

## **SETTLEMENT AGREEMENT**

This Settlement Agreement (“Agreement”) is made and entered into as of January \_\_\_\_, 2014 by and between Plaintiffs SIERRA CLUB and FRIENDS OF THE WEST SHORE (collectively referred to herein as “Plaintiffs”); and Defendants and Real Parties in Interest HOMEWOOD VILLAGE RESORTS, LLC, a Delaware limited liability company, and JMA VENTURES, LLC, a California limited liability company (collectively referred to herein as “HMR”). The parties hereto are the Sierra Club, Friends of the West Shore, and HMR, and may be collectively referred to as the “Parties” and individually as a “Party.”

### **DEFINITIONS**

For the purposes of this Agreement, the terms listed below are defined as follows:

1. “Action” means *Sierra Club, et al., v. Tahoe Regional Planning Agency, et al.* (Eastern District of California for the United States District Court, Civil Case No. 2:12-CV-00044-WBS-CKD).
2. “2011 EIR-EIS” means the Final Environmental Impact Report/Environmental Impact Statement (SCH No. 2008092008) certified by the Placer County Board of Supervisors and TPRA Governing Board on December 6, 2011 and December 14, 2011, respectively, for the Homewood Ski Area Master Plan Project. The 2011 EIR-EIS consists of: The Draft EIR-EIS, the Final EIR-EIS, and the appendices thereto.
3. “Agreement” means this Settlement Agreement.
4. “BAE” means BAE Urban Economics.
5. “Board of Supervisors” means the Board of Supervisors of Placer County.
6. “CEQA” means the California Environmental Quality Act (“CEQA”) (Pub. Resources Code, § 21000 et seq.).

7. “Compact” means the Tahoe Regional Planning Compact, Public Law No. 96-551, 94 Statute 3233 (1980), as amended.

8. “Complaint” means the Complaint for Declaratory and Injunctive Relief; and Related Pendant State Law Claims and Petition for Writ of Mandate filed by Plaintiffs on or about January 5, 2012, in this Action.

9. “County” means the County of Placer.

10. “District Court” means the Eastern District of California for the United States District Court.

11. “Effective Date” means the date this Agreement takes effect. The Effective Date shall be the date the Parties sign this Agreement, as indicated below. If the Parties sign this Agreement on different dates, then the latest date of signing by a Party shall be the Effective Date.

12. “EVA” means the Economic Viability Analysis prepared by BAE Urban Economics, dated September 5, 2013.

13. “Friends of the West Shore” means the community organization on the West Shore of Lake Tahoe identified in the Complaint filed in this Action, including its officers, directors, and agents, to the extent the officer, director, or agent is acting in his or her capacity as a representative or agent of Friends of the West Shore.

14. “Governing Board” means the TRPA Governing Board.

15. “HMR” means, collectively, HOMEWOOD VILLAGE RESORTS, LLC and JMA VENTURES, LLC, named as Defendants and Real Parties in Interest in the Complaint.

16. “MMRP” means mitigation monitoring and reporting plan.

17. “Modified Project” means the Homewood Ski Area Master Plan Project (Project) approved by the Placer County Board of Supervisors and TPRA

Governing Board on December 6, 2011 and December 14, 2011, respectively, as modified by HMR to allow HMR to implement the Project consistent with the terms of this Agreement (as described in Exhibit A to this Agreement).

18. “Project Modifications” means the changes to the Project proposed by HMR that will allow HMR to implement the Project consistent with the terms of this Agreement described in Exhibit A attached hereto.

19. “Plaintiffs” means the Sierra Club and Friends of the West Shore, individually and jointly, including each group’s officers, directors, and agents, to the extent the officer, director, or agent is acting in his or her capacity as a representative or agent of the plaintiff group.

20. “Project” means the Homewood Mountain Resort Ski Area Master Plan Project, approved by the Placer County Board of Supervisors and TPRA Governing Board on December 6, 2011 and December 14, 2011, respectively, as embodied and reflected in the Final EIR/EIS as “Alternative 1A.” The Project site encompasses about 1,200 acres on the western shore of Lake Tahoe, about six miles south of Tahoe City in Placer County, California, as further described in the 2011 EIR-EIS.

21. “Sierra Club” means the nationwide non-profit conservation organization identified in the Complaint, as well as all divisions, chapters, and groups of the Sierra Club, including the Tahoe Area Sierra Club Group, Mother Lode Chapter, and the Toiyabe Chapter, including each of their officers, directors, and agents, to the extent the officer, director, or agent is acting in his or her capacity as a representative or agent of the Tahoe Area Sierra Club Group, Mother Lode Chapter, Toiyabe Chapter, or the Sierra Club.

22. “TRPA” means the Tahoe Regional Planning Agency.

## RECITALS

A. On December 6, 2011, the Board of Supervisors for Placer County certified the 2011 EIR-EIS and approved the Homewood Mountain Resort Ski Area Master Plan Project. As part of Project approval, the Board of Supervisors adopted Findings of Fact, an MMRP, and a Statement of Overriding Considerations.

B. On December 14, 2011, the TRPA Governing Board certified the 2011 EIR-EIS and approved the Homewood Ski Area Master Plan - Community Enhancement Plan Phase I Project. As part of Project approval, the Board adopted Findings and an MMRP.

