

San Miguel Conservation Bank

SAN MIGUEL CONSERVATION BANK AGREEMENT

THIS SAN MIGUEL CONSERVATION BANK IMPLEMENTATION AGREEMENT (the "**Conservation Bank Agreement**") is made and entered into this 27th day of August, 1997, by and between Emerald Properties, Corp., a New York corporation ("**Bank Property Owner**"), the California Department of Fish and Game ("**CDFG**"), and the United States Fish and Wildlife Service ("**USFWS**") (CDFG and USFWS are referred to collectively hereinafter as the "**Wildlife Agencies**").

RECITALS

A. Bank Property Owner is the owner of certain real estate located in the sphere of influence of the City of Chula Vista, County of San Diego, California, consisting of a 738 acre southern parcel (the "**South Parcel**") and a 1,852 acre northern parcel (the "**North Parcel**") (the South Parcel and the North Parcel referred to collectively as the "**San Miguel Ranch**") and is located regionally as shown on the map attached hereto as **Exhibit A**. The North Parcel includes: (i) an approximately 500 acre parcel described in **Exhibit D** attached hereto (the "**500 Acre Parcel**"); (ii) an approximately 166 acre parcel described in **Exhibit E** attached hereto (the "**North Mitigation Parcel**"); and (iii) approximately 1,186 acres described in **Exhibit C** attached hereto (the "**Bank Property**"). The South Parcel includes approximately 146 acres depicted in **Exhibit F** attached hereto (the "**South Mitigation Parcel**"). Substantially concurrently herewith, Bank Property Owner and USFWS have entered into an Agreement for the Acquisition of Lands with respect to the 500 Acre Parcel and the Bank Property (the "**500 Acre Purchase Agreement**").

B. Pursuant to the California Endangered Species Act, California Fish and Game Code §2050 et. seq. ("**CESA**"), and other State laws, CDFG has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of certain species set forth in such laws. CDFG is also the manager and trustee of fish and wildlife resources and their habitat pursuant to California Fish and Game Code § 1802.

C. USFWS has jurisdiction over the conservation, protection, restoration, enhancement and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species under the Endangered Species Act, 16 U.S.C. 1531, et seq. ("**ESA**"), and the Fish and Wildlife Coordination Act, 16 U.S.C. 661-666c, and Fish and Wildlife Act of 1956, 16 U.S.C. 742(f) et. seq. and other Federal law.

D. As illustrated in **Exhibit B** (Biological Resource Inventory), the North Parcel of the San Miguel Ranch supports a variety of native plant communities and comprises habitat which may be suitable for a variety of endangered, threatened and sensitive species including the Otay Tarplant, Diegan coastal sage scrub, Orange-throated Whiptail, California Gnatcatcher, the Golden Eagle, the Northern Harrier, the Cooper's Hawk and the Coastal Cactus Wren. The Multiple Species Conservation Plan ("**MSCP**") proposed for portions of San Diego County recognizes the North Parcel as consisting of "Very High Quality Multi-Species Habitat Values"

including coastal sage scrub consisting predominantly of "Very High Quality Habitat", and further recognizes the North Parcel as providing core gnatcatcher populations at a high density. The North Parcel also includes lesser acreage of other habitat types including chamise and mixed chaparral, perennial grasslands, and riparian scrub, freshwater marsh, and seasonal ponds that further promote the multi-species values of the property (see Exhibit B). The North Parcel is an integral linkage parcel to the Sweetwater River Corridor and South County Segment of the County of San Diego's Subarea Plan.

E. The Bank Property Owner wishes to develop portions of the San Miguel Ranch and wishes to conserve the Bank Property and other portions of the San Miguel Ranch for habitat purposes. The Bank Property is particularly appropriate for conservation. Establishment of the San Miguel Conservation Bank represents an excellent opportunity to implement the ongoing regional biological resource planning efforts in Southwest San Diego County by conserving highly valuable resources within an area which is recognized as an essential part of a regional biological preserve system.

