RESOLUTION - ACTION REQUESTED 2016-309

MEETING: June 21, 2016

TO: The Board of Supervisors

FROM: Doug Binnewies, Sheriff-Coroner-Public Administrator

RE: County Fire Protection Agreement for Silvertip Resort Village Project

RECOMMENDATION AND JUSTIFICATION:

Approve the County Fire Protection Agreement for Silvertip Resort Village Project with Palm Springs Village - 309 LLC; and Authorize the Board of Supervisors Chair to Sign the Agreement.

As part of the project conditions of approval and Environmental Impact Report (EIR) mitigation measures for Planned Development No. 99-1 and Conditional Use Permit 267, the Silvertip Resort Village project is required to enter into a written agreement satisfying the requirements of County Fire for fire protection (Condition of Approval 15). The agreement shall, at a minimum, enumerate each mitigation measure identified in the EIR for fire protection and shall affirmatively state the measure's inclusion in the agreement or alternatives accomplishing the same objective as required by the mitigation measure that are incorporated into the agreement.

BACKGROUND AND HISTORY OF BOARD ACTIONS:


Resolution Nos. 03-442, 03-444 and 03-445 December 2, 2003 certifying the EIR, conditionally approving and adopting findings for Planned Development No. 99-1 and Conditional Use Permit No. 267 for the SilverTip Resort Project.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Approve a modified agreement. Negative action would result in no agreement and non-compliance with the applicable conditions and mitigation measures.

FINANCIAL IMPACT:
EIR Compliance - No Fiscal Impact

ATTACHMENTS:
Silvertip Fire Agmt REVISED PSV EXEC  (PDF)
Email from Karen Glendenning requesting CA11 be pulled from Consent.  - (PDF)

CAO RECOMMENDATION
Requested Action Recommended

Mary Hodson
Mary Hodson, CAO  6/15/2016

RESULT:  ADOPTED BY CONSENT VOTE [UNANIMOUS]
MOVER:  Rosemarie Smallcombe, District I Supervisor
SECONDER:  Marshall Long, District III Supervisor
AYES:  Smallcombe, Jones, Long, Cann, Carrier
COUNTY FIRE PROTECTION AGREEMENT FOR
SILVERTIP RESORT VILLAGE PROJECT

THIS COUNTY FIRE PROTECTION AGREEMENT, dated June __, 2016 for reference purposes only, is by and between Palm Springs Village - 309 LLC, a California limited liability company ("Owner") and the County of Mariposa ("County") and is made on the basis of the following facts, intentions and understandings:

A. Owner is developing a resort project within the unincorporated area of the County commonly known as the SilverTip Resort Village Project (the "Project"), as more particularly described on the legal description attached hereto as Exhibit B.

B. The Project has received County Board of Supervisors (the "Board") Certification of the Environmental Impact Report ("EIR") by Board Resolution 03-442, to which were attached the Mitigation Measures approved under the Resolution (the "Mitigation Measures").

C. The Board approved CUP No. 267 ("CUP") and PUD 99-1 ("PUD") by Resolution Nos. 03-444 and 03-445, respectively. The Conditions of Approval for items 14, 15, 16, 17, 18, and 19 are identical for both the CUP and PUD (each a "Condition" and together the "Conditions").

D. Condition 15 states:

Prior to the issuance of any building or grading permits, the County Fire Chief shall provide the Planning Director with a letter certifying that the permit holder has entered into a written agreement satisfying the requirements of County Fire for fire protection. The County Fire Chief shall provide a copy of the written agreement with the certification letter. The agreement shall, at a minimum, enumerate each mitigation measure identified in the Environmental Impact Report for fire protection and shall affirmatively state the measure’s inclusion in the agreement or alternatives accomplishing the same objective as required by the mitigation measure that are incorporated into the agreement.

It is the intent of the parties for this Agreement to satisfy the requirements of Condition 15.

E. Owner and County now desire to enter into this Agreement regarding the manner in which each of the specified Mitigation Measures and each of the Conditions below will be satisfied.

FOR GOOD AND VALUABLE CONSIDERATION, including without limitation the promises and covenants of the parties set forth below, Owner and County (individually a "Party" and together the "Parties") agree as follows:

1. Mitigation Measure No. 08 (Condition No. 14).

1.1 Mitigation Measure No. 08 and Condition No. 14 provide:
Mitigation Measure No. 08

The project site plan shall be revised to provide for passage of a car and fire engine throughout the loop road, to provide for access via road or turfblock to Conference Center S2A to support a 50,000-pound load; and to provide a 50-foot radius turnaround for Conference Center S2B. Interior roadways shall consist of two nine-foot lanes with shoulders. Private fire access roads shall provide an all-weather surface with a minimum paving width of 20 feet. Any gated access shall be approved by the Fire Department.