C. Plaintiffs Sierra Club and Friends of the West Shore jointly filed a Complaint on January 5, 2012 against Placer County and TRPA, naming HMR as Real Parties in Interest. The parties filed cross-motions for summary judgment and a hearing was held on the cross-motions on December 19, 2012.

D. On January 4, 2013, the District Court issued a decision on the cross-motions for summary judgment. The court held that the 2011 EIR-EIS's discussion regarding the feasibility of Alternative 6 was inadequate and must be revised and recirculated. In particular, the District Court determined that the record of proceedings before Placer County and TRPA did not contain "substantial evidence" supporting the agencies' decision to reject "Alternative 6" – an alternative consisting of reducing the size of the Project by approximately 15%. (Memorandum and Order re: Cross-Motions for Summary Judgment (January 4, 2013) ("Order"), pp. 49, 56.) The District Court held that Placer County and TRPA otherwise complied with CEQA and the Compact. Based on these conclusions, the District Court ruled as follows:

With respect to the EIR-EIS's analysis of Alternative 6 and to TRPA's and the County's findings that Alternative 6 is economically infeasible, plaintiffs' motion for summary judgment is GRANTED as to all defendants, and defendants'

cross-motions for summary judgment are DENIED. In all other respects, defendants' cross-motions for summary judgment are GRANTED and plaintiffs' motion for summary judgment is DENIED. This does not necessarily mean that the Project or some version of it may not go forward at some point in time. However, before it does, TRPA and the County must ensure that a legally adequate EIR-EIS has been certified and the necessary findings under CEQA and Compact have been made.

IT IS THEREFORE ORDERED that TRPA and the County shall not begin any construction of the Project without the preparation, circulation, and consideration under CEQA and the Compact of a legally adequate EIR-EIS with regard to Alternative 6 and adoption of the appropriate findings required by CEQA and the Compact.

(Order, pp. 113-114.)

E. HMR has provided the County and TRPA with a revised Economic Viability Analysis (EVA) prepared by BAE Urban Economics (BAE) regarding financial feasibility of the Homewood Mountain Resort Master Plan. The EVA, dated September 5, 2013, addresses issues raised in the District Court's January 4, 2013 Order and evaluates the financial feasibility of the approved Master Plan Alternative 1A, as compared to a scaled-back alternative, known as Alternative 6. The County and TRPA have peer reviewed the revised EVA. Plaintiffs have also reviewed the revised EVA.

F. In entering this Agreement, HMR and Plaintiffs intend to resolve the above-described litigation to the reasonable satisfaction of all parties without requiring TRPA and the County to modify, re-circulate, or re-certify the 2011 EIR-EIS as indicated in the District Court's January 4, 2013 Order. The centerpiece of this Agreement is the proposal by HMR to reduce the number of units (but not the aggregate or saleable square footage of the units from the originally approved Project) for the Project from 312 units to 299 units, thereby reducing the Project by thirteen (13) units. In addition, HMR has agreed to certain modifications to the Project included in Exhibit A to this Agreement. In

exchange, Plaintiffs agree to support a joint motion, stipulation, or any other pleadings necessary to dissolve the injunctive relief granted in the District Court's January 4, 2013 Order without requiring TRPA or the County to recirculate and recertify the EIR-EIS for the Project. Alternatively, in the event the Court refuses to dissolve the injunction, Plaintiffs agree not to submit written comments or present oral testimony to government agencies challenging or objecting to approval of the Modified Project or any documents circulated by the County or TRPA that either agency deems necessary to approve the Modified Project and to comply with CEQA, the Compact, the District Court's January 4, 2013 Order, or any subsequent court orders, or file a legal challenge against such approval. Plaintiffs further agree not to submit written comments or present oral testimony to government agencies challenging or objecting to any future project-level approvals, or permits to implement the Modified Project, consistent with this Agreement, or file a legal challenge against such approvals or permits, subject to the limitations set forth in Section 3.C below.

G. If approved by TRPA and the County, the Modified Project will become the approved HMR Ski Area Master Plan. The Parties recognize that TRPA and the County have made no commitment to approve the Project Modifications. The Parties further recognize that TRPA and the County shall exercise their independent judgment in determining what level of environmental review is necessary to process the Project Modifications and approve the Modified Project.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and/or covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **1. RECITALS**

The above recitals are true and are hereby incorporated by reference as part of this Agreement.

### **2. OBLIGATIONS OF HMR**

#### **A. Agreement Binding on HMR.**

HMR will abide by all terms of this Agreement for the term of this Agreement, including but not limited to the terms set forth in this Section.

#### **B. HMR Request to TRPA and County to Approve Project Modifications.**

HMR shall request that TRPA and the County approve Project Modifications that will allow HMR to implement the Project in a manner consistent with the terms set forth in Exhibit A to this Agreement. Plaintiffs acknowledge that the terms set forth in Exhibit A to this Agreement are contractual obligations on the part of HMR (not conditions of approval of the Project) and that HMR has sole discretion to determine what Project Modifications are necessary to allow HMR to implement the Project consistent with the terms of this Agreement. If TRPA and the County of Placer approve the Project Modifications proposed by HMR, the Modified Project will become the HMR Ski Area Master Plan and HMR agrees to comply with the terms included in Exhibit A in implementing the Modified Project.