F. It is anticipated that construction and development activity in portions of San Diego County as further depicted in Exhibit G, including all non-coastal areas of San Diego County and, on a case-by-case basis, as determined by the Wildlife Agencies, coastal areas of San Diego County (referred to as the "**Credit Area**"), will necessitate the mitigation of impacts to endangered, threatened and sensitive species and biologically sensitive habitats through the preservation of off-site lands which possess similar or comparable habitat values. (See Exhibit B, Biological Resources Inventory, for habitat values associated with the Bank Property).

G. On the terms and conditions hereinafter provided, the parties hereto desire to establish a conservation bank with respect to the Bank Property (the "**San Miguel Conservation Bank**") in order to provide for conservation in perpetuity of the Bank Property, the use of such land as mitigation as provided in Recital F above, and the sale of conservation bank credits by Bank Property Owner to third party purchasers in need of such mitigation ("**Credit Purchasers**").

H. The parties desire to enter into this Conservation Bank Agreement to set forth the terms and conditions pursuant to which the San Miguel Conservation Bank will be established and implemented.

CONSERVATION BANK AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Establishment of San Miguel Conservation Bank. The Bank Property shall be established as the San Miguel Conservation Bank in a single phase. The San Miguel Conservation Bank shall be established when the Bank Property Owner conveys the Bank Property for conservation as provided in Section 3, below. Upon conveyance of the Bank Property, as provided below, in exchange for the permanent conservation and management

thereof, Bank Property Owner shall be entitled to receive Conservation Credits as provided (and defined) in Section 4, below.

2. Conservation Bank Evaluation and Acceptance.

(a) Representatives of the Wildlife Agencies have inspected and evaluated the Bank Property for purposes of determining its biological values in connection with the sale of Conservation Credits. On the basis of such inspection and evaluation, and as a result of the benefits accruing to wildlife resources, including sensitive, endangered, and threatened species and their habitat, upon the establishment and the conveyance of San Miguel Conservation Bank for conservation purposes, the Wildlife Agencies acknowledge and agree that, subject to Section 4(c), below, the Bank Property possesses biological values which support the Conservation Credits acknowledged in Section 4.

(b) The Wildlife Agencies have determined that the Bank Property is generally suitable to mitigate for impacts of certain sensitive and declining vegetation types, habitat for certain species designated endangered or threatened under CESA or ESA, certain rare or sensitive species and multi-species habitat values within the Credit Area as described in Recital F and **Exhibit B ("Biological Resources Inventory")** for habitat values associated with the Bank Property. Highly sensitive habitats that are unrepresented on the Bank Property (e.g., southern maritime chaparral and maritime succulent scrub), coastal obligate species and certain rare or endemic species as identified by the Wildlife Agencies, may not have similar or comparable habitat values and, therefore, may not be appropriately mitigated, at the San Miguel Conservation Bank.

(c) Upon the request of a project proponent or a lead agency, the Wildlife Agencies will determine the necessary mitigation for potential adverse environmental impacts to biological resources of specific proposed projects during environmental review of the project pursuant to the California Environmental Quality Act, Public Resources Code Section 21000, et seq., the National Environmental Policy Act, 42 U.S.C. Section 4321, et seq., or the Endangered Species Act, and, as appropriate, under the Clean Water Act and other applicable law.

(d) The Parties acknowledge that various Natural Community Conservation Planning Act (Fish & Game Code Section 2800, et seq.) plans ("NCCP's") and Endangered Species Act Section 10(a)(2)(A) Habitat Conservation Plans ("HCP's") covering all or part of the Credit Area (collectively or individually referred to hereinafter as "NCCP/HCP") may be adopted or approved by the applicable Wildlife Agencies. As used herein, the term "NCCP/HCP" specifically includes the proposed MSCP, as implemented by one or more of the subarea plans contemplated in the MSCP, any proposed Multiple Habitat Conservation Plan for the northern portion of San Diego County ("MHCP"), as implemented by one or more subarea plans contemplated in the MHCP, and other subarea plans now or hereafter proposed (each such subarea plan is referred to hereinafter as a "Subarea Plan"). Once an NCCP/HCP is approved, and for so long as it is in effect, the NCCP/HCP shall, for Development Projects within its ambit that are within the Credit Area, govern the offsite mitigation requirements of all habitats and species covered by that NCCP/HCP.

