospitable, friendly and responsive service. The District has zero tolerance for illegal drug use. Any employee found in possession of, under the influence of or using illegal drugs on or about the Community Area or District Facilities shall be immediately removed from the staff. Two such violations shall constitute a material default by Contractor.

(i) Safe and Clean Services. Contractor shall be responsible for the care, cleanliness and neatness of the District Facilities, and for courteous, responsive and effective delivery the Services.

(j) Meetings with District. Contractor and General Manager shall hold periodic meetings at mutually agreeable times, no less often than weekly between May 1 (or as soon thereafter as is practical given weather conditions that delay access to the District Facilities) and October 1, and as agreed at other times through the year, to review operations ("Operations Meetings"). The purpose of the Operations Meetings shall be to assist District and Contractor to fulfill their respective obligations under the Agreement, and to provide District an opportunity to review and comment on Contractor's performance. Operations Meetings shall include review and discussion of any required repairs that are not ordinary, day-to-day items that need to be brought to the attention of the District for review. If District desires any modification in the type of method of delivery of the Services, the General Manager shall inform Contractor of such requests at the Operations Meetings. Contractor shall modify delivery of the Services to accommodate the District's request. If Contractor determines that a request for modification materially changes Contractor's obligations under this Agreement Contractor shall promptly notify District before implementing such change. If District makes a request for material modification of the services that the Parties cannot mutually resolve, Contractor may elect to terminate the Agreement. For purpose of this paragraph, "material" shall mean causing a foreseeable reduction of Contractor's annual Gross Revenues of at least \$25,000.

Contractor's Operations Manager shall attend District's Board meetings held from time to time between May and October ("In Season Meetings") and may be asked to attend Board meetings held between October and May ("Out of Season Meetings"). Contractor shall use best efforts to provide to the Board, through the General Manager, before each regularly scheduled In Season Meeting, a written report of Contractor's operations for the prior period, including without limitation an executive summary of Contractor's Gross Receipts (as defined in paragraph (k) below) from all operations of District Facilities and an overview of the nature, extent and quality of the Services provided during the prior period. Contractor shall be prepared to present an oral report and discuss operations with the Board and respond to proper questions from the public at each Board meeting. If District requests Contractor to attend any Out of Season Meeting, District shall give Contractor sufficient notice of the request to attend and of any information District wishes Contractor to present at such meeting.

(k) Reports to District. Contractor shall deliver to District's General Manager full and complete reports on the 25th day of June, July, August, September, October and November. If the November report does not include year-end activities, Contractor shall deliver to District a final year report on or before December 15. Reports shall include a summary of the Gross Receipts: (i) for the immediate reporting period, (ii) cumulative for the year to date of the report; and (iii) during years two through five of the Term, year to year comparison of both period and annual totals. Gross Receipts shall mean all revenue from whatever source received by Contractor arising under this Agreement, including without limitation, store/cafe and marina operations and parking revenues but excluding items sold at the request of a community organization such as the Fallen Leaf Fire Department or the Fallen Leaf Chapel.

Contractor shall provide such additional reports as may reasonably be requested by District to enable both District and Contractor to meet their respective obligations.

(l) Pricing. Commercial products and services offered from the District Facilities shall be priced by Contractor in its sole discretion, except that prices for weekly, monthly and seasonal mooring spaces, launching and boat wash activities will be set in accordance with the provisions of the Associates Agreement. Such prices shall remain fixed for the entire summer season unless changed by mutual consent of District and Contractor.

(m) Restrooms. The public restrooms must be operable, stocked, and maintained in a clean and sanitary condition at all times, and must be open during normal hours of operation. Contractor is responsible for providing restroom supplies and cleaning materials.

(n) Trash. Contractor must utilize bear proof trash containers and is responsible for collecting and removing all debris, trash and garbage throughout the entire Community Area. Trash bins should be located at appropriate locations around the New Store, Old Store, Marina, beach and other eating and gathering areas.

(o) District Furnished Capital Equipment. District shall furnish the Marina and Store with the equipment and furnishings identified on Exhibit D (District Property). Contractor is responsible for maintaining the District Property in good condition and shall replace any items at its own expense that fail due to acts or omissions of Contractor. Upon termination of the Agreement, Contractor shall return all District Property to District in substantially similar condition as existed at the commencement of the Agreement, less normal wear and tear.

(p) Contractor Equipment. Contractor shall provide all, necessary personal property, equipment, and appliances necessary for effective operation of the District Facilities not already provided by the District.

(q) Opening and Closing. Contractor shall open all District Facilities in time for commencement of the Open Season and shall close all District Facilities at the end of the Open Season. Contractor's responsibilities include, without limitation, all components of the marina and beach area (breakwater, floating docks, etc.), the Community Building and the New Store Building. At Closing, Contractor is responsible for removing docks and related floating marina equipment to dry storage on the Community Area where designated by District.