The Parties recognize that TRPA and the County shall exercise their independent judgment in determining what level of environmental review is necessary to process HMR's application for the Project Modifications. If for any reason the County and TRPA do not approve HMR's Project Modifications, this agreement will terminate as provided in Section 4 below. If this Agreement

terminates for this reason and no person, entity, or group listed in Exhibit B to this Agreement or Plaintiffs submitted written comments or presented oral testimony to the County or TRPA challenging or objecting to the Project Modifications, HMR agrees not to object to or oppose any attempt by Plaintiffs to reinstitute the injunctive relief included in the District Court's January 4, 2013 Order, if such order has been vacated or dissolved. If this Agreement terminates for this reason and none of the persons, entities, or groups listed in Exhibit B to this Agreement or Plaintiffs submitted written comments or presented oral testimony to the County or TRPA challenging or objecting to the Project Modifications, HMR will pay Plaintiffs reasonable attorney's fees and costs for reinstating the injunction. If the injunction is reinstated, HMR may bring any motion(s) it deems necessary to address the January 4, 2013 Order or subsequent order(s) and Plaintiffs may oppose any such motion(s).

### **3. OBLIGATIONS OF PLAINTIFFS AND THEIR MEMBERS**

#### **A. Agreement Binding on Plaintiffs.**

Plaintiffs will abide by all the terms of this Agreement for the term of this Agreement, including but not limited to the terms set forth in this Section.

#### **B. Support Joint Motion to Dissolve Injunction without Further Environmental Review.**

Plaintiffs agree to support in writing a joint motion, stipulation, or any other pleading with HMR (and/or Placer County and TRPA) to remove the injunction issued by the District Court on January 4, 2013. In accordance with and limited to this provision, Plaintiffs agree to stipulate that recirculation of the EIR-EIS is not warranted or in the public interest in this Action because the revised EVA (referenced in Recital E above) addresses the District Court's January 4, 2013 Order, provides substantial evidence in support of the EIR-EIS's alternatives analysis, and thereby makes any revisions to the EIR-EIS, the County's CEQA findings, and TRPA's Compact findings unnecessary.

**C. No Objections or Challenges to Future Project Approvals  
Consistent with this Agreement.**

Plaintiffs agree to not to submit written comments or present oral testimony to government agencies opposing HMR's request that the County and TRPA approve the Project Modifications. Plaintiffs and their legal counsel (i.e., Earthjustice and Lozeau Drury LLP) further agree that, if TPRA and the County approve the Project Modifications, Plaintiffs and their legal counsel will neither challenge such approval in court nor fund lawsuits filed by any third party to challenge such approval.

Plaintiffs further agree not to submit written comments or present oral testimony to government agencies objecting to any future project approvals that are consistent with the HMR Ski Area Master Plan approved in December 2011 by TRPA, as analyzed in the 2011 EIR-EIS, and as modified by this Agreement, including but not limited to regulatory and permit approvals to implement the Modified Project. Plaintiffs, however, may submit comments and present testimony to government agencies on project-level reviews that were not performed in the December 2011 EIR-EIS (e.g., Tahoe Ski Bowl Way extension and 16 townhomes on North Base), provided, however, that these comments will focus on project-specific review and will not oppose the basic project features included in the HMR Ski Area Master Plan (e.g., the right to seek entitlements for 16 townhomes).

Plaintiffs shall not file any further administrative or legal action challenging either approvals of the Modified Project or approvals to implement the Modified Project (e.g., permits), including any project-level reviews that were not performed in the December 2011 EIR-EIS, as long as said approvals are consistent with the HMR Ski Area Master Plan approved in December 2011 by TRPA, as analyzed in the 2011 EIR-EIS, and as modified by this Agreement, except that Plaintiffs may challenge:

- (a) Any violation by HMR of the Modified Project's mitigation measures, conditions of approval, or the terms set forth in Exhibit A;
- (b) Any failure by TRPA or the County to enforce the Modified Project's mitigation measures or conditions of approval;
- (c) Any proposals by HMR (or its successors or assigns) to revise the Modified Project in a manner that conflicts with this Agreement; or
- (d) Any violation of law arising out of the Modified Project's implementation and/or operations (e.g., citizen's lawsuit to enforce an Endangered Species Act incidental take permit requirement). This exception does not permit Plaintiffs to challenge the approval of the Modified Project or any project-level permits or reviews that are consistent with the HMR Ski Area Master Plan, as analyzed in the 2011 EIR-EIS, and as modified by this Agreement.

Where HMR seeks changes to the Project consistent with the Project Modifications set forth in Exhibit A, Plaintiffs shall not submit written comments or present oral testimony to government agencies objecting to approval of the Modified Project or commence lawsuits or fund lawsuits by third parties challenging approval of the Modified Project or HMR's right to develop the Modified Project.

