ENDOWMENT MANAGEMENT AGREEMENT
BY AND BETWEEN
WESTERVELT ECOLOGICAL SERVICES
AND
CENTER FOR NATURAL LANDS MANAGEMENT
FOR THE ESTABLISHMENT AND MANAGEMENT OF
_________________ MITIGATION BANK
ENDOWMENT FUND

This **Endowment Management Agreement** for the creation and management of _____________ Mitigation Bank Stewardship Endowment Fund ("Agreement") is made and entered into this ___day of _________, 2009 ("Effective Date") by Westervelt Ecological Services ("Westervelt" or "Bank Sponsor") and the Center for Natural Lands Management, a California public benefit corporation ("Center"), also referred to herein individually as a "Party" and collectively as the "Parties," on behalf of the public as well as natural resource conservation in the State of California.

RECITALS

A. The people of the State of California and the United States, as represented by the California Attorney General and the California Department of Fish and Game ("CDFG"), the U.S. Army Corps of Engineers ("USACE"), the U.S. Environmental Protection Agency ("USEPA"), and the U.S. Fish and Wildlife Service ("USFWS"), on behalf of natural resource conservation, are the beneficiaries of the endowment account created by this Agreement.

B. Westervelt creates mitigation banks, including the _____________ Mitigation Bank ("Mitigation Bank"), and provides environmental mitigation and habitat planning services.

C. Center is a 501(c)(3) nonprofit organization that preserves natural habitats, native species and functioning ecosystems, and owns and manages lands in an ecologically beneficial manner, and has been authorized by the CDFG to hold and administer endowment funds in accordance with the terms and conditions set forth below.

D. CDFG has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of these species pursuant to California Fish and Game Code §1802. USEPA and USACE have jurisdiction over waters of the U.S. pursuant to the Clean Water Act, 33 U.S.C §1251 *et seq*. Waters of the U.S. include jurisdictional wetlands. USFWS, an agency within the U.S. Department of the Interior, has jurisdiction over the conservation, protection, restoration and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of these species within the U.S. pursuant to the federal Endangered Species Act, 16 U.S.C. §1531, *et seq.*, the Fish and Wildlife Coordination Act, 16 U.S.C. §§661-666c, the Fish and Wildlife Act of 1956, 16 U.S.C. §742(f), *et seq.*, and other provisions of federal law. The Interagency Review Team ("IRT"), comprised of CDFG, USACE, USEPA, and USFWS, is an interagency group which oversees the establishment, use, operation, and maintenance of the Mitigation Bank.

E. Center shall be trustee of this account and the CDFG shall be successor trustee.

F. The _____ __, 2009 "Bank Enabling Instrument, _____________ Mitigation Bank" ("BEI") by and among Westervelt, the owner of the Mitigation Bank property located in the _________________________, California, and IRT establishes mitigation for impacts of certain approved projects affecting wetlands and associated habitats and species. The "_____________ Mitigation Bank Long-term Management Plan" dated _______ __, 2009 ("Long-term Management Plan") created under the BEI, and qualified as a "CDFG-approve management plan" under CDFG "minimum specifications of trustee agreement(s)" guidance in effect at the Effective Date, is intended to ensure the Mitigation Bank conserved habitat is managed, monitored, and maintained in perpetuity to conserve and protect its waters of the U.S., covered species, and covered habitat.

G. Westervelt (Bank Sponsor) has the long-term management and habitat stewardship responsibilities for the Mitigation Bank and desires to establish an endowment fund to produce a revenue stream from investment income on the fund to support the costs of implementing the Long-term Management Plan.

H. The purpose of this Agreement is to create and maintain an endowment fund to provide an ongoing source of monies to fund the adaptive management and stewardship costs of herein identified natural lands for the benefit of the people of California and the United States.