(r) Maintenance and Minor Repairs. Contractor shall be responsible for repairs and maintenance of normal day-to-day conditions of the District Facilities under Connector's control. Minor maintenance and repairs shall include, without limitation, changing light bulbs and batteries, replacing washers, cleaning clogged drains, cleaning/replacing air filters, refastening loose dock boards, sweeping/raking areas to maintain safe surfaces, trimming of vegetation and watering landscaped areas, etc. Contractor shall not be responsible for any repairs to portions of District Facilities which Contractor is precluded from using under the terms of this Agreement, including the General Store building apartment while used by the Fire Chief, the unfinished apartment, the Post Office, the Community Building, the District's office space, and the STPUD pumping plant, nor for any major repairs to any of the District Facilities. Major repairs shall mean a single item, such as roof replacement or parking lot repaving, which costs more than \$5,000 to repair. Contractor shall be granted access to any such excluded District Facilities if necessary to accomplish Contractor's repair and maintenance obligations. Notwithstanding anything to the contrary in this Section 5(r), the cost of repairs to the Marina shall be allocated as follows: the first \$2,500 shall be paid by Contractor and the next \$2,500 (up to \$5,000) shall be split equally between District and Contractor.

(s) Notice of Conditions, Services or Performance. Either Party shall give Notice to the other of any condition at, on or involving the District Facilities, Services provided by Contractor or performance of the obligations under this Agreement that requires action by the other Party, reasonably promptly after the condition is identified. Contractor shall when possible, give notice of maintenance issues of an urgent nature or which affect public safety immediately upon identification of the issue. Contractor shall promptly take corrective action to respond to any requests within the scope of the services under this Agreement. District will, within time frames controlled by law, inform Contractor of its response to Contractor's requests.

(t) District Directives. Contractor shall comply with the reasonable directives, policies and procedures that District may adopt from time to time.

(u) Schedule of Operations. Contractor shall operate the Marina and Store daily during the Open Season. The actual opening date will vary from year to year depending on the calendar and weather. It is the intent of the Parties that, weather permitting, the Marina and Store shall be open from no later than the Friday of Memorial Day weekend through the end of September. The opening date may be accelerated or extended by up to two weeks due to weather, The closing date may be extended by up to two weeks, weather permitting. Operating hours shall be from 8:00 am through 6:00 pm between June 30 and Labor Day. Shorter hours may be set before and after those dates.

(v) Use of Premises. Contractor may use the Community Area premises for Contractor's permitted use and for no other purpose. No other use is permitted without first obtaining express written permission from District. Contractor will maintain the aesthetic qualities of the Community Area and the surrounding property by keeping it free of unnecessary equipment and debris. It is understood that under certain circumstances during opening and closing procedures and during construction or repair projects equipment may temporarily be needed in public areas. The fire road between the General Store Building and the beach is a public area.

(w) Utilities. Contractor shall be responsible to provide and pay for all costs for utility service provided to District Facilities under Contractor's responsibility and control. Utility services are provided to the District Facilities by various providers. District has contracted for telephone, propane, electricity and water service at District Facilities Contractor shall provide refuse collection at District Facilities adequate to maintain the cleanliness and safety of the District Facilities. Propane is delivered to and stored in an approved facility located in the Community Area.

Contractor shall pay all charges for water, sewer, gas, electricity, telephone, refuse collection and disposal, and other services and utilities used by Contractor on or related to the District Facilities during the Term of this Agreement, unless otherwise expressly agreed to in writing by District and subject to reimbursement as provided herein.

The telephone, water, propane and electricity service are provided in the name of District, and bills for services are issued to District. District will allocate the costs for such services between the Fire Department and the Contractor pursuant to the schedule on Exhibit K ('Utility Allocation') and invoice Contractor monthly for its allotment. Contractor shall reimburse District such amounts as are billed to Contractor through Contractor's normal accounts payable processing, but in no event no later than 30 days after receipt of such statements from District. Contractor will be billed directly for the sewer.

District is not responsible for providing Utility Services to Contractor or the District Facilities. District shall not be liable for any losses of inventory or income incurred by Contractor as a result of interruption of utility service and/or from Contractor's failure to ensure that utility service is available to District Facilities.

The published telephone numbers for any and all of the District Facilities shall belong to the District and may not be changed without District's approval. The telephone numbers shall survive the termination of his Agreement, unless terminated by the District.

(x) Licenses. Contractor shall use reasonable commercial efforts to maintain a valid offsite beer and wine license throughout the Term of this Agreement. Contractor's loss of such license shall constitute a material breach and Default of this Agreement.

Contractor shall obtain and maintain all other licenses and permits as required by law from all federal, state, county and local agencies to conduct any and all of Contractor's business. Contractor shall pay all fees, taxes, (sales, personal property and other taxes and assessments of every sort (except real property taxes)) that may be due because of Contractor's operations.

(y) Contractor's Improvements. Contractor may, with District's written consent, improve the District Facilities to enhance or improve Contractor's performance of its obligations under this Agreement solely at Contractor's cost and expense. All modifications shall accrue to the District upon termination of this Agreement, unless otherwise agreed by the Parties in writing.

(z) Vacating the Community Area. On or before the conclusion of this Agreement, Contractor shall vacate the premises and remove Contractor's property not otherwise purchased by District.

6. **Marina Operations**

(a) Marina Operations. Contractor shall open, operate, maintain and close the Marina and all the related areas and components. The related areas and components include the stationary and floating docks, mooring ramps, boat launch ramp and piers, breakwater, swim beach and swim floats, fuel pump, operator's office, storage and shop space in the basement of the New Store Building and all of the paved and unpaved surfaces delineated on Exhibit C (Map).