Condition No. 14

Prior to the issuance of any building or grading permits, the County Fire Chief and California Department of Forestry and Fire Protection shall provide the Planning Director with a letter certifying that the engineering design of the loop road is of adequate width, template, and construction design to meet the requirements of the fire protection agencies.

1.2 County and Owner agree that Mitigation Measure No. 08 and Condition No. 14 shall be addressed and satisfied as follows:

a. In accordance with the approved site plan for the Project, which is attached hereto as Exhibit A (which may be amended as necessary to comply with the Grading Permit issued by County), Owner shall construct a two-way private access road (the "upper road"), a two-way private access road (the "lower road"), both of which shall be a minimum of 20-feet in width pursuant to California Fire Code ("CFC") §503.2.1, and a private access road to the water storage tank (shall be a minimum of 12-feet with a Hammer Head T Turnaround). All of the above mentioned roads shall support a 75,000-pound load under all weather conditions and be designed in compliance with the then applicable State and County Fire Codes. Any gated access shall be approved by the Fire Department and equipped with KNOX locks.

b. A "turnaround" shall be constructed by Owner along the upper road. Turnouts shall be constructed along the upper road at all fire hydrant locations. The turnouts will be designed to comply with the then current CFC Appendix D-103 and County Fire Codes.

c. There shall be no guest parking or guest vehicular access within the upper road other than handicap access required by Federal, State, and County Regulations in locations reasonably approved by the County. The Mariposa County Fire Department ("County Fire") will allow Turf Block, or equivalent, to be used for access for fire apparatus after accepting a geotechnical report prepared by a registered professional geotechnical engineer. The report shall be provided for each area where Turf Block is to be used for such access. The Turf Block to be used for such access shall support not less than a 100,000-pound load under all weather conditions.

2. Mitigation Measure No. 09 (Condition No. 16).

2.1 Mitigation Measure No. 09 and Condition No. 16 provide:
Mitigation Measure No. 09

The project developer shall be required to pay the cost of fire apparatus capable of reaching the peak of the hotel structure and providing an elevated stream to service interior operations from required standpipes (an aerial apparatus). The project developer shall be required to pay an incremental cost (estimated at 25 to 30 percent) to accommodate the additional equipment required to service the project site. Alternatively, the Fire Department will waive these requirements if the following measures are incorporated into the project design:

- The hotel/conference structure shall be constructed to Type II FR standards, Automatic Fire Protection Sprinklers per NFPA 13.
- Fire suppression equipment shall be available to fire crews located on each floor; equipment shall include hose lines, nozzles, spare Self Contained Breathing Apparatus and bottles to support interior operations. All equipment shall be approved by and become the property of the Mariposa County Fire Department.
- All enclosed spaces within the hotel/conference center shall be finished and protected per NFPA 13.
- Direct access shall be provided to the roof for the Fire Department, with surface treatment to allow movement.

Condition No. 16 provides:

The public water system including storage tank, loop water line system, fire hydrants and the provisions to meet the commercial fire flows, as required by the County Fire Marshall, shall be installed prior to the issuance of a Building Permit for the construction of any flammable structures on the subject property or prior to the storage of flammable materials on site whichever occurs first.

Condition 16 shall be addressed in paragraph 3 below.

2.2 County and Owner agree that Mitigation Measure No. 09 and Condition No. 16 shall be addressed and satisfied as follows:

a. In lieu of paying the incremental cost of fire apparatus capable of fighting fires within a multi-storied hotel structure, Owner agrees to construct the hotel/conference structure ("Hotel Building") to meet Type II-A Fire Rated standards with automatic fire protection sprinklers per the National Fire Protection Association ("NFPA"). (NFPA 13). The Hotel Building shall be designed and built to accommodate the following: (i) dual egress systems shall be provided from all levels of the Hotel Building; (ii) elevators shall accommodate ambulance gurneys per California Building Code ("CBC") Chpt. 33; and (iii) fire suppression equipment caches for the fire crews shall be located on the entry floor and at each end of the Hotel Building with the location determined by County Fire containing the following: (I) eight (8) Self Contained Breathing Apparatus with spare air bottles for each Apparatus, (II) hose lines and nozzles to support interior operations within the Hotel Building to the satisfaction of County Fire, (III) emergency medical equipment including but not limited to, emergency medical kits, oxygen bottles and regulators, suctioning units, backboards and straps, and Automatic External Defibrillator, and (IV) structure-rated and wildland-rated personal protection equipment (PPE)
along with positive communication equipment. The Hotel Building and all cabins within the Project shall have approved radio coverage for emergency responders within the buildings based upon the provisions of CFC §510.2013. Owner agrees that fire suppression, medical equipment and radios mentioned above shall be approved by and will become the property of County Fire. The above equipment shall be maintained, repaired or replaced when it is damaged, stolen, or not operating properly per manufacturer and NFPA standards by Owner (or its successor) at Owner’s (or successor’s) cost.

