

AGREEMENT TO SATISFY SPECIAL CONDITION #1, MS 23-2007

This Agreement to Satisfy Special Condition #1, MS 23-2007 (“**Agreement**”) is entered into as of the Effective Date by and between the Pinoleville Pomo Nation (hereinafter referred to as the “**Tribe**”) by and through its Tribal Chairperson, Leona Williams, the Pinoleville Pomo Trust (hereinafter referred to as the “**Trust**”) by and through the Interim Receiver of the Trust, acting as Trustee, Christopher Neary, and by the County of Mendocino, California (hereinafter referred to as “**County**”), by and through the Director of the Department of Planning and Building Services. The Tribe, Trust and County may hereinafter be referred to collectively as the “**Parties**.”

RECITALS

A. For more than 100 years, the Trustees of the Pinoleville Indians (hereinafter referred to as “**Trustee**”), by and through its Interim Receiver, Christopher J. Neary, has owned certain real property in the County of Mendocino, State of California, consisting of approximately 68.5 acres, located on or near Orr Springs Road, Ukiah, California and, as of November 2008, comprising all or part of Mendocino County Assessor Parcel Numbers 169-110-05; 169-110-21; and 169-170-04 (the “**Property**”).

B. The property is the subject of *In the Matter of the Trusteeship of the Pinoleville Indians*, Case No. CV-5220 in the Superior Court of California, Mendocino County. This is one of the oldest known pending cases in California. In *In the Matter of the Trusteeship of the Pinoleville Indians*, the Court has determined that the Tribe may purchase the Property, and that certain recognized residents of the Property may remain on the Property and be given the option to purchase portion(s) of the Property.

C. On or about April 2, 2002, the Court in *In the Matter of the Trusteeship of the Pinoleville Indians* issued an Order for the Dissolution of the Trusteeship of the Pinoleville Indians and for the Distribution of Trust Assets (the “**April 2, 2002 Order**”), attached hereto as **Exhibit A**. In the April 2, 2002 Order, the Court ordered the distribution of the Property. As relevant to this Agreement, the Court’s order makes clear that the Property must be subdivided prior to being offered for sale to the Tribe and/or the certain recognized residents.

D. The Planning Commission of the County of Mendocino has identified certain requirements that must be satisfied to effectuate the subdivision of the Property, including a condition known as Special Condition #1 (“**Special Condition #1**”). Special Condition #1 requires that “[p]rior to recordation of the Parcel Map, all building and zoning violations shall be adequately addressed.”

E. The Parties are entering this Agreement for the purpose of adequately addressing all building and zoning violations as required by Special Condition #1.

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties hereby agree as follows:

1. **Existing Violations.**
 - a. The most recent code enforcement inspection conducted by the County took place on September 29, 2017. That inspection resulted in a re-inspection report identifying and detailing the code violations on the Property. This re-inspection report is attached hereto as **Exhibit B**. A map showing the location of the addresses is attached as **Exhibit C**.
 - b. To the extent that the violations have not already been resolved, the violations identified and described in the re-inspection report on September 29, 2017 are the violations that currently exist on the Property (“**Existing Violations**”).
 - c. In brief, the Existing Violations identified in the September 29, 2017 re-inspection report are:
 - i. **850 Orr Springs Road**
 - A. Excess trash and solid waste
 - B. Several inoperative vehicles
 - ii. **850 Orr Springs Road**
 - A. Occupied, non-permitted mobile home
 - B. Excess trash, solid waste, and fencing
 - C. Inoperative vehicles
 - D. Occupied recreational vehicles
 - iii. **870 Orr Springs Road**
 - A. Non-permitted mobile home with attached deck.
 - iv. **880 Orr Springs Road**
 - A. Abandoned/dilapidated dwelling deemed to be an unsafe structure
 - B. Abandoned vehicles
 - C. Excess solid waste and garbage
 - v. **960 Orr Springs Road**
 - A. Non-permitted mobile home that is substandard
 - B. Excessive amounts of solid waste and garbage
 - C. Non-permitted fence
 - d. **Other Sites.** The County is not currently aware of any existing building code violations for the following, which are therefore not included within the definition of Existing Violations:
 - i. 970 Orr Springs Road
 - ii. 890 Orr Springs Road
2. **Plan to Resolve the Existing Violations.**
 - a. After this Agreement is executed, and after the final parcel map has been recorded for the purpose of subdividing the Property, the Trust intends to sell the Property to the Tribe, thereby transferring title of the Property to the Tribe. In taking title to the Property, the Tribe will accept responsibility for all building and zoning violations that exist on the Property at the time of the sale.
 - b. The Tribe hereby agrees to perform all the work necessary to resolve the Existing Violations in accord with the terms of this Agreement and in accord with all applicable laws (“**Abatement Work**”), including but not limited to obtaining any County permits that are required to perform the Abatement Work, such as

construction permits and demolition permits.