(b) Protection of the Environment. The District is committed to support and protect the environment. The Fallen Leaf Marina was the first marina in the Tahoe Basin to implement mandatory hot water boat washing to prevent aquatic invasive species from entering the lake. Contractor is responsible for making commercially reasonable efforts to further protect Fallen Leaf Lake in accordance with Exhibit F ("Green Operations").

(c) Mooring Spaces. The marina contains 78 mooring slips, 62 of which are for rental on a daily, weekly or seasonal basis. Fallen Leaf Lake Associates have the right to rent slips. (See "Marina Operating Agreement, Exhibit I). Sixteen of the slips are not to be rented; six or seven shall be reserved for hourly use by customers of the Store, Post Office or other activities in the area; eight are reserved for the Contractor's rental/service boats; one shall be made available at no cost for the Fallen Leaf Fire Department fire boat, and one, if requested, for the Sheriff's boat. If the Sheriff's Department does not request a slip, that slip can be rented.

Contractor shall obtain from all slip renters and from Marina mooring owners a full and complete Release of Claims against District, in such form as may be approved by District and Contractor.

Contractor is responsible for and may operate from the small building located in the marina area. Historically this building has been used for renting boats and related equipment and watching/managing the marina area. District does not guarantee the building will be available throughout the Term of this Agreement as it may be necessary to remove part or all of this building in the future. If the building is not available for use by Contractor, District shall work with Contractor to provide reasonably equivalent alternative space.

(d) Boat Launching. Contractor will operate and control access to and use of the boat launch facility. No motorized boats or watercraft of any kind may be launched into the lake unless the boat has obtained a valid tag certifying inspection and washing. Contractor shall use commercially reasonable efforts to inspect and wash all non-motorized boats or watercraft that are launched at the boat ramp in order to try to avoid any aquatic invasive species from contaminating the lake. Contractor's employees may require training in proper washing and inspection techniques.

The launch ramp must remain closed and barricaded with a locked chain at all times unless Contractor's employee(s) are attending to an approved boat launch. Weather permitting,

Contractor shall arrange to allow boat launching before Memorial Day and after Closing. Contractor may charge a fee for such services.

Contractor shall print, post and inform boaters about Fallen Leaf Lake Boating Regulations, Exhibit G ("Boating Regulations"), and deliver a copy of the Regulations to boat operators when each boat is launched. This includes daily users, mooring customers and lake residents with private docks.

(e) Rental Boats. Contractor shall provide, at Contractor's expense, a fleet of rental boats such as outboards not exceeding 40 hp, rowboats, kayaks and pontoon boats. Contractor acknowledges that the number of boats is limited by the limit of available slip spaces and the secure storage area available for use by Contractor. Power boats shall be primarily for sight-seeing and fishing. Waterski or wakeboard boats may be rented only with a marina-supplied driver. Personal watercraft (wave-runners) may not be rented. Contractor shall not allow paragliding from a rental boat.

Contractor may not sublet space to any commercial operator without the express written consent of District, which consent may be withheld at District's discretion.

During normal hours of operation, Contractor shall have staff available to operate, as necessary, a rescue/retrieval boat to assist boat renters in distress or who do not return as scheduled.

(f) Fuel. Contractor is to operate the gasoline pump installed on the fueling dock and sell gasoline and related products, Contractor sets gasoline prices in its sole discretion and refills the gas storage tank, as needed. To protect lake water quality and decrease the fire danger of gasoline stored in personal containers, District encourages Contractor to set gasoline rates at a level to encourage use of the marina fueling facility rather than inducing boat owners and operators to purchase at other locations and transport gasoline into the area. Contractor must possess a valid Hazardous Materials Business Plan permit. Contractor shall require any third party that provides or delivers fuel to the Community Area to procure and maintain commercial general liability insurance equivalent to the requirements in of this Agreement as applicable to such delivery, and have the carrier or carriers issuing such policy or policies issue Additional Insured Endorsements naming Contractor and District.

(g) Swim Beach. The small public swimming beach area on the easterly side of the marina area is the only public beach at the south end of Fallen Leaf Lake ("Beach Area").

The Beach Area must be maintained in a neat and orderly fashion at all times. This requires raking, clean-up and trash removal. The portion of the beach east of the east-most "pier" is reserved as the Swimming Area. It is to be roped off to prohibit boat access; boat slips only on the east side of the "pier" shall be limited to use by non-power boats only. Contractor shall use its own experience, skill and judgment to notify Swimming Area users that they do so at their own risk. Contractor shall at a minimum install and maintain signs at the beach entrance that state: "Swim at Your Own Risk. No Lifeguard on Duty" and "No Dogs. Allowed on Beach."

The District currently one swim float for the enjoyment of those using the beach.

After inspection and washing, kayaks and canoes can be launched from the area between the two eastern “piers.” No boats of any type (except children’s toy boats) may be launched at the Beach Area.

(h) Winter Storage. The marina’s floating docks, slips and fingers must be removed from the lake in the fall and stored on Community Area property for the winter. In the spring they must be reassembled and reinstalled in time for the summer season. Contractor is responsible for this operation.