I. This Agreement does not govern nor address any matters relating to conserved habitat management, operations, stewardship expenses, or conservation policies, including mitigation compliance, the application for or use of grants, the creation, recording, or implementation of conservation easements, biological monitoring, property management and stewardship, or any similar undertaking.

J. Center complies with accounting practices established by the Financial Accounting Standard Board ("FASB") which through Statement of Financial Accounting Standards No. 117 "Financial Statements for Not-for-Profit

Organizations" establishes principles for the classification of assets based on donor-imposed restrictions. In conformance with this Statement, the principal in the endowment created and managed under the terms of this Agreement will be classified as permanently restricted and income derived from it will be classified as temporarily restricted. CDFG through its guidance on minimum specifications for trustee agreement requires that the current endowment principal be defined as the California CPI inflation-adjusted value of the original endowment principal. Therefore, in compliance with FASB Statement 117 and what the Parties understand to be the CDFG minimum specifications, the permanently restricted amount representing the current endowment principal for this endowment fund created by this Agreement will be adjusted annually.

K. IRT and its individual member agencies have reviewed and acknowledged the terms of this Agreement and have the right to review any amendments to it.

AGREEMENT

THEREFORE, in consideration of the foregoing recitals, the Parties hereby agree as follows.

1. Endowment Fund.

a. The Endowment Principal. Westervelt (Bank Sponsor) is obligated to fund the Endowment Principal in an amount and according to the terms and schedule for making deposits ("Endowment Deposits") set forth in the BEI at Section VI.E. Center has agreed to hold the Endowment Principal in the Endowment Fund and administer in it accordance with this Agreement.

Westervelt (Bank Sponsor) has agreed that when fully funded, the Endowment Principal shall be ___ Million ___Thousand ___ Hundred ___ Dollars ($___.00) (the "Original Endowment Principal") as adjusted in accordance with the terms of the BEI relating to the California Consumer Price Index, All Items (1982-1984=100), for All Urban Consumers for California, published by the California Department of Industrial Relations, Division of Labor Statistics and Research ("CPI").

From the time of deposit of the Original Endowment Principal into the Endowment Fund, the Current Endowment Principal shall be defined as the CPI-adjusted value of the Original Endowment Principal. This Current Endowment Principal amount shall be the permanently restricted amount and adjusted annually by Center as set forth in Subsection 2(b), below.

Westervelt (Bank Sponsor), in consultation with IRT, but not Center, conducted a habitat stewardship and administrative (standard rates and fee) costs-in-perpetuity analysis, including a __% capitalization rate to arrive at the Original Endowment Principal amount.

b. The Endowment Fund. Center shall establish and hold a permanent, dedicated endowment account ("Endowment Fund") for the Mitigation Bank, and shall deposit the funds received from Westervelt (Bank Sponsor) as provided by the BEI into the Endowment Fund promptly upon receipt to establish a perpetual endowment for the Mitigation Bank ("Endowment"). While an objective, the Parties do not guarantee that the Endowment will produce without exception an annual revenue stream adequate to support the costs of implementing the Management Plan and associated Endowment Fund administration expenses.

c. Optional Deposits. In addition to the Endowment Principal, Westervelt (Bank Sponsor) may at any time transmit additional amounts for deposit intended to support operating and administrative expenses when and if these costs cannot be supported from accumulated investment income from the Endowment. These deposits shall be placed in the Endowment Fund and held as temporarily restricted assets. These amounts shall not be reclassification as permanently restricted assets pursuant to Section 1(a), above.

d. Center Fiduciary Duty. Center has a fiduciary duty to ensure that the Endowment held in trust for the Mitigation Bank is properly managed. Center shall deposit investment income from the Endowment into the Endowment Fund to be held as temporarily restricted assets unless reclassified as permanently restricted assets under Subsection 1(a), above. Center shall only disburse monies as required by this Agreement from temporarily restricted assets. The following principles of fiduciary duty shall apply:

(i) *Accounting*. Center shall maintain an accurate accounting of funds in the Endowment Fund including at minimum an annual balance sheet and income statement and such accounting will be separate from all other accounting of funds held by or managed by Center. Funds in the Endowment Fund may be pooled with other funds held by or managed by the Center for investment purposes.