Plaintiffs acknowledge that if any person, entity, or group listed in Exhibit B to this Agreement takes any action that Plaintiffs would be prohibited from taking under this Agreement and Plaintiffs are unable to remedy that action's interference with HMR's ability to implement the Modified Project, HMR shall have the discretion to terminate this Agreement as provided in Section 4 below. Obtaining the withdrawal of a comment letter or oral testimony submitted to a governmental agency, or of a lawsuit opposing a project approval shall adequately remedy interference with HMR's ability to implement the Modified Project. Under no circumstances shall Plaintiffs be required to remedy, or to compensate any person or entity for, any financial losses or expenses incurred as a result of actions taken by persons listed in Exhibit B that would be grounds for HMR to

terminate this Agreement. Nor shall plaintiffs be required to do so as a condition for avoiding termination of this agreement.

#### **4. TERMINATION**

This Agreement shall continue in effect from its effective date until the earlier of the following dates: (a) the date when either TRPA or the County rejects the Project Modifications included in Exhibit A to this Agreement and HMR does not seek reconsideration within 90 days; (b) the first date when all of the Parties' obligations under this Agreement have been satisfied; (c) the TRPA permit for the Project expires by operation of law under Compact Article VI(p) or through voluntary relinquishment or any other means that results in both the voiding of the regulatory approvals and other entitlements related to the permit(s) that are the subject of this Agreement and the legal inability to continue Project construction and/or operations; (d) all parties agree in writing to terminate this Agreement; (e) HMR elects to terminate this Agreement because Plaintiffs fail to cure a breach of this Agreement as provided in Section 13.B of this Agreement; or (f) HMR elects to terminate this Agreement because Plaintiffs fail to remedy an interference with HMR's ability to implement the Modified Project caused by any person, entity, or group listed in Exhibit B to this Agreement challenging or objecting to the Modified Project to the extent Plaintiffs would be prohibited from doing so under this Agreement as provided in Section 13.B of this Agreement. At that time, the owner of the Project site shall provide Plaintiffs with notice 10 days in advance of the termination of this Agreement.

#### **5. NO ADMISSIONS**

The Parties understand and agree that nothing in this Agreement, or in the execution of this Agreement, shall constitute or be construed as an admission by any Party of any inadequacy or impropriety in connection with the allegations contained in this Action. This Agreement is the result of a compromise and nothing contained herein shall be construed as an admission of liability, responsibility, or wrongdoing by any Party hereto. It is agreed that all statements contained herein and the conduct of any Party in connection with this Agreement

shall be inadmissible as evidence under Federal Rules of Evidence 408 and California Evidence Code § 1152(a), except that the statements contained herein shall be admissible in any action to enforce or interpret this Agreement.

**6. BINDING ON SUCCESSORS IN INTEREST**

In signing this Agreement, HMR represents to Plaintiffs that, in any future transactions by which HMR conveys land within the Project to any successor(s) in interest while this Agreement is in effect, HMR shall include provisions requiring such successor(s) to be bound by the terms of this Agreement as specified in Exhibit A.

**7. MODIFICATIONS; WAIVER; INDEMNIFICATION**

This Agreement may not be amended or modified by the Parties except in writing executed by all Parties. No waiver of any provision of this Agreement shall be binding unless executed in writing by the Party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar. Nor shall any waiver constitute a continuing waiver.

Except as otherwise expressly provided herein, each Plaintiff for and in consideration of the mutual promises and consideration set forth in this Agreement, expressly releases, waives and relinquishes and forever discharges TRPA, the County, and HMR from all claims, demands, actions, liabilities and causes of action, of every nature and kind whatsoever, whether known or unknown, suspected or unsuspected, asserted or unasserted, or hereafter discovered or ascertained, in law or equity, by reason of any matter, cause or thing whatsoever, it has or may have with respect to the Project and TRPA's and the County's approval of the Project, including claims set forth in the Complaint, and those claims Plaintiffs could have included in their Complaint. Each Plaintiff understands, acknowledges, and agrees that this Agreement constitutes a complete and sufficient defense barring any such claim, and TRPA, the County, and HMR, can rely upon this Agreement as a complete defense. This Agreement does not

constitute a release or waiver by Plaintiffs of claims that may accrue in the future or are otherwise unrelated to the Complaint or the Project, including:

(a) Any violation by HMR of the Modified Project's mitigation measures, conditions of approval, or terms set forth in Exhibit A;

(b) Any failure by TRPA or the County to enforce the Modified Project's mitigation measures or conditions of approval;

(c) Any proposals by HMR (or its successors or assigns) to revise the Modified Project in a manner that conflicts with this Agreement; and

(d) Any violation of law arising out of the Modified Project's implementation and/or operations (e.g., citizen's lawsuit to enforce an Endangered Species Act incidental take permit requirement). This exception does not permit Plaintiffs to object to or challenge the approval of the Modified Project and any project-level permits and reviews that are consistent with the HMR Ski Area Master Plan, as analyzed in the 2011 EIR-EIS, and as modified by this Agreement.

Each Plaintiff acknowledges and agrees that all rights under Section 1542 of the California Civil Code are expressly waived. That section provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Each Plaintiff acknowledges that its attorney-at-law has explained to it the meaning and effect of this statute. Each Plaintiff understands fully the statutory language of Civil Code Section 1542 and, with the understanding, each Plaintiff nevertheless elects to, and does, assume all risk for claims released under this Agreement heretofore and hereafter arising, known or unknown, and each Plaintiff specifically waives any rights it may have under Civil Code Section 1542. Each Plaintiff fully understands that if the facts with respect to this Agreement are found hereafter to be other than or different from the facts now believed by it to be true, it expressly accepts and assumes the risk of such possible

difference in facts and agrees that this Agreement shall be and remain effective, notwithstanding such difference in facts.