(e) It is agreed that one Conservation Credit represents one acre of suitable mitigation land for biological impacts within the Credit Area, subject to the following requirements:

(i) For development projects ("Development Projects") located outside the ambit of a Wildlife Agency approved NCCP/HCP, but within San Diego County, the Wildlife Agencies, consistent with their legal authority, shall, subject to section 2(b), establish the amount and type of mitigation required to mitigate biological impacts to endangered, threatened or sensitive species and habitats.

(ii) For Development Projects located within the ambit of a Wildlife Agency approved NCCP/HCP within San Diego County, the NCCP/HCP mitigation requirements will control the appropriate amount and type of mitigation required to mitigate biological impacts to covered endangered, threatened or sensitive species and habitats; and

(iii) Development Projects impacting wetland areas shall be subject to permitting as described in Section 4(g) below.

(f) Once the Bank Property is conveyed as the San Miguel Conservation Bank in accordance with the procedures set forth herein, no further evaluation or assessment by the Wildlife Agencies shall be required as a prerequisite to the sale of the Conservation Credits, or the Wildlife Agencies' acknowledgment and acceptance thereof, except as provided in Section 4, below.

(g) Notwithstanding anything to the contrary contained in this Agreement, including the definition of Credit Area in Recital F above, the Wildlife Agencies agree to consider allowing Conservation Credits to be used as mitigation for impacts within the coastal areas identified in Exhibit G attached hereto, on a case-by-case basis, so long as the Wildlife Agencies can determine that the impacts to biological resources can, on the basis of similar or comparable habitat values, appropriately be mitigated by the Bank Property.

(h) The parties recognize that there may be circumstances when the San Miguel Conservation Bank may not be suitable to offset certain project impacts, including but not limited to: (a) impacts that threaten a Subarea Plan outside of the Subarea Plan in which the Bank Property is located, in which case mitigation must occur within the Subarea Plan impacted, (b) designated important habitat linkage areas; or (c) where habitat or species impacted requires like-kind mitigation. If the San Miguel Conservation Bank meets the Wildlife Agency mitigation requirements for project impacts, the Wildlife Agencies shall not unreasonably object to its use.

3. Conveyance of the Bank Property.

(a) The conveyance of the Bank Property shall be made in accordance with that certain Agreement for the Acquisition of Lands executed by Bank Property Owner and the

United States of America and dated substantially concurrently herewith (the "**Acquisition Agreement**").

(b) The level of Conservation Credits provided to Bank Property Owner hereunder have been negotiated by the parties with the express understanding that no enhancement of the San Miguel Conservation Bank lands to maintain or increase Conservation Credits shall be required by Property Owner (although Property Owner may voluntarily enhance such lands as contemplated in Section 4(a) below).

4. **Conservation Credits.** As a result of the benefits accruing to endangered, threatened, and sensitive species and their habitat upon the establishment of the San Miguel Conservation Bank and the conveyance and management of the Bank Property for conservation purposes, the San Miguel Conservation Bank shall have a total of 1,186 Conservation Credits which shall be established as follows:

(a) Except as otherwise provided in Section 2, the Wildlife Agencies agree to accept each acre of land within the San Miguel Conservation Bank as an equivalent acre of mitigation credit (each acre, a "**Conservation Credit**," and all such acres "**Conservation Credits**") subject to the following:

(i) The Conservation Credits may only be used as mitigation with respect to Development Projects located within the Credit Area.

(ii) Subject to Section 2(b), for Development Projects located outside the ambit of a Wildlife Agency approved NCCP/HCP, after the Wildlife Agencies have established the amount and type of mitigation pursuant to section 2(e)(i), Conservation Credits shall be available for mitigation on a one credit for one acre basis for all species and habitats described in the Biological Resources Inventory. For example, in the event a Credit Purchaser is required to mitigate the impact of the loss of coastal sage scrub habitat through a 20 acre off-site mitigation requirement, the Wildlife Agencies agree to accept 20 Conservation Credits from the San Miguel Conservation Bank as adequate mitigation for the 20-acre mitigation obligation.