## 7. Store/Café Operations

(a) General. The Contractor shall operate the General Store and Cafe located in the New Store Building. Contractor is also responsible for maintaining the public restrooms, outside eating areas and basement storage areas utilized for store/café storage as shown on the Fallen Leaf Community Area Map, Exhibit C (Map). Contractor is permitted use of an office work area in the upstairs portion of the New Store building. The apartment in the New Store building may be occupied by the fire chief throughout the year. Contractor is responsible for all activities for operation of the General Store and cafe including without limitation ordering, stocking, and proper handling of all items for sale in the store and for use in the cafe.

(b) Year Round Occupancy and Maintenance. Contractor is responsible for maintaining the District Facilities throughout the Term of this Agreement, including during the off-season months (e.g. October through May). This includes preparing public areas for opening in the spring and closing at the end of the Open Season. Maintenance of the District Facilities includes, without limitation, winterizing the District Facilities (e.g. draining water lines, securing electrical services, storing outside furniture, restoring critical systems after power outages including the fire suppression system, periodically checking on the condition of the buildings, and taking remedial action when necessary). Contractor is responsible for any damage to the General Store and/or the District Facilities that results from Contractors opening, operating and/or closing procedures. However, if CSD staff (Fire Chief or General Manager) occupies the apartment in the New Store Building during the off season months, Contractor and District shall determine and memorialize in writing which Party will bear responsibility for operation of the New Store Building during the period of such occupancy.

(c) Food Service. Contractor shall provide prepared food service consisting of a variety of breakfast and lunch items and ice cream and coffee services at the cafe. Contractor may also elect to provide takeout prepared food and/or dinner options.

(d) Store Stock. Contractor shall select the products to provide in the store. District encourages Contractor to include common groceries, produce, confections, beverages, dairy products, beer and wine, newspapers, sundries, souvenirs, email toys, fishing and hiking items, branded clothing items, maps, books and pamphlets about the area as may be attractive to both residents and visitors to the area.

(e) Health Regulations. Contractor shall comply with all OSHA rules and regulations relating to food handling and preparation. Contractor acknowledges it is aware it

is subject to governmental inspections and permits such as the Fire Department inspection sticker on the kitchen hood and the El Dorado County Health Department Food District Facilities permit.

(f) Food Handling and Quality. Quality of food sold and café items prepared in the Store/café shall meet or preferably exceed minimum food quality standards set by the USDA and, where appropriate, shall bear the USDA seal. All fresh dated food products shall be rotated per dates on packages. Contractor acknowledges the store/café operation is subject to periodic, unannounced audits by government agencies. Failure to comply with proper food handling techniques and/or failure to comply with audit requirements is a default under this Agreement and grounds for termination of this Agreement.

8. **Obligations of District.**

(a) Facilities. District will use its best effects to provide District Facilities in a useable condition. District shall not be responsible to Contractor in any way for failure to provide District Facilities or any portion thereof, resulting from reasons beyond the control of District, including, without limitation, District's financial condition.

(b) Maintenance and Repairs. District shall be responsible for major repairs of all District Facilities and normal day-to-day conditions of the portions of District Facilities which Contractor is precluded from using under the terms of this Agreement, including the General Store building apartment while used by the Fire Chief, the unfinished apartment, the Post Office, the Community Building, the District's Office space, and the STPUD pumping plant. Subject to the provisions of Section 5(r), major repairs shall mean a single item, such as roof replacement or parking lot repaving, which costs more than \$5,000 to repair.

(c) Inquiries. District shall use its best efforts to respond to reasonable inquiries and reports from Contractor.

(d) District Furnished Capital Equipment. District shall furnish the Marina and General Store with the equipment and furnishings identified on Exhibit D ("District Property").

9. **Contractor's Personal Property.** Contractor shall provide District with a list of personal property it initially furnishes at the commencement of the Agreement, and update such list of property acquired and put into service during the Term of this Agreement. Contractor shall retain ownership of such personal property, equipment, and removable fixtures. Any damage to any building that results from removing property shall be repaired by Contractor. The list of Contractor's personal property, as updated from time to time, shall be attached to this Agreement as Exhibit T.

At the termination of this Agreement District shall have the option, but not the obligation, to purchase those items of Contractor's property used on or for the District Facilities that were purchased by Contractor during the life of this Agreement. The purchase price shall be at Contractor's cost, less a reasonable amount for wear and tear. District shall make such election not later than 30 days before the end of the Term of this Agreement.

10. **Insurance.**

(a) If the District Facilities or any part thereof are damaged by fire or other casualty resulting from any act of negligence by Contractor or by any of Contractor's agents, employees or invitees, Contractor shall be responsible for the costs of repairs or replacement not covered by Contractor's insurance.

(b) District shall maintain fire and extended coverage insurance on the District Facilities in such amounts as District shall determine, provided, however, that District shall use its best efforts to insure the New Store Building for replacement value. Contractor shall not be liable under Section (a) above for District's failure to carry sufficient insurance for the New Store Building.

(c) Contractor's insurance shall be primary to District's insurance.

(d) Contractor shall be solely responsible for fire and extended coverage on any or all of Contractor's property.