- c. The Trust agrees that \$100,000.00 of the purchase price of the Property shall be set aside (“**Abatement Funds**”) and made available pursuant to the terms of this Agreement to ensure that the Existing Violations are resolved.
- d. The Tribe herein agrees to resolve the Existing Violations within two (2) years of sale of the Property.

3. **Administration of the Abatement Funds.**

- a. At the time of sale of the Property by the Trust to the Tribe, the Abatement Funds shall be disbursed by the escrow officer to the Trust, to be held, disbursed and accounted for by the Trust in the Trust’s account, pursuant to the terms of this Agreement.
- b. The Trust shall have no authority to disburse the Abatement Funds except by Court authorization through the continued administration of the Trusteeship of the Pinoleville Indians.
- c. Access to the Abatement Funds:
 - i. The Tribe may submit a written request to the Trust that specifies the amount requested, along with either the copies of receipts for work already performed and/or a description of how the money will be spent for work not yet performed. If the request is for work not yet performed, the Tribe shall also submit an estimate by the entity that will perform the work. At the time the Tribe submits a written request to the Trust, the Tribe shall provide a copy of any such written request to the County, consistent with section 8(f).
 - ii. The Trust will submit the Tribe’s request to the Court, and the Trust shall provide a copy of any such request to the County, consistent with section 8(f).
 - iii. At a time not less than five days following the Court’s receipt of the request from the Trust, the Court may grant the Trust authorization to release the requested amount if the request is reasonable and for the purpose of performing the Abatement Work or, upon request by any of the Parties to this Agreement or *sua sponte* by the Court, notice a hearing on the authorization to release.
 - iv. The Tribe shall keep all receipts and an accounting of all work performed, which the Tribe shall provide to the Court and to the Parties prior to the Court’s final acceptance and affirmation of the Tribe’s accounting.
- d. After the Existing Violations are resolved, all remaining, unused Abatement Funds shall be disbursed pursuant to Section 5(d)(iii) this Agreement.

4. **County’s Authority to Perform Abatement Work and Access Abatement Funds.**

- a. In the event the Tribe does not resolve all Existing Violations within two years of sale of the Property, the County may then commence its own actions to complete the Abatement Work.
- b. Parties agree that County may take any and all actions to complete the Abatement Work in the same manner as it would perform such work on any other property within its jurisdiction over which it had already received the authorization to

perform such work.

- c. Tribe, as Property owner, agrees to cooperate with County and take all actions necessary to enable County to complete the Abatement Work.
- d. To the extent consistent with state and federal law, the Tribe grants the County, and its authorized agents, the authority to enter the Property to perform the Abatement Work without notice to Tribe and without the need to obtain an inspection warrant, so long as such entrance is consistent with the terms of this Agreement.
- e. In the event the County commences its own actions to complete the Abatement Work, the County shall be allowed to utilize the Abatement Funds. The County shall access the Abatement Funds in the same manner as the Tribe, as provided for in Section 3(c), above.
- f. If the remaining Abatement Funds are insufficient to enable the County to perform the necessary Abatement Work, the Tribe agrees that the County may perform the actions necessary to complete the Abatement Work and then recover its costs in the same manner as if those costs were incurred as a result of abating a nuisance.
- g. Nothing in this Section 4 limits the County's ability to take any other enforcement action that it would otherwise have available to use for land within its jurisdiction. The County specifically retains its authority to utilize any other available statutory remedy that it would otherwise have available to address the Existing Violations if the Existing Violations are not resolved within two years of sale of the Property.

5. **Completion of Abatement Work and Court Hearing**

- a. Upon completion of the Abatement Work, the Tribe shall provide the County 30 days notice ("**Notice of Completion**"), consistent with Section 8(f), within which the County may inspect the Property to verify that that Existing Violations have been resolved. The Notice of Completion shall also provide a time and a date that is at least 5 days but not more than 15 days after the date of notice on which County may enter and conduct its inspection with a minimum 2-hour block of time to complete the inspection. Such time and date offered shall be between 8:00 am and 5:00 pm, and shall be on a date that the County is open for business.
- b. If County is unavailable to conduct the inspection on the time and date identified by Tribe at the time of its Notice of Completion, County may give notice to Tribe of an alternative time and date, so long as it is between 8:00 am and 5:00 pm on a date that the County is open for business ("**Alternative Notice**"). Upon proper notice to Tribe, permission is automatically granted to County by Tribe to enter the Property during the time and date stated in County's Alternative Notice unless Tribe or an occupant of the Property affirmatively refuses to grant County entry. After such refusal, County may seek an inspection warrant to conduct its inspection.
- c. At the conclusion of the County's inspection or the 30-day period following the Notice of Completion, the Tribe shall provide a copy of its accounting of the Abatement Funds ("**Accounting**") to both the Trust and the County.
- d. Upon receipt of the Accounting, the Trust shall request a court hearing and submit

the Tribe's Accounting to the Court for a determination that the Abatement Work is complete.