\_\_\_\_\_ Sierra Club (Initials)

\_\_\_\_\_ Friends of West Short (Initials)

Each Plaintiff hereby further agrees never to commence, prosecute, or fund against HMR, the County, or TRPA, any action or any other proceeding based in whole or in part upon any rights, liens, claims, demands or causes of action of any nature whatsoever waived, released or discharged by this Agreement. This Agreement may be pled as a full and complete defense to any subsequent action or other proceeding involving any person or Party which arises out of the rights, liens, claims, demands or causes of action waived, released and discharged by this Agreement.

The Parties acknowledge that this Agreement is being entered into in settlement and to avoid further dispute, expense or litigation. The Parties agree that neither execution hereof nor performance of any of the provisions of this Agreement shall constitute or be construed as an admission on the part of either Party of any liability regarding the claims, and nothing herein shall be admissible in any proceeding as an admission of any factual matter, liability or fault against any Party. Each Party agrees to indemnify and save harmless the other Parties from any loss incurred directly or indirectly by reason of the falsity or inaccuracy of any representation made herein by it, subject to the limitations in Section 13.B below.

**8. AMBIGUITIES AND INTERPRETATION**

This Agreement shall be deemed to have been drafted equally by all of the Parties, and shall not be interpreted for or against any Party by reason of the alleged authorship of any provisions. The Parties understand and agree that the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement. Each Party acknowledges that it is represented by counsel, and has had the benefit of advice from counsel with respect to this Agreement.

**9. CONVENIENCE AND REFERENCE**

The headings and numbers used in this Agreement are included for the purpose of convenience of reference only and they shall not be used to explain, limit, or extend the meaning of any part of the Agreement.

**10. SEVERABILITY**

If any term or provision of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law, unless the exclusion of such term or provision, or the application of such term or provision, would result in such a material change so as to cause completion of the obligations contemplated herein to be unreasonable, in which case the Parties shall work in good faith to amend this Agreement and/or take other action necessary to achieve the intent of this Agreement in a manner consistent with the ruling of the court.

**11. SUCCESSORS AND ASSIGNS BOUND**

The terms of this Agreement shall be binding and inure to the benefit of the Parties hereto and their successors, assigns, heirs, and representatives.

**12. GOVERNING LAW; VENUE**

This Agreement shall be construed under and governed by the laws of the United States and the State of California with venue in United States District Court for the Eastern District of California.

**13. REMEDIES FOR BREACH OF AGREEMENT**

**A. Notice and Opportunity to Cure**

Any Party shall receive written notice within 30 days of any alleged breach of this Agreement or its discovery. Upon receipt of any written notice of breach, the Party has 30 days to cure the alleged breach. If after 30 days the alleged breach has not been cured to the satisfaction of the Party alleging the

breach, the Party alleging a breach of the Agreement may seek a court order demanding specific performance consistent with subparagraph B of this Section. The Party alleging the breach may not unreasonably refuse to accept a Party's cure of an alleged breach of an affirmative obligation as set forth in this Agreement. Any enforcement of this Agreement may be sought against only the Party or Parties claimed to be in breach of the Contract, as well as their heirs, successors, assignees, and transferees of the Parties.

HMR shall provide written notice to Plaintiffs if it believes any person, group, or entity listed in Exhibit B takes any action that Plaintiffs would be prohibited from taking under this Agreement within 30 days of the action or its discovery. Upon receipt of such notice, Plaintiffs shall have 30 days to remedy the action's interference with HMR's ability to implement the Modified Project.

HMR shall provide written notice to Plaintiffs if any person has submitted a written comment or presented oral testimony before a government agency claimed to be offered on behalf of either Plaintiff in violation of this Agreement within 30 days of the submission of the comment or testimony, or its discovery. Upon receipt of such notice, Plaintiffs shall have 30 days to submit a letter to the agency either (1) withdrawing the comment or testimony, or (2) notifying the agency that the person is not authorized to speak on behalf of Plaintiff(s) with respect to the Modified Project and that the comment or testimony at issue does not represent Plaintiffs' position.

**B. Remedy if Party Fails to Undertake an Obligation under This Settlement Agreement**

The Parties agree that specific performance is an appropriate remedy for enforcement of this Agreement. The Parties acknowledge and agree that specific performance is the only appropriate remedy for any breach of this Agreement, and under no circumstances shall monetary damages be allowed for any breach of this Agreement. The Parties further agree that HMR may elect to terminate this Agreement if: (1) Plaintiffs fail to cure any breach of this Agreement within 30 days as specified in subparagraph A of this Section; or (2) Plaintiffs have not remedied an interference with HMR's ability to implement the Modified Project

caused by any action taken by any person, group, or entity listed in Exhibit B that Plaintiffs would be prohibited from taking under this Agreement as specified in subparagraph A of this Section within 30 days of receiving written notice from HMR of such action. This Agreement shall be admissible in any proceeding for its enforcement in accordance with Sections 1118 and 1123 of the California Evidence Code. In the event any action should be necessary to enforce the terms and conditions of this Agreement, each party shall bear their own attorneys' fees and costs, including the fees and costs of enforcing any judgment.