(e) Contractor shall, at Contractor's expense, procure and maintain throughout the Term of this Agreement, a policy or policies of commercial general liability insurance of not less than \$2,000,000 per occurrence, \$2,000,000 aggregate, for bodily injury, property damage or combination thereof. Contractor shall also maintain the following coverages:

Marine Operators Legal Liability  
Auto and Comprehensive Liability  
Liquor Liability  
Hazardous and Pollution Liability.

Contractor shall cause all such policies to include District as an additional named insured, and shall provide District with Certificates of Insurance and Additional Insured Endorsements evidencing Contractor's compliance with this paragraph within 30 days of the commencement of this Agreement and continuously throughout the Term of this Agreement as necessary to maintain uninterrupted coverage of District. Contractor shall instruct Contractor's insurance company or companies in writing, copied to District, to immediately notify District in the event Contractor's insurance policy or policies shall be diminished or shall lapse.

(f) Contractor shall be responsible for lawfully required worker's compensation insurance on Contractor's employees.

(g) All insurance companies selected shall be rated "A" or better by AM Best Company.

(h) Contractor shall promptly comply with all requirements as directed at any time by District and/or Contractor's insurance carriers to prevent any policy from being cancelled or invalidated. Loss of insurance coverage is a Default under this Agreement.

11. **Destruction of District Facilities.** If District Facilities or any portion or part thereof are damaged or destroyed by any cause whatsoever, if such damage or destruction

impacts delivery of the Services, District shall not be liable to or obligated in any way to Contractor for any loss Contractor may sustain, and Contractor hereby waives and releases District from any and all claims for any and all damages Contractor may incur arising from such damage or destruction. If District Facilities or any portion or part thereof are damaged or destroyed by any cause whatsoever, if such damage or destruction prohibits Contractor from being able to deliver a material part of the Services, the Fee will be renegotiated by the Parties, and if the Parties cannot agree on a new Fee, then either Party may elect to terminate the Agreement. For purposes of this paragraph, "material" shall mean operation of the marina, the cafe or the store.

12. **Advertising.** Except as provided in this section, Contractor shall not advertise to the general public outside of the Community Area. Contractor's signage and advertising shall be in accordance with TRPA regulations and restricted to the portions of the Community Area under Contractor's control. The sole exception is that Contractor may distribute or display a flyer at the Fallen Leaf lake campground.

13. **Independent Contractor.** Contractor is an independent contractor and is not entitled to the rights or benefits afforded to managers or employees of District, including, without limitation, disability insurance or unemployment insurance, workers' compensation, medical insurance, sick leave or any other employment benefit. Contractor shall be responsible for all of Contractor's employees, including employer's taxes, worker's compensation, and all other legal obligations of an employer.

14. **Assignment or Subcontracting.** Contractor may not assign this Agreement or any portion thereof without the express written consent of District, which consent may be withheld in District's sole discretion. Contractor may not subcontract to others its day-to-day performance of the Services in the General Store or Marina. Contractor may, upon written notice to District, subcontract performance of the following services: installation repair and removal of marina components,, and opening and closing of District Facilities.

15. **Binding Agreement.** Contractor may not bind District to any contracts. This Agreement is binding on Contractor, and its agents, successes and assignees.

16. **Audit.** District shall have the right to have an audit performed on Contractor's Gross Receipts at District's expense; on seven days' written notice, and Contractor shall make Contractor's books and records available to District and its designated representatives. In the event that an audit shall disclose and confirm a reporting discrepancy of 5% or more, Contractor shall reimburse District for any audit expense. If an audit discloses and confirms a discrepancy of 10% or more or there is a second discrepancy of 5% or more during the Term of this Agreement, such discrepancy shall be deemed a material default and District may terminate this Agreement. District shall use its best efforts to keep audit data confidential, except for any adverse findings.

17. **Indemnification.**

(a) With the exception that in no event shall Contractor be required to indemnify District to a greater extent than permitted under the laws of the State of California,

Contractor shall indemnify, defend, release and save harmless District, including its directors, officers agents, and employees, and each of them of and from any and all claims, demands, matters, causes of action, damages, costs, expenses, attorney's fees and consultant's fees, losses or liabilities in law or in equity, of every kind and nature whatsoever, alleged to arise directly or indirectly out of or be related to the Agreement and/or the Services provided or to be provided by Contractor ("Claims"), for or related to, but not limited to:

- (i) Personal injury, including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons, including, but not limited to, any employees or agents of Contractor, District or any of Contractor's subcontractors;
- (ii) Damage to property of anyone (including loss of use thereof);
- (iii) Damage to the economic interests of any person or entity;
- (iv) Penalties imposed on account of the violation of any law, order, citation rule, regulation, standard, ordinance or statute, caused solely or in part by the action or inaction of Contractor;
- (v) Infringement of any intellectual property rights which may be brought against the Contractor or District arising out of this Agreement
- (vi) Claims (against funds, the Real Poverty and/or bonds) and liens for labor performed or materials used or furnished to be used on the Community Area, including all incidental or consequential damages resulting to Contractor or District from such claims or liens, other than by Contractor in the event of nonpayment by District;
- (vii) Any matters relating to Hazardous Materials;
- (viii) Contractor's direct and/or indirect failure to fulfill or comply with, through action or inaction, the covenants, warranties, duties and/or obligations as set forth in and through the terms and provisions of this Agreement;
- (ix) Failure of Contractor to comply with the Insurance provisions of this Agreement; and/or
- (x) Any violation or infraction by Contractor of any law, order, citation, rule regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, including, but not limited to, the use of Contractor's or other's equipment, hoists, elevators or scaffolds.