(iii) For Development Projects located within the ambit of a Wildlife Agency-approved NCCP/HCP, the amount and type of mitigation established in accordance with Section 2(e)(ii) shall be used to determine the suitability of Conservation Credits. To the extent the NCCP/HCP does not preclude use of the Bank Property as mitigation for Development Projects within the jurisdiction of such NCCP/HCP, one Conservation Credit shall be accepted by the Wildlife Agencies for each acre of mitigation required in accordance with Section 2(e)(ii) regardless of whether the habitat or species to be mitigated are included within the Biological Resources Inventory.

(iv) Conservation Credits shall be subject to adjustment as provided in Section 4(e) below.

(b) Concurrently with the conveyance of the Bank Property in accordance with the Acquisition Agreement, 1,186 Conservation Credits will be created, acknowledged, and

accepted by the Wildlife Agencies, subject to the provisions of this Section 4. Bank Property Owner shall be entitled to sell Conservation Credits to Credit Purchasers requiring mitigation, or apply such Conservation Credits against any biological resources mitigation applicable to other properties owned by Bank Property Owner in the Credit Area, subject to the other terms of this Agreement, including, without limitation, the South Parcel. Subject to Bank Property Owner's obligations under Section 5, below, Bank Property Owner shall have the exclusive right to determine the price for any and all Conservation Credits offered for sale or conveyance.

(c) Nothing contained in this Conservation Bank Agreement shall be deemed to limit the Wildlife Agencies' respective jurisdiction over impacts and applicable mitigation of endangered, threatened, and sensitive species and biological resources, or to restrict the ability of CDFG and USFWS to fully discharge their respective responsibilities under applicable law, including, without limitation, CESA and ESA, respectively; provided, however, that except as provided in Sections 2 and 4(a) above, the Wildlife Agencies will not withhold their consent to the use of Conservation Credits as mitigation on a one acre-for-one credit basis (as adjusted pursuant to Section 4(e)) for mitigation in a manner consistent with the terms of this Agreement.

(d) The sale or conveyance of Conservation Credits shall be accounted for in accordance with Section 6, below. Once all Conservation Credits for the Bank Property have been conveyed, no further Conservation Credits shall be acknowledged by the Wildlife Agencies.

(e) In the event the City of Chula Vista has granted discretionary entitlements to Bank Property Owner permitting the development of in excess of 1262 residential units within the South Parcel, the aggregate number of Conservation Credits acknowledged under this Conservation Bank Agreement shall be reduced as follows: (i) in the event the City approves development within the South Parcel in accordance with Exhibit H attached hereto CAC Alignment, the aggregate number of Conservation Credits shall be reduced by 1.0 Conservation Credit for each unit approved in excess of 1262; and (ii) in the event the City has approved development within the South Parcel in accordance with Exhibit I attached hereto the Proctor Valley West Alignment, the aggregate number of Conservation Credits shall be reduced by 1.1 Conservation Credit for each residential unit approved in excess of 1262.

(f) The number of Conservation Credits available for future sale or transfer shall be further reduced pursuant to the procedures set forth in Section 9(a) below.

(g) The use of any wetlands areas within the Bank Property as mitigation for impacts to wetlands within the Credit Area will be subject to permitting and mitigation requirements of Section 404 of the Federal Clean Water Act and Section 1600 of the Fish & Game Code, and shall be "in-kind" mitigation resulting in no net loss of wetland areas, function and values.

(h) If the Wildlife Agencies approve an NCCP/HCP or other habitat conservation plans covering all or any part of the Credit Area and that plan uses habitat categories different than those set forth herein, then, at the request of the Bank Property Owner, the remaining Conservation Credits held by the Bank Property Owner will be reallocated in

accordance with such different habitat categories. The Wildlife Agencies agree to act reasonably in approving any such reallocation.