b. Owner shall pay $150,000 to the County at least six (6) months prior to the anticipated issuance of the Certificate of Occupancy for the Hotel Building. These funds shall be applied by County towards the purchase of a Medium Duty Rescue and/or an enclosed trailer to contain and transport industry standard rescue equipment including, but not limited to, the following tool inventory: Hurst tools - complete set power/electrical, Tempest Ventilation Positive Pressure Blower, 8 SCBA’s with 40 spare bottles, set of Irons -Rapid Intervention Crew (RIC) Rescue System, pick head ax, flat head ax, sledge hammer, huxbars, hooligan tools, confined space rescue system, over the side rope rescue system, chain saw, K12 rescue saw, hack saws, sawzall, assorted hand tools -wrench set, screw drivers, socket set, hammers, RS-10 extractor rescue system, forcible entry tools, elevator tools, complete set of air lift bags, Hi-Lift jack, Paratech rescue strut stabilization kit, hydraulic jack, 911 RK super duty kit, air tools, bolt cutter, c-clamps, glass cutter, drywall knives, shop vac, HEPA vac, ½” electric drill, cordless drill circular saw, generator with lights and extension cords (collectively, together with the Medium Duty Rescue and/or enclosed trailer, the “Rescue Equipment”).

Except as provided below, County and Owner agree that prior to issuance of a Certificate of Occupancy for the Hotel Building, the Rescue Equipment shall be available to the Project. County shall have an affirmative duty to provide the Rescue Equipment no later than six (6) months after receipt of the $150,000.00 payment from Owner. If County Fire has not been able to purchase the Rescue Equipment by the end of the six (6) month period, through no fault of Owner, the availability of the Rescue Equipment shall not be a condition to or prevent the issuance of the Certificate of Occupancy for the Hotel Building.

3. Mitigation Measures No. 10 (Condition No. 16).

3.1 Mitigation Measure No. 10 and Condition No. 16 provide:

Mitigation Measure No. 10 provides:

The project developer shall complete the following improvements to the project water system:
- Provide a standpipe from the access roadway to service each conference center.
- Provide a looped water system, rated dry barrel steamer hydrants, and provide for snow removal to serve the conference centers (refer to Mitigation Measure # 13 below)
- Provide four hydrants to serve the hotel. Provide hydrants, PIV and FDC co-located to serve the hotel.
• Provide hydrants located in the entry planter and in the planter in the rear of the commercial structure.
• Provide an interior fire suppression system (sprinklering) for the small conference centers, cabins, and commercial facility/shopowner living units. These structures shall meet the California Fire and Building Code requirement for an R1 occupancy, which includes automatic fire extinguishing systems, fire alarms and life safety requirements.
• Provide fire flow and water storage as provided in Mitigation Measure #19.

Condition No. 16

The public water system including storage tank, loop water line system, fire hydrants and the provisions to meet the commercial fire flows, as required by the County Fire Marshall shall be installed prior to the issuance of a Building Permit for the construction of any flammable structures on the subject property or prior to the storage of flammable materials on site whichever occurs first.

3.2 County and Owner agree that Mitigation Measure No. 10 and Condition No. 16 shall be addressed and satisfied as follows:

a. Owner shall complete the following improvements to the Project water system prior to the issuance of an occupancy permit for the on-site buildings within the Project:

• All structures shall be designed and constructed to the current California Building Code and fire protection per the California Fire Code as adopted by the County

• All structures shall have interior fire suppression system sprinklers per NFPA 13

• All fire systems shall be tested, inspected, and approved by County Fire prior to the issuance of an occupancy permit.

• All stairwell doors shall have an alarm that sounds after a door has remained open more than five minutes

• Fire suppression systems (sprinklers) for cabins, and commercial/employee living units shall comply with NFPA 13 standards

• Commercial facility / employee living units shall provide dual egress systems for upper floors

• Fire hydrants shall be dry barrel and equipped with two-2 ½” and one 4 1/2” ports with national standard thread.
• Access to the roof of all buildings higher than two stories shall be by a roof hatch. The hatch dimensions and location shall be approved by County Fire

• Four fire hydrants to serve the Hotel Building

• Hydrants, Post Indicator Valve (PIV) and Fire Department Connection (FDC) co-located to serve the Hotel Building

  b. Interior fire suppression system sprinklers for the cabins and commercial facility/employee living units shall be installed. The structures shall meet the current California Fire Code and the current California Building Code requirements for an R-1 occupancy, which includes automatic fire extinguishing systems, fire alarms and life safety requirements.

  c. Fire flow and water storage tank(s) meeting projected water demands consistent with standards contained in the most recently adopted California Fire Code. The required storage volume shall be a minimum of 427,000 gallons.