(b) The indemnifications provisions of this Agreement shall:

- (i) Extend to all Claims arising from the activities of Contractor while engaged in the performance of this Agreement;

(ii) Survive the completion of this Agreement;

(iii) Extend to Claims occurring and/or arising after completion of the performance of the Agreement and/or the termination and/or conclusion of this Agreement;

(iv) Apply even if the event that requires Contractor to indemnify District is alleged to be or is contributed in part by the negligence, omission and/or misconduct of District, as long as the Claim is, or is alleged to be, attributable to and/or caused, in whole or in any part, by Contractor's action, operations, performance, negligence, misconduct, breach and/or omission of Contractor;

(v) Apply regardless of any active and/or passive negligent act or omission of District;

(vi) Shall not be limited by the Insurance requirements set forth in this Agreement; and/or

(vii) Apply so long as the basis for the indemnification is alleged to be or is caused, in any part, by the negligence, misconduct, action and/or inaction of Contractor.

(c) Contractor shall:

(i) At Contractor's own cost, expense and risk, immediately upon tender by District defend all Claims as defined in this Agreement that may be brought or instituted by third parties, including, but not limited to, governmental agencies or employees of Contractor against District, its directors, officers or employees of any of them;

(ii) Pay and satisfy any judgment or decree that may be rendered against District, its directors, officers or employees, or any of them, arising out of any such Claim; and/or

(iii) Reimburse District, its directors, officers or employees or any of them, for any and all reasonable legal expense incurred by any of them in connection herewith or in enforcing the indemnity granted in this Agreement.

(d) Each and every remedy or cause of action for indemnity, hold harmless, defense and release provided to District, in any term or provision of this Agreement, is not to the exclusion or prohibition of any other remedy or cause of action for indemnity, hold harmless, defense and release set forth in this Agreement or as otherwise provided by law. All such remedies or causes of action for indemnity, hold harmless, defense and release are cumulative and are enforceable and pursuable separately and individually as well as jointly.

Notwithstanding anything herein to the contrary, Contractor shall not be liable for indemnification of the Indemnified Parties for claims arising from the use of the Excepted Areas

displayed on Exhibit C ("Map") by tenants or occupants of such excepted areas, their guests and invitees.

18. **Default**

(a) Any of the following is a Default under the Agreement:

(i) continuous or repeated unsatisfactory customer service by Contractor or its employees;

(ii) failure to pay the Fee when due, or

(iii) failure by Contractor to observe and perform the material covenants or conditions under the Agreement.

(b) If Contractor is in Default in the payment of the Fee when due, Contractor shall have 10 days after receipt of written notice thereof to cure such Default.

(c) If Contractor is in Default with respect to any other matter, Contractor shall have 15 days after receipt of written notice thereof to cure such Default.

(d) In the event Contractor fails to cure any Default within the time allowed, District may declare the Agreement terminated by giving Contractor written notice of such election, and Contractor shall surrender the premises within 30 days. If this Agreement is prematurely terminated, District and Contractor shall promptly enter into negotiations to determine which assets of Contractor, if any, District desires to purchase. District shall have the absolute right to purchase at reasonable value, Contractor's assets (excluding watercraft) for which Contractor's purchase price was in excess of \$1,000. In the event that District and Contractor shall not agree on reasonable value such determination shall be resolved by mediation as provided below.

19. **Mediation.**

Any controversy arising out of or relating to this Agreement shall be settled or resolved as follows:

(a) The Parties agree to mediation of any dispute. The mediation shall occur promptly, and no later than 15 days after either Party delivers written notice of a dispute and request for mediation. After mediation is requested, the Parties shall promptly agree on the appointment of a mediator. If the parties cannot so agree, then upon petition to the Superior Court of California, County of El Dorado, the court shall appoint a mediator. Mediation shall be held at or near the District Facilities or at such other local location as the Parties may agree as upon as soon as practical after the appointment of the mediator.

(b) In the event any dispute is not resolved by mediation, then any such dispute shall be resolved by binding Arbitration under the rules of the American Arbitration Association, or other dispute resolution procedure the Parties agree to use, and judgment upon the arbitrator's determination may be entered in any court having jurisdiction thereof.

(c) If any legal action or arbitration is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, in the discretion of the arbitrator, mediator or judge.

20. **Notices.**

Any notices required or permitted under this Agreement shall be in writing, delivered personally or sent by United States Certified Mail, return receipt requested, addressed as follows:

District  
P.O. Box 9415  
South. Lake Tahoe, CA 961511  
Attention: President of the Board  
For Personal Delivery: General Manager

Contractor  
California Land Management Services Corporation  
675 Gilman Street  
Palo Alto, CA 94301-2520  
Attention: Executive Officer or President  
For Personal Delivery: Operations Manager

21. **No Waiver.** No waiver of any default shall be implied from any omission to take any action on account of such default if such default persists or is repeated. One or more waivers by District or by Contractor shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

22. **Signatures.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together will constitute one and the same original of this Agreement. Execution hereof, or any notice or other document to be executed pursuant hereto, may be made by facsimile or other electronic format, provided that the original thereof shall, upon recipient's request, be delivered promptly thereafter to recipient. Electronically transmitted signatures on this document shall be deemed the same as original signatures. Copies of this document, including faxed and electronically scanned versions, may be used in lieu of the original, and copies shall be equally admissible in evidence.