5. Management and Endowment.

(a) Upon the conveyance of the Bank Property pursuant to Section 3, USFWS shall be designated owner/manager of the Bank Property.

(b) The lands comprising the San Miguel Conservation Bank, along with the North Mitigation Parcel, if and when such parcel has been conveyed to the United States of America, shall be owned and managed by the USFWS as a unit of the National Wildlife Refuge System. The Bank Property shall be acquired by the United States of America through the USFWS subject to the purchase of the 500 Acre Parcel from the Bank Property Owner by the United States of America through the USFWS. Upon conveyance, USFWS shall oversee, manage, and maintain the North Parcel lands in perpetuity, in accordance with the terms and obligations of this Agreement and applicable Federal law.

(c) USFWS will prepare a management plan consistent with the National Wildlife Refuge System Administration Act of 1966, Refuge Recreation Act of 1962, Executive Order 12996 (Management and General Public Use of the National Wildlife Refuge System) for the North Parcel. National Wildlife Refuge lands are managed primarily for the benefit of fish, wildlife, and their habitats and secondarily for other uses that are compatible with the purpose for which the refuge was established. A Comprehensive Management Plan and step down refuge management plan will be prepared by the USFWS and will specify the types and locations of any public use activities, and monitoring, recovery, and fire management actions. This plan will include a detailed environmental analysis, and will identify compatible public uses that will be permitted within the San Diego Refuge. Public involvement will be solicited in the development of the plan.

(d) Subject to the remaining provisions of this Section 5, conservation and restoration shall be funded through Bank Property Owner's contributions as set forth in this paragraph. Bank Property Owner shall deposit with the National Fish and Wildlife Foundation ("NFWF") the amount of One Hundred Thousand Dollars (\$100,000) (the "**Initial Deposit**") upon conveyance of the Bank Property. Bank Property Owner shall further deposit with the NFWF the amount of \$500 (the "**Endowment Deposit**") for each Conservation Credit conveyed pursuant to Section 4; provided, however, that in consideration of the Initial Deposit, no Endowment Deposit shall be due with respect to the first 140 Conservation Credits sold. The aggregate of the Initial Deposit and all Endowment Deposits shall be referred to hereinafter as the "**Endowment Fund**," and shall be used for the conservation and restoration of the Bank Property in accordance with a cooperative agreement to be executed by the USFWS and NFWF. Upon conveyance of the North Mitigation Parcel, Bank Property Owner shall contribute to the Endowment Fund an additional \$500 for each acre comprising the North Mitigation Parcel and such contribution shall fully satisfy any and all of Bank Property Owner's management obligations with respect to such parcel.

(e) The Bank Property Owner's sole obligation with respect to the management of the North Parcel shall be its obligation to establish the Endowment Fund as set forth herein.

(f) Upon each conveyance of Conservation Credits by Bank Property Owner pursuant to Section 4, Bank Property Owner shall deliver the requisite Endowment Deposit to the NFWF, and Bank Property Owner shall deliver to each of the Wildlife Agencies a copy of the receipt of such Endowment Deposit executed by such entity (the "**Endowment Receipt**").

(g) To the extent the Bank Property Owner secures permanent alternative management funding which provides equivalent or better management of bank lands, the Wildlife Agencies agree that the management Endowment Fund can be reduced or eliminated in a manner acceptable to the Wildlife Agencies. Nothing contained in this Agreement shall be deemed to prohibit Bank Property Owner from participating in regional or local habitat management programs generally applicable to property dedicated or conserved as mitigation for biological resource impacts.