**14. AUTHORITY TO ENTER INTO THIS AGREEMENT**

Each person signing this Agreement on behalf of a Party hereby represents and warrants that he or she has complete authority to bind that Party to the terms and conditions of this Agreement.

**15. NOTICES**

All notices required under this Agreement shall be in writing, and may be given either personally or by registered or certified mail (return receipt requested) or facsimile. Any Party may at any time, by giving ten (10) days' written notice to the other Party, designate any other person or address in substitution of the address to which such notice shall be given. All notices required under this Agreement shall be given to the Parties at their addresses set forth below:

**IF TO SIERRA CLUB:**

Aaron Isherwood  
Coordinating Attorney  
Sierra Club Environmental Law Program  
85 Second Street, Second Floor  
San Francisco, California, 94105  
415-977-5680; 415-977-5793(fax)  
[aaron.isherwood@sierraclub.org](mailto:aaron.isherwood@sierraclub.org)

Terry Davis  
Director  
Motherlode Chapter  
Sierra Club  
909 12<sup>th</sup> St. Street, Suite 202  
Sacramento, CA 95814  
(916) 557-1100 x108  
(916) 557-9669 (fax)

**With copies to:**

TRENT W. ORR  
WENDY S. PARK  
Earthjustice  
50 California St., Suite 500  
San Francisco, CA 94111  
(415) 217-2000  
(415) 217-2040(fax)  
[torr@earthjustice.org](mailto:torr@earthjustice.org); [wpark@earthjustice.org](mailto:wpark@earthjustice.org)

**IF TO FRIENDS OF THE WEST SHORE:**

SUSAN GEARHART  
P.O. Box 3442  
Fremont, CA 94539  
Tel: (510) 579-1257  
[susan@friendswestshore.org](mailto:susan@friendswestshore.org)

**With copies to:**

MICHAEL LOZEAU  
Lozeau Drury LLP  
410 12th Street, Suite 250  
Oakland, CA 94607  
Tel: (510) 836-4200  
Fax: (510) 836-4205  
[michael@lozeaudrury.com](mailto:michael@lozeaudrury.com)

TRENT W. ORR  
WENDY S. PARK  
Earthjustice  
50 California St., Suite 500  
San Francisco, CA 94111  
(415) 217-2000  
(415) 217-2040(fax)  
[torr@earthjustice.org](mailto:torr@earthjustice.org);  
[wpark@earthjustice.org](mailto:wpark@earthjustice.org)

**IF TO HMR:**

Todd Chapman  
President, JMA Ventures, LLC  
180 Sansome Street, Suite 1200  
San Francisco, CA. 94140  
(415) 728-0791  
(415) 777-1878 (fax)

Art Chapman  
David Tirman  
JMA Ventures, LLC  
P.O. Box 3938  
Truckee, CA. 96160  
(530) 581-5472  
(530) 581-5477 (fax)

**With copies to:**

Whitman F. Manley  
Howard F. Wilkins III  
Remy Moose Manley, LLP  
455 Capitol Mall, Suite 210  
Sacramento, CA 95814  
(916) 443-2745  
(916) 443-9017 (fax)  
[wmanley@rmmenvirolaw.com](mailto:wmanley@rmmenvirolaw.com)  
[hwilkins@rmmenvirolaw.com](mailto:hwilkins@rmmenvirolaw.com)

**16. EFFECTIVE DATE**

This Agreement shall be effective (“Effective Date”) as of the date of the signing by the last signatory to the Contract.

**17. COUNTERPART EXECUTION**

This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date hereinafter written.

**SIERRA CLUB**

By: \_\_\_\_\_  
Name: Laurel Ames  
Title: Conservation Chair, Tahoe Area Sierra Club  
Dated: January \_\_\_\_, 2014

**FRIENDS OF THE WEST SHORE**

By: \_\_\_\_\_  
Name: Susan R. Gearhart  
Title: President, Friends of the West Shore  
Dated: January \_\_\_\_, 2014

**HOMEWOOD VILLAGE RESORTS, LLC,**  
a Delaware limited liability company,

By: \_\_\_\_\_  
Name: Art Chapman  
Dated: January \_\_\_\_, 2014

**JMA VENTURES, LLC,**  
a California limited liability company,

By: \_\_\_\_\_  
Name: Todd Chapman  
Title: President, JMA Ventures, LLC  
Dated: January \_\_\_\_, 2014

**Approved as to form:**

Dated: January \_\_\_\_, 2014

\_\_\_\_\_  
WHITMAN F. MANLEY on behalf Homewood Village Resorts, LLC, and JMA  
Ventures, LLC

Dated: January \_\_\_\_, 2014

\_\_\_\_\_  
WENDY S. PARK on behalf of Sierra Club and Friends of the West Shore

Dated: January \_\_\_\_, 2014

\_\_\_\_\_  
MICHAEL LOZEAU on behalf of Friends of the West Shore

## Exhibit A

HMR agrees to implement and operate the Homewood Ski Area Master Plan Project (Project) approved by the Placer County Board of Supervisors and TPRA Governing Board on December 6th, 2011 and December 14, 2011, respectively, consistent with the following terms. HMR has discretion to seek any modifications to the original Project approvals that it deems necessary to comply with these terms. This Agreement is contingent on, TRPA and County approving the modifications to Project sought by HMR to comply with the following terms and Plaintiffs meeting their obligations under this Agreement.