(ii) *Duty of loyalty*. Center shall have a duty of loyalty and shall not use funds in the Endowment Fund for its own benefit (except for those administrative fees due Center as provided by this Agreement).

(iii) *Prudent investor.* Center shall act as a prudent investor of the Endowment Fund subject to the Uniform Prudent Investor Act (California Probate Code §§16045-16054 and §§18500-18509), and shall account for Endowment Funds under General Accepted Accounting Principles (GAAP).

(iv) *Auditing.* Center shall have an annual audit of the Endowment Fund using GAAP performed by a qualified, independent accounting organization. Center shall submit the auditor's written report to Westervelt (Bank Sponsor) and/or IRT (including CDFG) upon request. The results of such audits will include, at a minimum, a record of the beginning and ending fund balance, all deposits and withdrawals, and a record of the income and expense of the Endowment Fund.

(v) *Loss reporting.* Center shall exercise prudence in preserving the Current Endowment Principal. In the event the fair market value of all assets held in the Endowment Fund falls below the Current Endowment Principal amount, Center must report the loss (either realized or unrealized losses) to Westervelt (Bank Sponsor) and to CDFG within fourteen (14) days of such loss together with an explanation of the reason for the loss.

2. Disbursement of funds from the Endowment Fund. For purposes of providing long-term management of the Mitigation Bank pursuant to the terms, conditions, and provisions of the BEI, Center shall disburse monies from the Endowment Fund as provided by this subsection 2:

a. Fiscal Year. Fiscal Year means the period from October 1 through September 30.

b. Reclassification of Assets. On or about September 30, Center shall adjust as necessary to meet the requirements of Section 1(a), above, the Current Endowment Amount by reclassifying temporarily restricted assets in the Endowment Fund to permanently restricted assets.

c. Disbursement Amount. The Center may not disburse to Westervelt (Bank Sponsor) from the Endowment Fund during any Fiscal Year an amount exceeding __ percent (__%) of the CPI-adjusted Current Endowment Principal, permanently restricted assets, as adjusted pursuant to Section 1(b) ("Fixed Amount"), except that the Fixed Amount limitation may be exceeded in any Fiscal Year as required for capital and emergency expenses as requested by Westervelt (Bank Sponsor), and as approved in writing in advance by the IRT to Center.

d. Disbursement Schedule. Westervelt (Bank Sponsor) may make requests to Center for an annual disbursement ("Annual Disbursement") on or about October 1 of each Fiscal Year, such written request being specific as to an amount of disbursement sought. Center shall release to Westervelt (Bank Sponsor) by November 15 of the Fiscal Year the lesser of the requested amount or the Fixed Amount, unless as otherwise provide by Section 2(c), above.

e. Administrative Fees.

(i) *Setup Fee*. Westervelt (Bank Sponsor) shall provide to Center concurrently with the execution of this Agreement an initial administrative overhead fee ("Endowment Fund Setup Fee") of ____ Dollars ($___.00).

(ii) *Deposit Fees*. Westervelt (Bank Sponsor) deposit fees ("Endowment Deposit Fees") equal to ___ percent (_._%) of each individual Endowment Deposit deposited into the Endowment Fund at the time of the deposit.

(iii) *Annual Administrative Fee*. The Center shall be entitled to withdrawal annually in a lump sum as of October 1 of the current Fiscal Year the amount of ___ percent (_._%) of the fair market value of all assets held in the Endowment Fund as an Annual Administrative Fee, to be recovered from the temporarily restricted assets in the Endowment Fund.

In the event that temporarily restricted assets in the Endowment Fund are insufficient to cover the Annual Administrative Fee when due and payable to Center, the amount of the Annual Administrative Fee remaining due and payable to Center shall be paid by Westervelt (Bank Sponsor) within thirty (30) days of Center providing written notification of the insufficiency in temporarily restricted assets and the amount due Center.