4. Mitigation Measure No. 11 (Condition No. 20).

4.1 Mitigation Measure No. 11 and Condition No. 20 provide:

Mitigation Measure No. 11

The project developer shall provide staffing to supplement existing paid and volunteer staffing that is adequate to serve the facility and meet minimum interior attack requirements, and shall also provide a minimum of two EMT/First Responders on duty. A minimum of four individuals trained to meet Fire Department standards shall be available at all times. These requirements shall be included in a fully executed agreement between the Fire Department and the applicant. Staffing may be provided by SilverTip Resort Village employees who have completed required training. Dual egress systems shall be required from upper floors. All elevators shall accommodate ambulance gurneys for supine patients.

Condition No. 20

Prior to the use or occupancy. The permit holder shall provide staffing to supplement existing paid and volunteer staffing that is adequate to serve the facility and meet minimum interior attack requirements, and shall also provide a minimum of two EMT/First Responders on duty. A minimum of four individuals trained to meet Fire Department standards shall be available at all times. These requirements shall be included in a fully executed agreement between the Fire Department and permit holder. Staffing may be provided by SilverTip Resort Village employees who have completed required training. Dual egress systems shall be required from upper floors. All elevators shall accommodate ambulance gurneys for supine patients. A fully executed agreement
regarding these items shall be submitted to the Planning Department prior to the issuance of a Certificate of Occupancy for any structure on the project site.

4.2. County and Owner agree that Mitigation Measure No. 11 and Condition No. 20 shall be addressed and satisfied as follows:

a. Prior to use or occupancy of the Hotel Building, Owner shall provide and thereafter use commercially reasonable efforts to maintain a minimum of four (4) on call trained and certified emergency staff located within the Project or in the Fish Camp community at all times (individually a “Responder” and together the “Responders”). The number of Responders to be provided by Owner can be reduced to three (3) provided that there are an additional three (3) Responders available in the greater Fish Camp community provided by other parties. Responders shall be available to respond to emergencies within 10 minutes after having received a “response call” to supplement existing County paid and volunteer staffing in order to adequately serve the Project and meet minimum emergency medical and interior fire attack requirements. County Fire shall provide training and certification, at its sole expense, for a sufficient number of Responders (with the required certifications as described below) to meet the four (4) on call Responder requirement (or three (3) Responders as provided above). County Fire shall provide expedited training for the initial staffing of Responders and for any subsequent Responder replacements. The four (4) Responders (or three (3) Responders as provided above) shall all be Firefighter I certified, and all Responders shall be a certified Emergency Medical Technician or EMR. First Responders and at least one (1) Responder shall be a certified apparatus/driver.

- Responders shall be available to respond to all dispatched emergencies at the Project.
- Responders shall be capable of responding to emergencies per NFPA 1710.
- All assigned schedules and work attendance records shall be maintained by Owner and shall be available to the County Fire Chief and/or designee for a minimum of three (3) years.

b. Owner will be responsible for compensation to the neighboring fire jurisdictions for any mutual aid response to the Project from time of dispatch to the time of departure.

c. Owner shall notify County Fire if the number of Responders falls below minimum staffing levels as set forth in clause 4.2.a above for more than 48 hours. This report must be made within 48 hours after Owner obtains actual knowledge of such staff understaffing. If such staff understaffing occurs, County Fire has the right to back fill such understaffing with staffing at Owner’s expense to bring the emergency staffing to the agreed level as set forth in Paragraph 4.2.a. above.

Continued failure of Owner to comply with the personnel or any other requirements in this Agreement will result in County Fire notifying the County Planning Commission who may elect to implement Section 17.140.030 of County Code. Before such implementation of Section 17.140.030, Owner shall be given a reasonable time to cure any such failure after receipt of
written notice from County Fire describing such failure to comply, which at a minimum will allow Owner sufficient time to adequately train any replacement personnel.

d. Written approval by County Fire that EMT and Firefighter/First Responders have been trained and are available to serve the Hotel Building shall be submitted to the County Planning Department prior to the issuance of a Certificate of Occupancy for any new structure within the Project.

e. All elevators in the Hotel Building shall accommodate ambulance gurneys for supine patients.

f. It is understood and agreed that if any Responder employed by Owner responds to a fire or incident outside of the Project as an official member of County Fire (including without limitation, as a volunteer member), and not in an individual capacity, such Responder will not be acting as an employee of Owner, and Owner will have no responsibility or liability for the acts or omissions of such Responder and such Responder will have the same rights and liability protection as any other member of County Fire, whether volunteer or otherwise.

5. Mitigation Measure No. 11R (Condition Nos. 18, 39).

5.1 Mitigation Measure No. 11R and Condition No. 39 provide:

Mitigation Measure No. 11R

The project developer shall provide an on-site water storage tank or tanks adequate to meet project water demands consistent with standards contained in the most recently adopted Uniform Fire Code. The required storage volume shall be a minimum of 410,000 gallons.

Condition 18

Prior to the commencement of any structure framing, the approved water system shall be fully operational and approved by the County Fire Department. Evidence of Fire Department approval of the water system shall be provided to the Building Department prior to its issuance of any approvals to proceed with framing of the structures.

Condition No. 39

Prior to the use or occupancy of any building, the Planning Director shall receive a letter from the County Fire Chief certifying that the permit holder has installed on-site water storage tank(s) meeting project water demands consistent with standards contained in the most recently adopted Uniform Fire Code. The required storage volume shall be a minimum of 410,000 gallons. Water storage may be apportioned in phases with a nexus to the requirements generated by facilities for which occupancy is sought combined with the total demand of all facilities under construction.
5.2 County and Owner agree that Mitigation Measure No. 11R and Condition Nos. 18 and 39 shall be addressed and satisfied as follows:

a. Owner shall, prior to the issuance of a building permit for the first on-site building within the Project, install on-site water storage tank(s) meeting project water demands consistent with standards contained in the most recently adopted California Fire Code. The required storage volume shall be a minimum of 427,000 gallons. Owner shall also install sufficient additional water improvements within the Project to meet fire flow during phased construction to the satisfaction of County Fire (i.e., the total project water system set forth in Paragraph 3.1 does not have to be built in order to start construction on the main Hotel Building).

6. **Mitigation Measures No. 10 (Condition No. 17).**

6.1 Mitigation Measure No. 10 and Condition No. 17 provide:

**Mitigation Measure No. 10**

The project Owner shall complete the following improvements to the project water system:
- Provide a standpipe from the access roadway to service each conference center.
- Provide a looped water system, rated dry barrel steamer hydrants, and provide for snow removal to serve the conference centers (refer to Mitigation Measure # 13 below)
- Provide four hydrants to serve the hotel.
- Provide hydrants, PIV and FDC co-located to serve the hotel.
- Provide hydrants located in the entry planter and in the planter in the rear of the commercial structure.
- Provide an interior fire suppression system (sprinklering) for the small conference centers, cabins, and commercial facility/shopowner living units. These structures shall meet the California Fire and Building Code requirement for an R1 occupancy, which includes automatic fire extinguishing systems, fire alarms and life safety requirements.
- Provide fire flow and water storage as provided in Mitigation Measure #19.

**Condition No. 17**

Prior to the issuance of any building or grading permits, the permit holder shall submit required plans and water system designs to the County Fire Department for review and approval. No building or grading permits shall be issued until the Planning Director receives a letter from the Fire Chief certifying the approval of the Plans. The Plans shall include all necessary information required by the County Fire Department.

6.2 County and Owner agree that Mitigation Measure No.10 and Condition No. 17 shall be addressed and satisfied as follows:

a. Owner shall design the buildings and water system within the Project to a level of design satisfactory to, and approved by County Fire. No building permit shall be issued
until the County Planning Director receives a letter from the County Fire Chief certifying the approval of the above plans.

7. **Mariposa County Code Section 17.140.030 (Conditional use permits and variances – Revocation).**

7.1 Owner and County Fire agree that the CUP may be revoked by resolution of the County Planning Commission if it is determined that Owner has failed to meet any or all of the requirements that were imposed as Conditions on the CUP in any material respect. Such revocation cannot take place until all procedures for public hearings as stipulated in Mariposa County Code Section 12.140.030 and Chapter 17.132 have been performed and Owner has been given a reasonable time after receipt of written notice from the County identifying any such failure to correct such failure. After final determination is made following the public hearing on such a revocation, the County Planning Commission must develop findings explaining the grounds for revocation and base the revocation on those findings.

8. **Miscellaneous Provisions.**

8.1 **Interpretation Guides.** This Agreement shall be deemed to have been prepared by the Parties jointly, and no ambiguity shall be resolved against any Party on the premise that it was, or its attorneys were, responsible for drafting this Agreement or any provision herein. The captions and headings set forth herein are for convenience only and in no way establish, define or limit the scope or intent of any Article, Section, Subsection, Subdivision or other provision of this Agreement. Any reference herein to an Article, Section, Subsection, or Subdivision, unless specified otherwise, shall be a reference to an Article, Section, Subsection or Subdivision of this Agreement. When necessary or useful in the context of this Agreement, use of the singular shall be deemed to include the plural, and use of the plural shall be deemed to include the singular.