- i. During this hearing the County and Trust shall each have the opportunity to present opposition as to whether the Existing Violations have been resolved.
- ii. The Court will decide whether the Existing Violations have been resolved in accord with this Agreement, or whether additional Abatement Work is needed.
- iii. Upon the Court's final decision regarding the completion of the Abatement Work, any remaining Abatement Funds shall be disbursed to the Trust, unless the Court directs otherwise based on good cause.

6. **Limited Waiver of the Tribe's Sovereign Immunity.** The Tribe expressly and irrevocably waives its sovereign immunity (and any defenses based thereon) from suit for the purpose of enforcing the terms of this Agreement and consents to the jurisdiction of and to be sued in the Superior Court of Mendocino County. The Tribe hereby waives any requirement of exhaustion of tribal remedies. The Tribe does not waive any aspect of its sovereign immunity with respect to actions by third parties. Except for this limited waiver of sovereign immunity, nothing in this Agreement shall be construed as a waiver of sovereign immunity by the Tribe.

7. **Satisfaction of Special Condition #1.** County affirms that the terms of this Agreement will adequately address the building and zoning violations on the Property when this Agreement is fully executed and enforceable. If any building or zoning violation that is not identified in this Agreement is discovered by or made known to County after the Effective Date, such violation shall not impact the effect of this Agreement, and specifically shall not impact the County's determination with respect to Special Condition #1 as stated in this section.

8. **Miscellaneous Provisions.**

- a. The Trust agrees to include an additional note on the final parcel map that restricts any future permitting on the Property if the Tribe does not purchase the Property, except permits that would have been granted prior to subdivision, until after the Existing Violations have been resolved.
- b. Authorization .
 - i. Ms. Williams is authorized by the Pinoleville Pomo Nation to enter into this Agreement, and a copy of the Resolution of the Tribal Council providing said authorization is attached hereto as **Exhibit D**.
 - ii. Mr. Neary is authorized to enter into this Agreement through his authority as Interim Trustee of the Trust.
 - iii. The Director of Planning and Building Services is authorized to enter this Agreement based on his authority to verify that the final map of the subdivided Property conforms to the conditions of approval to subdivide the Property that were created by the Mendocino County Planning Commission, based on his authority over the Code Enforcement Division of the Department of Planning and Building Services, and based on his

authority provided by the Mendocino County Board of Supervisors by way of Resolution No. _____, a copy of which is attached hereto as **Exhibit E**.

- c. **Interpretation**: This Agreement shall be construed and enforced pursuant to the laws of the State of California, subject to Section 6, above.
- d. **Counterparts**: The Parties agree that this Agreement may be executed in counterparts. Each of the undersigned, whether signing separately or on the same document, agrees to each and every part of this Agreement.
- e. **Effective Date**: This Agreement shall not become effective until all signatories have executed this agreement. This Agreement shall be deemed effective as of the date that the last signatory, as listed below, signs this Agreement.
- f. **Severability**: In the event that a court of competent jurisdiction finds that any portion or provision of this Agreement to be illegal, invalid, unenforceable, nonbinding, or otherwise without legal force or effect, the remaining portion(s) will remain binding.
- g. **Notices**. Unless otherwise required or provided by this Agreement, all demands, notices, approvals and other communications hereunder (individually and collectively, **“Notices”**) shall be in writing and shall be emailed and mailed, first class mail, postage prepaid, and addressed as set forth below. Each Party shall make an ordinary, good faith effort to ensure that it will accept or receive Notices that are given in accordance with this Section, and that any Party to be given Notice actually receives such Notice. However, Notices shall be deemed served five (5) days after mailing, unless receipt is otherwise confirmed in writing. Any party to whom Notices are to be sent pursuant to this Agreement may from time to time change its address and/or email for future communication hereunder by giving Notice in the manner prescribed herein to all other Parties.

- i. **If to Trust**:
Christopher J. Neary
Interim Receiver
Neary and O’Brien
110 So. Main Street, Ste. C
Willits, CA 95490
cjneary@pacific.net

- ii. **If to Tribe**:
Leona L. Williams
Chairperson
500 B Pinoleville Drive
Ukiah, CA 95482
leonaw@pinoleville-nsn.gov

With a Copy to:
Padraic I. McCoy
Padraic I. McCoy, P.C.
6650 Gunpark Dr., Ste. 100

Boulder, CO 80301
pmc@pmccoylelaw.com

- iii. If to County:
Attn: Director
Dept. of Planning and Building Services
860 N. Bush Street
Ukiah, CA 95482
schultzb@mendocinocounty.org

With a Copy to:
Attn: County Counsel
Office of the County Counsel
501 Low Gap Rd., Rm. 1030
Ukiah, CA 95482
CoCoSupport@mendocinocounty.org

IN WITNESS WHEREOF, the Parties have signed the Agreement effective as of the last date written below.

Date: _____

Pinoleville Pomo Nation
By Leona Williams, Tribal Chairperson

Date: _____

Pinoleville Pomo Trust
By Christopher Neary, Interim Receiver/Trustee

Date: _____

County of Mendocino
By Brent Schultz, Director
Department of Planning and Building Services