23. **Exhibits.** The following Exhibits are attached hereto and hereby made a part of this Agreement.

Exhibit A -- Agreement Between the Fallen Leaf Lake Associates and the Fallen Leaf Community Services District

Exhibit B -- TRPA Agreement

Exhibit C -- Fallen Leaf Community Area Map

Exhibit D -- Fallen Leaf Lake California Community Services District -- Inventory of CSD owned property as of August 10, 2003

Exhibit E -- Policies and Procedures, Community Area at Fallen Leaf

Exhibit F -- Green Operations guidelines

Exhibit G -- Fallen Leaf Boating Regulations

Exhibit H -- District Compensation Form

Exhibit I -- Marina Operating Agreement

Exhibit J -- Contractor's Property with Value Greater than \$1,000

Exhibit K -- Utility Allocation

IN WITNESS WHEREOF, the parties hereto have read the foregoing Agreement, fully understand it, and have executed this Agreement as of the date first written above.

FALLEN LEAF COMMUNITY SERVICES DISTRICT

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

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

CALIFORNIA LAND MANAGEMENT CORPORATION

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

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

**Agreement between the**  
**Fallen Leaf Lake Associates**  
**and the**  
**Fallen Leaf Lake**  
**Community Services District**

**Adopted by the Board of Directors:**

**May 10, 1993**

## AGREEMENT

This agreement (the "Agreement") dated May 10, 1993, by and between Fallen Leaf Lake Associates, a California limited partnership ("FLLA"), and the Fallen Leaf Lake Community Services District ("CSD") is for the development and operation of the Fallen Leaf Lake Community Area.

## RECTALS

A. FLLA is the record owner in fee simple of that certain real property located in the County of El Dorado, State of California, commonly known as the Fallen Leaf Lodge and described more fully in Exhibit A hereto (the "Lodge Property").

B. By the Real Property Transfer Agreement dated July 3, 1990 (the "Transfer Agreement"), between FLLA and the Trust for Public Lands, a non-profit California public benefit corporation ("TPL"), FLLA agreed on the terms set forth therein to convey to TPL for the benefit of the CSD or, at the direction of TPL, to convey directly to the CSD a portion of the Lodge Property known as the Community Acquisition and identified more fully in the Transfer Agreement, which is Exhibit A hereto.

C. The Transfer Agreement paragraph 5.1 provides that the CSD shall develop and FLLA and CSD shall agree on a site plan for that part of the Community Acquisition known as the Community Area and identified more fully in the Transfer Agreement. The site plan is to resolve the reasonable concerns of FLLA regarding the development and use of the Community Area.

D. The FLLA and the CSD intend hereby, as between themselves and their successors, to comply with, implement, and fulfill the requirements of Transfer Agreement paragraph 5.1.

NOW, THEREFORE, the FLLA and the CSD agree:

1. **Land Use Plan.** The plan attached hereto as Exhibit B depicts the site plan for the Community Area as adopted by the CSD and depicts the location of the old gas dock and the existing boat slip piers.

1.1. **Design.** The FLLA will have reasonable rights to approve the bulk, height, exterior materials, roof materials, and color of structures shown on the site plan to insure that they are compatible with the FLLA development. Roofs are to be non-shiny and in tones compatible with the range of materials that the FLLA will be using in its project.

1.2. **Fire Department Structure.** The FLLA will approve placement of a fire department storage facility at location "J" on the site plan or at another location within the Community Area that is mutually agreeable to both parties if and only if, after a good-faith effort by the CSD Board, it is determined that the facility cannot be located at a south-end location outside the Community Area, such as the site near the Church.

Any storage facility at "J" will be limited to one story at the eaves and be subject to site review by the FLLA.

**1.3. Community Building.** It is anticipated that the store will be moved from its present location into a new structure located at location "A" on the site plan. At that time the old store building will be converted for use as a "Community Building". Use of the Community Building shall be allowed only for one-time or recurring supervised Fallen Leaf community activities approved by a Community Building Usage Committee (under the auspices of the CSD). All Community Building activities shall be conducted with appropriate respect for the interests of the Community Building's immediate neighbors.

**1.4. Usage Committee Composition.** The Community Building Usage Committee shall be composed of five members drawn from the Fallen Leaf Community. Two members are to be nominated by those members of the community with homes located between, and including, Rockhaven (currently the Maderios property) and Glen Alpine Creek. The remaining three committee members are to be selected by the CSD Board giving consideration to geographical balance within the Fallen Leaf Community.

**1.5. Area Behind Community Building.** The area located between the back of the Community Building and the rock retaining wall will be used only for handicapped parking and pedestrian access to the Community Building.

**2. Marina Plan.** The CSD shall develop a marina as part of the Community Area (the "Marina") under the following conditions.