8.2 ** Entire Agreement.** This Agreement contains the entire agreement and understanding concerning the matters described in this Agreement, and this Agreement supersedes and replaces all prior negotiations and proposed agreements, written or oral, except as they are included in this Agreement. Each Party acknowledges that: (i) neither the other Party nor its agents or attorneys have made any promise, representation, or warranty whatsoever, express or implied, not contained herein to induce the execution of this Agreement; and (ii) this Agreement has not been executed in reliance upon any promise, representation, or warranty not contained herein.

8.3 **Severability.** If any Article, Section, Subsection, Subdivision, paragraph, sentence, clause or phrase contained in this Agreement is held by a court of competent jurisdiction to be illegal, null or void, the remaining Articles, Sections, Subsections, Subdivisions, paragraphs, sentences, clauses or phrases contained in this Agreement shall not be affected thereby. In such event, this Agreement shall continue in effect and shall be interpreted to the fullest extent possible considering the illegal, null or void language to effectuate the intent of the Parties.

8.4 **Waiver.** The failure of any Party at any time to require a performance by the other Party of any provision of this Agreement shall not affect in any way the full right to require performance at any time thereafter of the same or any other requirement set forth in this
Agreement. The waiver of any breach of any provision of this Agreement by a Party shall not be deemed to be a waiver of any preceding or subsequent breach of the same or any other provision of this Agreement.

8.5 **Legal Expenses.** Each of the Parties will bear its own costs and legal expenses associated with the negotiation, execution, and performance of its obligations under the terms of this Agreement.

8.6 **Time Limits.** Any time limit, time period, date by which any act or event is to have occurred, or date by which any condition is to have been satisfied, that is set forth in this Agreement may be extended by written agreement of the Parties. All references in this Agreement to the performance of an act or occurrence of an event, or satisfaction of any condition, within a specific time limit or period, or by a specific date, if applicable because of an extension pursuant to this Section, shall be interpreted as allowing until the end of the extended period, or until the extended date, for the performance of such act, the occurrence of such event, or satisfaction of such condition. If the last day of any time period ends on a Saturday, Sunday or any government holiday, that last day shall be extended to the next business day.

8.7 **Assignment.** Owner shall have the right to assign its rights and obligations under this Agreement but only with the County’s express written consent, which shall be conditioned upon such assignee having acquired a majority and controlling interest in the Project, and shall not be unreasonably withheld, conditioned or delayed. Any proposed assignee shall execute a document providing such assurances or assumptions as required by the County. Any such authorized assignment must be in writing executed by the County and shall have no force or effect with respect to this Agreement until the County receives a copy of the written assignment and has approved the assignment in writing.

8.8 **Binding on Successors and Assigns.** This Agreement shall be binding on the Parties and their respective duly authorized successors and assigns subject to Section 8.7.

8.9 **Binding Contract.** The Parties acknowledge that this Agreement is fully enforceable against the Parties as a binding contract, and neither Party will assert in any manner that it is acting in excess of its powers in entering into this Agreement.

8.10 **Represented by Counsel.** The Parties hereto acknowledge they have each been represented by counsel in the negotiation, drafting and execution of this Agreement.

8.11 **Amendment.** Except as provided herein, this Agreement may not be modified except by a writing duly approved, signed, and delivered by the parties.

8.12 **Counterparts; Electronic Signatures.** This Agreement may be signed in one or more counterparts, each of which shall be an original, but all of which, taken together, shall constitute the same instrument. Signatures may be by facsimile or pdf electronic signature.

8.13 **Authority to Execute.** Each person signing this Agreement represents and warrants that he or she is legally entitled to enter into this Agreement, or has been authorized by appropriate action of the Party whom he or she represents to execute and thereby bind such Party to this Agreement.
8.14 **Notices, Demands and Communications between the Parties.** Any notices, requests, demands, documents, approvals or disapprovals given or sent under this Agreement from one party to the other party shall be in writing, may be given by that party’s legal counsel and shall be (a) personally delivered, or (b) sent by registered or certified mail, postage prepaid, or (c) sent by facsimile, or (d) sent by reputable overnight courier (such as FedEx), and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the Party to receive such notice, (ii) if mailed, three (3) business days following the date of posting by the United States Postal Service, (iii) if sent by facsimile, when sent, or (iv) if sent by reputable overnight courier, two (2) business days after deposit with the overnight courier. Any notices, requests, demands, documents, approvals or disapprovals given or sent by facsimile must be confirmed within forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing. The addresses and fax numbers of the Parties are as follows:

To County: County of Mariposa  
P.O. Box 784  
Mariposa, CA 95338  
Attn: County Administrative Officer  
Telephone: (209) 966-3222  
Fax: (209) 966-5147

To Owner: Palm Springs Village -309 LLC  
c/o Far West Industries  
2922 Daimler St.  
Santa Ana, CA 92705  
Attn: Scott A. Lissoy  
Telephone: (949) 224-1970  
Fax: (949) 224-1963

8.15 **Attorneys’ Fees.** In the event of a default by either party hereto which becomes the subject of litigation, the losing party agrees to pay the reasonable legal fees actually incurred by the prevailing party. For purposes of this Section, a party will be considered to be the “prevailing party” if (a) such party initiated the litigation and substantially obtained the relief which it sought (whether by judgment, voluntary agreement or action of the other party, trial, or alternative dispute resolution process), (b) such party did not initiate the litigation and either (i) received a judgment in its favor, or (ii) did not receive judgment in its favor, but the party receiving the judgment did not substantially obtain the relief which it sought, or (c) the other party to the litigation withdrew its claim or action without having substantially received the relief which it was seeking. The provision of this Section shall survive the termination of this Agreement.
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first stated above.

Owner: Palm Springs Village-309, LLC, a California limited liability company

By: Scott A. Lissoy, its Managing Member

County: County of Mariposa

By: John Carrier, Chair Board of Supervisors

Attest: 

Rehe La Roche.
Clerk of the Board

Approved as to Form:

Steven W. Dahlem,
County Counsel
EXHIBIT 'B'

Parcel 'C'

All that portion of the southeast quarter of Section 23, T. 5 S., R. 21 E., M.D.B. & M., more particularly described as follows:

BEGINNING at the northwest corner of the southeast quarter of said Section 23 as said corner is delineated on that certain map entitled "Parcel Map for Phillip E. Hauck" recorded November 23, 1973 as Parcel Map Book 7, Page 10, Mariposa County Records; thence, along the north line of the southeast quarter of said Section 23, North 89°22'46" East a distance of 1686.22 feet to the easterly boundary of that certain parcel of land described in Grant Deed recorded March 25, 1998 as Instrument No. 981284, Mariposa County Official Records; thence, along said easterly boundary, South 02°36'09" East a distance of 183.38 feet; thence, continuing along said easterly boundary, South 40°53'25" West a distance of 179.04 feet; thence, continuing along said easterly boundary, South 19°48'11" West a distance of 120.15 feet; thence, continuing along said easterly boundary, South 43°51'32" East a distance 200.74; thence, continuing along said easterly boundary, South 46°55'32" East a distance of 54.09 feet; thence, continuing along said easterly boundary, South 59°09'34" West a distance of 64.90 feet; thence, continuing along said easterly boundary, South 04°50'29" East a distance of 165.13 feet; thence, continuing along said easterly boundary, South 24°31'04" East a distance of 109.09 feet; thence, continuing along said easterly boundary, South 31°27'27" East a distance of 104.19 feet to the most southeasterly corner of Lot 16 as said Lot 16 is delineated on that certain map entitled "Map of Fish Camp Subdivision Block D", recorded October 2, 1944 as Record of Survey Map No. 116, Mariposa County Records; thence, along the northwesterly right-of-way line of State Highway No. 41, South 41°37" West a distance of 428.79 feet to the beginning of a non-tangent curve concave southeasterly and having a radius of 440.00 feet, a radial to said curve bears South 48°24'24" East; thence, southeasterly along said curve, through a central angle of 12°07'32" an arc distance of 93.12 feet to the southeasterly line of Fishcamp Lane as delineated on that certain map entitled "Yosemite Alpine Village" recorded May 20, 1969 as Record of Survey Map No. 1657, Mariposa County Records, a radial to said curve bears North 35°31'50" West; thence, along said southerly line, North 67°30'04" West a distance of 62.24 feet to the beginning of a tangent curve concave northeasterly and having a radius of 230.00 feet; thence, northerly along said curve, through a central angle of 44°30'54" an arc distance of 178.69 feet; thence, along said northerly line, North 15°34'51" West a distance of 165.83 feet to the beginning of a nontangent curve concave northeasterly and having a radius of 430.00 feet, a radial to said curve bears North 74°27'14" East; thence, northerly along said curve, through a central angle of 08°55'00" an arc distance of 66.92 feet to the northeast corner of Lot 2 of said "Yosemite Alpine Village"; thence, along the northerly boundary of said "Yosemite Alpine Village", South 72°01'06" West a distance of 265.35 feet; thence, continuing along
said northerly boundary, South 65°36'04" West a distance of 60.10 feet; thence, continuing along said northerly boundary, South 59°09'59" West a distance of 246.08 feet; thence, continuing along said northerly boundary, South 50°07'50" West a distance of 200.23 feet; thence North 00°06'36" West a distance of 180.01 feet; thence North 67°03'27" West a distance of 238.83 feet; thence South 80°16'29" West a distance of 259.44 feet to a point on the west line of the southeast quarter of said Section 23; thence, along said West line, North 02°23'27" West a distance of 1138.25 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM that certain real property previously described in Grant Deed recorded January 29, 1975 in Volume 152, Page 451, Mariposa County Official Records, said certain real property being more particularly described as follows:

Commencing at the most southeasterly corner of said Lot 16; thence, along the northwesterly right-of-way line of State Highway No. 41, South 41°37' West a distance of 428.79 feet to the beginning of a non-tangent curve concave southeasterly and having a radius of 440.00 feet, a radial to said curve bears South 48°24'24" East; thence, southwesterly along said curve, through a central angle of 05°30'17" an arc distance of 42.27 feet to the northeasterly line of Fishcamp Lane as shown on said "Yosemite Alpine Village"; thence, along said northeasterly line of Fishcamp Lane, North 67°30'04" West a distance of 61.04 feet to the beginning of a tangent curve concave northeasterly and having a radius of 170.00 feet; thence, northeasterly along said curve, through a central angle of 51°55'13" an arc distance of 154.05 feet; thence North 15°34'51" West a distance of 37.12 feet to the POINT OF BEGINNING; thence, along said northeasterly line of Fishcamp Lane, North 15°34'51" West a distance of 112.78 feet to the beginning of a non-tangent curve concave easterly and having a radius of 370.00 feet a radial to said curve bears North 74°22'55" East; thence, northwesterly along said curve, through a central angle of 07°12'40" an arc distance of 46.57 feet to the point of intersection with a curve concave southeasterly and having a radius of 230.87 feet a radial to said curve bears South 61°56'59" East; thence, Northeasterly along said curve, through a central angle of 07°03'43" an arc distance of 28.46; thence South 54°53'16" East a distance of 60.87 feet to the beginning of a non-tangent curve concave easterly and having a radius of 170.00 feet a radial to said curve bears South 54°53'16" East; thence, southwesterly along said curve, through a central angle of 50°40'00" an arc distance of 150.33 feet to the POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM a tract of property situated in a portion of the southeast quarter of said Section 23, more particularly described as follows:

Commencing at the most southeasterly corner of Lot 16 as said Lot 16 is delineated on that certain map entitled "Map of Fish Camp Subdivision Block D", recorded October 2, 1944 as Record of Survey Map No. 116, Mariposa County Records; thence, along the northwesterly right-of-way line of State Highway No. 41, South 41°37' West a distance of 428.79 feet to the beginning of a non-tangent curve concave southeasterly and having a radius of 440.00 feet, a radial to said curve bears South 48°24'24" East; thence, southwesterly along said curve, through a central angle of 05°30'17" an arc distance of 42.27 feet to the northeasterly line of Fishcamp Lane as delineated on that certain map.
entitled "Yosemite Alpine Village" recorded May 20, 1969 as Record of Survey Map No. 1657, Mariposa County Records; thence, along said northeasterly line of Fishcamp Lane, North 67°30'04" West a distance of 61.04 feet to the beginning of a tangent curve concave northeasterly and having a radius of 170.00 feet; thence, continuing along said northeasterly line of Fishcamp Lane northwesterly along said curve, through a central angle of 38°02'20" an arc distance of 112.86 feet to a point, a radial to said curve though said point bears North 60°32'16" East, said point also being the POINT OF BEGINNING of the herein described tract of property; thence, continuing northwesterly along said curve, through a central angle of 13°52'53" an arc distance of 41.19 feet; thence, continuing along said northeasterly line of Fishcamp Lane, North 15°34'51" West a distance of 37.12 feet to the most southerly corner of that certain parcel of land described in Grant Deed to Mariposa County, recorded January 29, 1975, in Volume 152 at Page 451, Mariposa County Official Records, said most southerly corner also being the beginning of a non-tangent curve concave easterly and having a radius of 170.00 feet a radial to said curve bears North 74°26'44" East; thence, leaving said northeasterly line of Fishcamp Lane and traversing northeasterly along the easterly line of said parcel grant deeded to Mariposa County, northeasterly along said curve and the easterly line of said certain parcel of land, through a central angle of 12°41'09" an arc distance of 37.64 feet; thence, leaving the easterly line of said certain parcel of land, North 65°37'28" East a distance of 53.17 feet; thence South 24°22'32" East a distance of 114.00 feet; thence South 65°37'28" West a distance of 70.00 feet to the POINT OF BEGINNING.

Containing 44.26 Acres, more or less.