- A. HMR agrees to eliminate seven (7) units from the gravel parking lot site (Fawn Parcel) approved as part of the Project and require restoration of all undeveloped areas of the Fawn Parcel site (“SEZ”) to its natural ground filtration system, using LID and native plant landscaping. (A copy of the Placer County Online GIS MAP for the Fawn Parcel is attached as Exhibit C to this Agreement.) This provision does not restrict or reduce the square footage or footprint of Project except as expressly provided for below. In addition, HMR agrees to the following provisions relating to the Fawn Parcel:
1. The Fawn Parcel SEZ must be restored to an effectively functioning stream environment zone that is well-designed to slow, spread and treat the runoff from both storm water and snowmelt. The SEZ is to be monitored for five years, above the site of incoming flow of runoff to the SEZ and below the site at which it leaves the SEZ, to assess the effectiveness of the SEZ to treat the runoff for sediment, phosphorus, and nitrates. The site will be maintained and protected as a SEZ in perpetuity. Monitoring results shall be reported to the public via the Homewood website on an annual basis. Restoration must be completed within the first construction season following the completion of construction of the condominiums on the Fawn Parcel.
  2. No coverage transferred from the Fawn Parcel may be transferred to any other SEZ area on the resort property.
  3. No snow storage (other than natural fallen snow) may be allowed on the SEZ.
  4. HMR will work with plaintiffs on the final design to ensure the SEZ is protected from foot traffic.
  5. HMR will screen the Fawn parcel parking lot from Sacramento St.

6. Total revised coverage on the Fawn parcel will be no more than 23,000 square feet.

B. HMR agrees to eliminate six (6) other units (to be selected by HMR) at the South Base of the Project. (A total of thirteen (13) units must be eliminated for the Project based on this provision and Paragraph A above.) This provision does not restrict or reduce the square footage or footprint of Project except as expressly provided for above.

C. In addition to the requirements of TRPA Traffic Monitoring and Reporting Permit Condition T(3), HMR agrees to comply with the following additional terms, which are underlined:

The permittee shall monitor traffic patterns for a period of not less than 20 years, beginning upon completion of Phase I. Annual traffic monitoring and reporting will continue for at least 20 years after the construction of Phase II. In the event Phase II is delayed or not implemented, traffic will continue to be monitored for 20 years after the completion of Phase I. Permittee shall also submit to TRPA, and make available to the public, a traffic monitoring report on an annual basis for the duration of the monitoring period. The monitoring shall include at a minimum:

1. Traffic counts at the project hotel entrance driveway, Fawn Street, and on Tahoe Ski Bowl Way at the intersections with State Route 89, for both peak winter and peak summer periods, including a peak weekend (Friday through Sunday) in the second half of February and the first half of August.

1a. Traffic counts and cars per minute at the Resort's North Base ingress/egress on State Route 89 and at the intersection of Fawn Street and the intersection of Tahoe Ski Bowl Way, during a peak period (including a peak weekend — Friday through Sunday) in August. The method for collecting this information (e.g. tubes, electronic methods, etc.) shall comply with Caltrans' and/or the Institute of Transportation Engineers manual's methodology for ensuring accurate traffic data collection. Traffic counts, and associated estimates of LOS, will be compared to estimates in the EIR-EIS to assess whether anticipated traffic levels are being maintained or exceeded. HMR shall also attempt to analyze to what extent increased traffic on State Route 89 is attributable to the Project based on any reported traffic counts from Caltrans during the monitoring period. HMR will attempt to coordinate its traffic monitoring with any Caltrans monitoring on State Route 89 in order to allow hourly traffic analysis to the extent practicable.

New traffic counts will be compared with the base and projected counts in the EIR-EIS.

2. Statistics (e.g., number of riders per day, directions of travel, peak periods of use, etc.) on alternative modes of transportation usage patterns including shuttles, bike program, water taxi, etc.;
3. HMR will provide TRPA with a statistical survey of visitors' use of all public transit and alternative forms of transportation. Survey will assess:
  - Level of use/ridership to and from HMR on public transit and other alternative forms of transportation including shuttles, bike program, water taxi, etc. for use in promoting the use by guests of such other modes of transit.
4. Reports will also include:
  - Traffic counts and LOS measurements as taken by Caltrans north and south of the project along S.R. 89, from Meeks Bay to Tahoe City, to the extent such information is available;
  - Truckee/North Tahoe Transportation Management Association's (TNT-TMA's) public transit schedules, level of use/ridership, frequency, days/hours transit is available, etc., and any related information that is provided by TNT-TMA to assess how to improve transit ridership.