**2.1. Size and Configuration.** The Marina shall be comprised of piers extending from the old gas dock identified in Exhibit B and from the site of the existing boat slip piers also identified in Exhibit B. The Marina shall accommodate no more than one hundred four (104) boat slips with the possible exception of a temporary accommodation of up to two (2) fire department boats until such time as slips become available by attrition. And, absent a CSD Board determination of compelling marina safety, design, or operational problems, the pier or piers that extend from the old gas dock shall be limited to no more than forty (40) slips.

**2.2. Lease Terms.** The FLLA shall establish the Fallen Leaf Lodge Homeowners' Association ("FLLHA") which will have the right to lease Marina slips under the following terms and conditions.

**2.2.1. Number of Slips.** The FLLHA shall have the right to enter into long-term lease agreements for the lease of up to forty (40) Marina slips. In the unlikely event of outside governmental action to reduce the total marina size to significantly less than 104 slips, the CSD and FLLHA may reconsider this number. As a consideration for these lease rights and in expectation of slips equivalent in quality to the newest slips in the marina, the FLLHA will deposit \$20,000 with the CSD at closing of the land sale. This deposit will be returned to FLLHA by the CSD at the rate of \$1000 per year for 20 years, due and payable at the close of each season.

**2.2.2. Location of Slips.** Absent a CSD Board determination of compelling marina safety, design, or operational problems, the Marina slips leased to the FLLHA on long-term leases shall be contiguous slips located on the pier or piers that extend from the old gas dock. If non-FLLHA slips are located on the west-most side of the west-most pier, then a suitable provision will be made to ensure that craft entering those slips do not encroach on the adjacent beach area.

**2.2.3. Definition of Long-term Leases.** Long-term leases are defined to be year-to-year, renewable leases. The term is one year—May 1 of one year to May 1 of the subsequent year. By March 1 of each year the FLLHA will be reminded to notify the CSD by May 1 if it does not wish to renew some of its leases for the subsequent year; the long-term leases continue until canceled by the FLLHA. Failure to notify the CSD of the FLLHA's intent to cancel will make the FLLHA responsible for the next-year's fee.

**2.2.4. Obtaining Long-term Leases.** By March 1 of each year FLLHA will notify the CSD of the number of new long-term leases that it would like to obtain, up to a maximum of the number specified in 2.2.1.

**2.2.5. Rental Fees.** The FLLHA will pay an annual rental fee equal to "market rent" for each leased slip. "Market rent" is defined as the most favorable rent charged in that year for a comparable slip.

**2.2.6. Deposits on Long-term Leases.** Each new long-term, lease request will be accompanied by a \$1,000 per slip deposit which will be held, interest free, for the duration of the long-term lease and will be returned to the lease-holder when the lease is canceled.

**2.2.7. Ownership and Operation.** All Marina facilities will be constructed, owned, insured, maintained, and operated under the control of the CSD and will be available only for the summer season as defined by the CSD. Maintenance and operation will include annual installation, removal, and storage of docks. All slips are to be protected by an appropriate breakwater. All costs of operation are to be borne by the CSD.

**2.2.8. Sublease of Slips.** The right to sublease any slip leased on a long-term basis will be permitted only pursuant to guidelines to be developed by the CSD.

**2.2.9. Leases subject to CSD Rules.** All use of the Marina slips will be in accordance with CSD rules. For example, despite the existence of a long-term lease, the CSD may suspend mooring in the Marina to any boat that is operated in so unsafe or dangerous a manner that it constitutes a hazard.

**3. Right of First Refusal.** In the unlikely event that at some point in the future the CSD will be unable or unwilling to continue operation of the Community Area and there is no other entity acceptable to the CSD to continue operating the Community Area for the benefit of the Community and public, the FLLA will have a right of first refusal before sale to a private party for private or commercial use.

4. **Binding Effect.** This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

5. **Exhibits.** Each of the Exhibits attached hereto is hereby incorporated herein by this reference.

6. **Headings.** Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only. Paragraph headings are not part of this Agreement and shall not be used in the interpretation of this Agreement.

7. **Severability.** If any one or more of the provisions of this Agreement are held to be invalid, illegal, or unenforceable in any respect for any reason, the validity, legality, and enforceability of any such provisions or provision in every other respect and of the remaining provisions of this Agreement shall not be in any way impaired.

8. **Governing Law.** The terms and provisions of this Agreement shall be construed in accordance with the laws of California.

9. **Dispute Resolution.** Any controversy arising out of or relating to this Agreement shall be settled by voluntary mediation or by arbitration. If the parties do not agree to mediation or if mediation does not resolve a controversy, then the controversy shall be settled by arbitration in accordance with the rules of the American Arbitration Association (the "AAA"), and judgment upon the arbitrator's determination may be entered in any court having jurisdiction thereof. A single arbitrator shall be named by the AAA, provided, however, that the arbitrator must be a lawyer licensed to practice in California and must be experienced in land-use law.

Dated: May 10, 1993

Fallen Leaf Lake Associates  
By: Fallen Leaf Lake Associates, Inc.  
General Partner  
By: James B. Hill  
James B. Hill, President

Dated: May 11, 1993

Fallen Leaf Lake Community  
Services District

By: Sally S. Marriner  
Sally S. Marriner, President