6. Database for Conservation Bank Transactions. Until such time as the Wildlife Agencies have been notified in writing that all Conservation Credits have been conveyed, Bank Property Owner (or any successor in interest) shall be responsible for maintaining a numerical accounting of the Conservation Credits conveyed to Credit Purchasers and the application of such Conservation Credits to development projects during any calendar year and the current amounts contributed to the Endowment Fund in a database format ("**Ledger**"). Bank Property Owner's Ledger maintenance obligation shall continue until the issuance of the final annual report to the Wildlife Agencies described in this section. The Ledger maintained by Bank Property Owner shall include (i) the number of Conservation Credits sold; (ii) the name, telephone number and address of the entity receiving the Conservation Credits; (iii) the effective date of the transfer; (iv) the name of the development project and jurisdiction in which it occurs; (v) the endowment received and the total endowment received to date; and (vi) the balance of the Conservation Credits remaining to be transferred. The Bank Property Owner shall make the Ledger available to the Wildlife Agencies upon written request, and, in any event, shall provide the Wildlife Agencies an updated Ledger summary annually. Such annual report shall cover a calendar year, and shall be provided by March 1 following the close of each year. Upon each consummation of a transfer of Conservation Credits, Bank Property Owner shall provide the Wildlife Agencies with a description of the transaction, including the information set forth in items (i) through (vi) above.

7. Term of Conservation Bank Agreement; Termination Rights.

(a) Except for USFWS's management obligations as set forth in Section 5 and its ongoing maintenance of the Endowment Fund, which obligation shall continue in perpetuity, unless sooner terminated in accordance with the provisions of this Section 7, this Conservation Bank Agreement shall terminate on the earlier to occur of: (i) the date all Conservation Credits have been conveyed and Endowment Fund deposits have been made pursuant to Section 5 by

Bank Property Owner; and (ii) the date 30 years from the date of this Conservation Bank Agreement.

(b) Notwithstanding anything to the contrary contained in this Conservation Bank Agreement, once the Bank Property Owner has unconditionally delivered the conveyance documents in accordance with Section 3(a), above, Bank Property Owner shall be entitled to the Wildlife Agencies' acknowledgment and acceptance of the Conservation Credits created thereby in accordance with Section 4.

8. Cooperation. The Wildlife Agencies and the Bank Property Owner agree to reasonably cooperate in the implementation of this Conservation Bank Agreement. Such cooperation shall include, without limitation:

(a) The Wildlife Agencies shall confirm in writing to prospective Credit Purchasers that Conservation Credits are available for mitigation as provided in Sections 2 and Section 4 above and that the San Miguel Conservation Bank is in full force and effect and is "approved" by the Wildlife Agencies;

(b) The Wildlife Agencies acknowledge the delivery of Endowment Deposits when actually delivered in accordance with Section 5, above;

(c) The Wildlife Agencies shall: acknowledge that the San Miguel Conservation Bank is a conservation bank "approved" by the Wildlife Agencies; include the San Miguel Conservation Bank on a list to be maintained by the Wildlife Agencies of all such approved conservation banks; and make such lists available to prospective Credit Purchasers at such time as the need for such Credit Purchaser's mitigation is disclosed to the Wildlife Agencies;

(d) The Wildlife Agencies and the Bank Property Owner agree to meet annually, if requested, following the delivery of the annual report provided by Bank Property Owner to the Wildlife Agencies to coordinate the Ledger and the Endowment Fund;

9. South Parcel Mitigation. In connection with the establishment of the San Miguel Conservation Bank and the conveyance of the 500 Acre Parcel in accordance with the Acquisition Agreement, Bank Property Owner has reserved, and the Wildlife Agencies have agreed to acknowledge and accept, the right to apply certain mitigation values associated with the North Parcel to offset certain biological impacts associated with the development of the South Parcel ("**South Parcel Mitigation Rights**") as follows:

(a) The Wildlife Agencies agree that notwithstanding the conveyance of the 500 Acre Parcel pursuant to the Acquisition Agreement, certain habitat or species within the 500 Acre Parcel shall be available for mitigation for impacts to like species within the South Parcel. The habitat and species available for such mitigation and the mitigation values which shall be acknowledged by the Wildlife Agencies are described in Exhibit J attached hereto (the "**500 Acre Mitigation Values**"). In the event Bank Property Owner seeks take authorization with respect to the South Parcel, or any portion thereof, independently of the Chula Vista Subarea

Plan and/or the MSCP, the 500 Acre Mitigation Values shall be available as mitigation for impacts to the species identified in Exhibit J ("**South Parcel Designated Species**") once the Wildlife Agencies determine the amount of such mitigation required with respect to the South Parcel. To the extent the 500 Acre Mitigation Values are applied as mitigation to the South Parcel, or any portion thereof, for each acre (or fractional portion thereof) accepted as mitigation for impacts from development of the South Parcel, one Conservation Credit (or corresponding fractional portion thereof) shall be deducted and permanently eliminated from the aggregate Conservation Credits available for sale or transfer from the San Miguel Conservation Bank. For example, in the event the 500 Acre Parcel was determined to have 20 acres of Otay Tarplant-occupied habitat, after the Wildlife Agencies establish the aggregate mitigation requirements of the South Parcel with respect to Otay Tarplant, Bank Property Owner may apply, and the Wildlife Agencies shall accept, 20 acres toward such mitigation requirement and the number of Conservation Credits within the San Miguel Conservation Bank shall be reduced by 20.

(b) Notwithstanding the conveyance of the 500 Acre Parcel, Bank Property Owner hereby reserves the right to enter upon the 500 Acre Parcel for the purpose of implementing an enhancement program ("**Enhancement Program**") with respect to the South Parcel Designated Species; provided, however, that such Enhancement Program shall be subject to approval by the Wildlife Agencies, and Bank Property Owner shall only be permitted to apply any enhanced acreage within the 500 Acre Parcel as mitigation for impacts to the South Parcel Designated Species pursuant to the terms of such approved Enhancement Program. Any mitigation arising from implementation of the Enhancement Program shall not result in reduction of any Conservation Credits.

10. Entire Conservation Bank Agreement. This Conservation Bank Agreement and the accompanying Agreement for Acquisition of Lands and their related Exhibits contain the entire Conservation Bank Agreement of the parties with respect to the matters covered by this Conservation Bank Agreement, and no other Conservation Bank Agreement, statement, or promise made by any party, or to any employee, officer, or agent of any party, which is not contained in this Conservation Bank Agreement shall be binding or valid.

11. Interpretation and Headings. The language in all parts of this Conservation Bank Agreement shall in all cases be simply construed according to its fair meaning and not strictly for or against any party. Headings of the paragraphs of this Conservation Bank Agreement are for the purposes of convenience only and the words contained in such headings shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Conservation Bank Agreement.

12. Modification. This Conservation Bank Agreement is not subject to modification except in a writing signed by all parties and any attempted modification not in compliance with this requirement shall be void. The parties shall use their good faith efforts to complete such modifications within ninety (90) days after the initial request is made for a modification by the requesting party.

13. Notices. All notices, demands, or requests from one party to another may be personally delivered, sent by facsimile, sent by recognized overnight delivery service, or sent by mail, certified or registered, postage prepaid, to the addresses stated in this paragraph and shall be effective at the time of personal delivery, facsimile transmission, or mailing.

Bank Property Owner: Emerald Properties Corp.
c/o Bankers Trust Company
130 Liberty Street
New York, NY 10006
Attn.: Garrett W. Thelander
Phone: 212-250-2550
Fax: 212-669-0743

With a copy to: Morrison & Foerster LLP
555 West Fifth Street, Suite 3500
Los Angeles, California 90013-1024
Attn.: Donald I. Berger, Esq.
Phone: 213-892-5602
Fax: 213-892-5454

CDFG: General Counsel
California Department of Fish and Game
1416 9th Street, 12th Floor
Sacramento, California 95814
Phone: 916-654-3821
Fax: 916-654-3805

With a copy to: Regional Manager
California Department of Fish and Game
330 Golden Shore, Suite 50
Long Beach, California 90802
Phone: 310-590-5113
Fax: 310-590-5193

USFWS: United States Fish and Wildlife Service
911 N.E. 11th Ave.
Portland, Oregon 97232
Attn.: Regional Director
Phone: 503-231-6118
Fax: 503-872-2716

With a copy to: United States Fish and Wildlife Service
2730 Loker Avenue West
Carlsbad, California 92008
Attn.: Field Office Supervisor
Phone: 619-431-9440
Fax: 619-431-9618

Any party may change the address to which such notices, payments, or other communications may be sent by giving the other parties written notice of such change. The parties agree to accept facsimile-transmitted signed documents and agree to rely upon such documents as if they bore original signatures. Each party agrees to provide to the other parties, within seventy-two (72) hours after transmission, such documents bearing the original signatures.

14. Exhibits. All Exhibits referred to in this Conservation Bank Agreement are attached to this Conservation Bank Agreement and are incorporated herein by this reference.

15. Counterparts. This Conservation Bank Agreement may be executed by the parties in several counterparts, all of which together shall constitute a single executed Agreement. This Conservation Bank Agreement shall become binding upon a Wildlife Agency immediately upon execution by such entity and Bank Property Owner, and shall not require the execution of all Wildlife Agencies in order to be a binding Conservation Bank Agreement; provided that, this Conservation Bank Agreement shall only be binding upon those parties which have executed the Conservation Bank Agreement. Any Wildlife Agency which has not executed the Conservation Bank Agreement shall not be obligated to accept any Conservation Credits as mitigation for impacts to species and habitats under its jurisdiction.

16. Governing Law. This Conservation Bank Agreement shall be governed and construed in accordance with the laws of the State of California and applicable federal law.

17. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns, provided that no assignment of any portion of, or interest in, the San Miguel Conservation Bank shall be made without prior written concurrence of the Wildlife Agencies, which concurrence shall require that the successor or assign assume all Conservation Bank obligations under this agreement and have sufficient capacity to carry out any unfunded obligations under Section 4 and 5, in which event, said concurrence shall not be unreasonably withheld or delayed. Upon any assignment or delegation of the rights and duties of this Agreement by Bank Property Owner, and subject to the prior written concurrence of the Wildlife Agencies of the proposed assignee or delegatee as set forth above, the assignee shall be deemed the current Bank Property Owner for all purposes and the assignor shall be released from and shall no longer have any obligations, responsibilities, liabilities, right or duty under this Agreement with respect to the assigned obligations following such assignment.

18. Authority. Nothing contained in this Agreement shall be deemed to affect CDFG's and USFWS' respective authorities under applicable law, including, without limitation, CESA and ESA.

19. Federal and State Appropriations. The duty of USFWS and CDFG to carry out their respective obligations under this Agreement shall be subject to the availability of appropriated funds.

20. Elected Officials. No member of Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

IN WITNESS HEREOF, the parties hereto have executed and delivered this Conservation Bank Agreement as of the date first set forth above.

BANK PROPERTY OWNER:

EMERALD PROPERTIES CORP., a New York corporation

By:

Name:

Its:

James W. Alexander
James W. Alexander
Vice President

CDFG:

CALIFORNIA DEPARTMENT OF FISH AND GAME

By:

Name:

Its:

USFWS:

UNITED STATES FISH AND WILDLIFE SERVICE

By:

Name:

Its:

IN WITNESS HEREOF, the parties hereto have executed and delivered this Conservation Bank Agreement as of the date first set forth above.

BANK PROPERTY OWNER: EMERALD PROPERTIES CORP., a New York corporation

By: _____
Name: _____
Its: _____

CDFG: CALIFORNIA DEPARTMENT OF FISH AND GAME

By: Patricia Wolf
Name: Patricia Wolf
Its: Regional Manager

USFWS: UNITED STATES FISH AND WILDLIFE SERVICE

By: _____
Name: _____
Its: _____

IN WITNESS HEREOF, the parties hereto have executed and delivered this Conservation Bank Agreement as of the date first set forth above.

BANK PROPERTY OWNER: EMERALD PROPERTIES CORP., a New York corporation

By: _____
Name: _____
Its: _____

CDFG: CALIFORNIA DEPARTMENT OF FISH AND GAME

By: _____
Name: _____
Its: _____

USFWS: UNITED STATES FISH AND WILDLIFE SERVICE

By: Gail C. Kobetich
Name: Gail C. Kobetich
Its: Field Supervisor