- D. HMR agrees to provide a report with the number of earth moving construction truck trips to Plaintiffs on an annual basis during the earth moving phase of the Project.
- E. HMR agrees to work with TNT-TMA to optimize transit ridership to and from HMR.
- F. HMR agrees to use best efforts to limit traffic generated by amphitheater events to the capacity of HMR's on-site parking and shuttles. This provision is not intended to prohibit the sale of tickets to individuals walking or using alternative forms of transportation to attend amphitheater events.
- G. HMR agrees to prohibit recreational uses which generate significant air, water, and/or noise pollution on all HMR-owned areas outside of the project area footprint that are currently zoned or deed-restricted as "recreational use under HMR's Ski Area Master Plan approved in December 2011 by TRPA." The following uses (unless approved in the

2011 Ski Area Master Plan) shall also be prohibited in those areas: garages, parking lots, major maintenance facilities, employee housing, secondary residences, permanent bars and restaurants other than seasonal facilities to serve skiers, and permanent day lodges. No new access roads shall be allowed on the mountain except (1) fire roads approved by fire authorities, or (2) access roads ancillary to recreational uses. A new access road on the mountain, if constructed, shall restore not less than 125% of the coverage associated with the new road.

- H. HMR agrees to prohibit tennis courts, tennis clubs, ice rinks, roller coasters, and athletic fields on the Mountain.
- I. HMR agrees to screen the mid-mountain buildings with trees to improve scenic views of the mountain from the roadway and the Lake.
- J. HMR agrees to modify the Project to reduce the size of all facility floor areas at Mid-Mountain to no more than 30,000 sq. ft.
- K. HMR agrees to retire 44,000 square feet of coverage, in addition to the 178,000 sq. ft. of coverage already required.
- L. HMR agrees to provide 30-day notice on HMR's website about construction activities and other planned significant noise-generating activities (with the exception of snow-making), and consult with neighbors at least twice per year (before seasonal scheduled activities, such as construction in the summer, by April 15, and snow-making in the winter, by November 15), at HOA or other community meetings. Consultation will include the placement of any sound buffers for snow-making equipment to the extent feasible (as that term is defined by CEQA) and necessary, taking into consideration the location of noise sensitive uses and the fact that the location for individual snow making machinery may change regularly (daily) based on snow and weather conditions.
- M. HMR agrees to not seek approval of the 20 lock-off units studied in the EIR-EIS.
- N. HMR agrees to not seek approval of an expansion in physical development on HMR's property that would require additional TAUs, ERUs, or CFA, beyond the levels in the HMR Ski Area Master Plan approved in December 2011 by TRPA, as modified by this Agreement.
- O. HMR agrees to comply with all 2011 TRPA and Placer County permit conditions for the Project unless they are modified by TRPA or the County to implement the Project consistent with this Agreement.

- P. Within 30 day of the Effective Date of this Agreement, HMR agrees to request the County of Placer to prohibit public parking on Tahoe Ski Bowl Way and support a prohibition proposed by the County. HMR shall provide a copy of its written request to Placer County to Plaintiffs. This agreement is not contingent on County of Placer acting on or approving this request.
- Q. HMR agrees that no third-party construction equipment and other heavy equipment, including motorized vehicles and trailers (“heavy equipment”), shall be stored on the Fawn Parcel SEZ (as defined in Section A of this Exhibit). After construction begins, HMR agrees that no construction and/or heavy equipment shall be stored on the portion of the Fawn parcel that TRPA has already identified as SEZ. After construction is completed, HMR agrees that all construction and/or heavy equipment shall be removed from the entire Fawn parcel to facilitate restoration of the parcel.
- R. HMR agrees this Agreement shall be binding on all future owners, lessees, or other transferees, except that, five years after the completion of Phase II, condition N shall not bind any future owners, lessees, or other transferees.

## Exhibit B

HMR may, at its sole discretion, terminate this agreement if any of the following individuals or groups object to or challenge the Modified Project if Plaintiffs would be prohibited from doing so under this Agreement. If any person, entity, or group changes its name, this provision shall apply to that person's, entity's or group's new name.

In addition, for those individuals, groups, or entities marked with an asterisk, HMR may, at its sole discretion, terminate this agreement if those individuals, groups or entities object to or challenge the Modified Project in their capacity as a legal representative of any person if Plaintiffs would be prohibited from doing so under this Agreement.

Laurel Ames  
Susan R. Gearhart  
Judith Tornese  
Steve Toschi  
Bruce Carswell  
Dana Spencer  
Jennifer Quashnick  
Earthjustice\*  
Trent Orr\*  
Wendy Park\*  
Lozeau Drury, LLP\*  
Michael Lozeau\*

**Exhibit C**

**[See Attached Placer County Online GIS Map for APN 097-140-003-000,  
dated 7/7/2011]**

## PLACER COUNTY, CALIFORNIA

## FAWN PARCEI

<b>APN</b>	097-140-003-000
<b>Address</b>	NO ADDRESS ON FILE ,
<b>Approx. Acres</b>	1.6919
<b>Zoning</b>	157 HOMEWOOD SKI AREA CONSERVATION
<b>Community Plan Area</b>	West Shore Area General Plan
<b>MAC Area</b>	NORTH TAHOE REGIONAL ADVISORY COUNCIL
<b>Supervisor District</b>	BOARD OF SUPERVISORS DIST 5
<b>Fire District</b>	NORTH TAHOE FIRE
<b>School District</b>	TAHOE TRUCKEE JOINT SCHOOL DISTRICT