(iv) *CDFG Fees.* Upon written demand by CDFG pursuant to Subsection 6(j), below, received by Center more than thirty (30) days after the end of the Fiscal Year, Center shall pay in a commercially reasonable timeframe an annual fee (as calculated by CDFG) to CDFG to allow it to recover CDFG-defined reasonable and documented administrative costs, unless the withdrawal of such monies would require Center to disburse from permanently restricted assets.

3. Reporting Requirements

a. Westervelt (Bank Sponsor) Reporting Requirements. Westervelt (Bank Sponsor) has no reporting requirements under this Agreement.

b. Center Reporting Requirements. Within ninety (90) days of the close of each Fiscal Year, Center will prepare and submit a report to Westervelt (Bank Sponsor) and CDFG which includes at minimum: (i) current balance sheet and income statement for the Endowment Fund; (ii) current balance sheet and income statement for the Center; (iii) report on any significant changes to the Endowment Fund investment policy of practice; and (iv) report on changes to the composition of the Center's Board of Directors Finance Committee.

Center, as fiduciary of the Endowment Fund, is not obligated under this Agreement or required by CDGF to file with CDFG any reports relating to conserved habitat management, operations, stewardship expenses, or conservation policies, including mitigation compliance, the application for or use of grants, the creation, recording, or implementation of conservation easements, biological monitoring, property management and stewardship, or any similar undertaking.

c. BEI Reporting Requirements. Center has not assumed any reporting obligations under the BEI.

4. Endowment Fund as Taxable Entity. If the Endowment Fund is determined to be a taxable entity under the Internal Revenue Code ("IRC") or the California Revenue Taxation Code ("CRTC") or is required to file any returns or other documents with the Internal Revenue Service ("IRS") or the California Franchise Tax Board ("FTB"), the Center may retain external expertise and assistance in the creation and/or preparation of this information. All associated fees and costs incurred associated with these activities and any appropriate taxes, tax return preparation costs, and necessary audit fees will be paid out of accrued earnings, and to the extent not covered by accrued earnings, shall be paid from the principal of the Endowment Fund. Costs incurred pursuant to this Subsection will be collected by Center from the Endowment Fund in arrears and reported in writing to Westervelt (Bank Sponsor) and IRT at the time of collection.

5. Rights of First Refusal. Center has no rights of first refusal to acquire fee title to the Mitigation Bank, succeed as grantee of the Conservation Easement, nor assume stewardship monies or responsibilities.

6. Miscellaneous Provisions

a. Amendment. The Parties agree that this Agreement may and will be amended as needed to align its terms and conditions with substantive and material changes in law. Neither this Agreement nor any provision hereof may be waived, modified, amended, or discharged except by an instrument in writing signed by the Parties and reviewed by IRT and approved by CDFG. Furthermore, the Parties agree to amend this Agreement as needed to keep it consistent with pertinent new or revised Federal and State statutes and regulations.

b. Entire Agreement. This Agreement and the attached exhibits constitute the entire understanding among the Parties with respect to the matters set forth herein and supersede all prior or contemporaneous understandings or agreements among the Parties with respect to the subject matter hereof, whether oral or written.

c. Severability. If a court of competent jurisdiction determines that a provision included in this Agreement is legally invalid, illegal or unenforceable, and such decision becomes final, such provision shall be deemed to be severed and deleted from this Agreement and the balance of this Agreement shall be reasonably interpreted to achieve the intent of the Parties. The Parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the purposes of the void or unenforceable provision.

d. Counterparts. This Agreement and any amendment thereto may be executed in two or more counterparts, and by each Party on a separate counterpart, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document.

e. Assignment. Neither Party may assign any rights granted by this Agreement without prior written approval of the other Party, USFWS and CDFG, which approvals may be granted or withheld in any Party's sole discretion; provided, however, that Westervelt (Bank Sponsor) shall have the right to transfer its interest in the Mitigation Bank in accordance with the Conservation Easement, and in connection therewith Westervelt (Bank Sponsor) shall have the right to assign its rights and obligations under this Agreement to Westervelt (Bank Sponsor) and successor without obtaining the consent of Center so long as such transfer is made in accordance with the Conservation Easement. CDGF may, with cause, require the transfer of all unspent funds in the Endowment Fund to the CDFG or a successor trustee designated by the CDFG with 60 days notice to Center by the CDFG.

f. Liability. The Parties agree to indemnify and hold harmless the CDFG from any claims or actions related to administration, investment, accounting or expenditure of the endowment funds, or from losses resulting from the CDFG's requirement that the endowment be transferred to another entity.

f. Termination. This Agreement is in perpetuity.

g. Rights and Remedies. In the event of a breach of this Agreement, the Parties have any rights and remedies provided by law or equity, including but not limited to the right to damages, injunction and specific performance. Neither Party shall be considered in breach of its obligations to the extent that the performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such Party.

CDFG shall have the right to ask a court of competent jurisdiction to remove Center as the trustee under this Agreement if CDFG determines that Center is not performing its duties consistent with the purposes of this Agreement upon ninety (90) days written notice to Center and Center's failure to address CDFG concerns within a commercially reason period of time.

h. Controlling Law. California law shall govern the interpretation of this Agreement.

i. Attorneys Fees. Should either Party bring an action against the other Party, by reason of or alleging the failure of the other Party with respect to any or all of its obligations hereunder, whether for declaratory or other relief, then the Party which prevails in such action shall be entitled to its reasonable attorneys' fees (of both in-house and outside counsel) and expenses related to such action, in addition to all other recovery or relief. A Party shall be deemed to have prevailed in any such action (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other Party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such Party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. Attorneys' fees shall include, without limitation, fees incurred in discovery, contempt proceedings and bankruptcy litigation, and in any appellate proceeding. The non-prevailing Party shall also pay the attorney's fees and costs incurred by the prevailing Party in any post-judgment proceedings to collect and enforce the judgment. The covenant in the preceding sentence is separate and several and shall survive the merger of this provision into any judgment on this Agreement.

j. Notices. Any written notice or communications required by this Agreement shall be personally delivered or sent by first class mail, certified or registered, postage prepaid, or sent by national overnight courier, with charges prepaid for next business day delivery, addressed to the addressee Party at its address or addresses listed below, or to such other address or addresses for a Party as such Party may from time to time designate by notice given to the other Party. Notices shall be deemed received upon actual receipt by the party being sent the notice, or on the following business day if sent by overnight courier, or on the expiration of three (3) business days after the date of mailing.

To Westervelt	Westervelt Ecological Services 600 North Market Boulevard, Suite 3 Sacramento, CA 95616 Attention:
To Center	Center for Natural Lands Management 215 West Ash Street Fallbrook, CA 92028 Attention: Executive Director
To CDFG	California Department of Fish and Game Habitat Conservation Branch 1416 Ninth Street Sacramento, CA 95814 Attention:

k. Authorization. Each signatory below attests that he or she is duly authorized to execute this Agreement on behalf of the Party he or she represents.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respectively duly authorized representatives.

SIGNATURES ON FOLLOWING PAGE

WESTERVELT ECOLOGICAL SERVICES, LLC,
a Delaware limited liability company

____

By:
Its:

Dated:

CENTER FOR NATURAL LANDS MANAGMENT,
a California corporation

____

By: David R. Brunner
Its: Executive Director

Dated:

ACKNOWLEDGMENT AS TO FORM

This is to acknowledge that this Agreement between Westervelt Ecological Services and Center for Natural Lands Management is accepted as to form by the undersigned:

____

By:
Title:

California Department of Fish and Game

Dated: