

**AGREEMENT BETWEEN  
THE NEWHALL LAND AND FARMING COMPANY  
AND SEMITROPIC-WATER STORAGE DISTRICT  
AND ITS IMPROVEMENT DISTRICTS  
FOR A NEWHALL-SEMITROPIC  
WATER BANKING AND EXCHANGE PROGRAM**

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SEMITROPIC WATER STORAGE DISTRICT AND ITS  
IMPROVEMENT DISTRICTS FOR A NEWHALL-  
SEMITROPIC WATER BANKING-AND EXCHANGE PROGRAM**

**THIS AGREEMENT** (this "Agreement"), dated as of May 21, 2001, is entered into by and between **THE NEWHALL LAND AND FARMING COMPANY** ("Newhall") and the **SEMITROPIC WATER STORAGE DISTRICT** and **SEMITROPIC IMPROVEMENT DISTRICT, BUTTONWILLOW IMPROVEMENT DISTRICT** and **POND-POSO IMPROVEMENT DISTRICT** of the **SEMITROPIC WATER STORAGE DISTRICT** (collectively called "**Semitropic**"). Newhall and Semitropic may be referred to individually as Party or collectively as Parties.

**RECITALS**

A. Newhall is a California limited partnership. Newhall and Vidler Water Company, Inc. ("Vidler") have executed an Assignment Agreement dated as of March 22, 2001 (the "Assignment Agreement"), that provides for the acquisition and assignment of 29.9297% of Vidler's rights under that certain "Agreement Between Vidler Water Company, Inc. and Semitropic Water Storage District and its Improvement Districts for a Vidler-Semitropic Water Banking and Exchange Program" dated as of October 8, 1998 (the "Semitropic Agreement"). Pursuant to the Semitropic Agreement, Vidler acquired at least 18.5 percent of the capabilities, rights and capacities of the Semitropic Water Banking and Exchange Program (the "Program"), which capabilities, rights and capacities are described in the Semitropic Agreement. Pursuant to the Assignment Agreement, Vidler has agreed to assign said portion of its rights pursuant to Paragraph 13.1 of the Semitropic Agreement. In addition, pursuant to the Assignment Agreement, Newhall will acquire 2,654 acre feet of water stored in Vidler's account pursuant to the Program.

A.1 As the result of the Assignment Agreement, Newhall will own at least 5.5 percent of the capabilities, rights and capacities of the Program. Vidler will have no further claim on the assigned capabilities, rights and capacities. The purpose of this Agreement is to memorialize Newhall's participation in the Program and to provide for a direct contractual and trustee/beneficiary relationship between Semitropic and Newhall. It is the intent of the Parties that, upon the execution of this Agreement, Newhall is to be in the same position relative to the Program as it would have been if it had executed an agreement identical to the Semitropic Agreement pursuant to which it acquired at least 5.5 percent of the capabilities, rights and capacities of the Program at the time Vidler executed Semitropic Agreement.

B. Semitropic obtains water from the SWP through its contracts with the Kern County Water Agency ("**Agency**") under the Agency's master contract with DWR, executed on November 15, 1963, and presently providing for a total contract entitlement of 1,112,730 acre-feet per year. This amount may be further reduced by up to 130,000 acre-feet by contract amendments required to implement the transfer provision of the Monterey Agreement. Semitropic's contracts with the Agency were originally executed December 9, 1976 (Buttonwillow Improvement District), December 9, 1976 (Pond-Poso Improvement District), and January 9, 1969 (Semitropic Water Storage District) and provided for a combined contract entitlement of 158,000 acre-feet per year. This later amount was reduced to 155,000 acre-feet by the contract amendments required to implement the Kern Water Bank exchange under the Monterey Agreement. Semitropic Improvement District was formed in 1991, its boundaries are coterminous with the boundaries of Buttonwillow Improvement District and Pond Poso Improvement District and, among other things, it serves as agent for Buttonwillow Improvement District and Pond-Poso Improvement District. A total of approximately 136,370 acres of land within Semitropic is irrigated with a total annual demand of approximately 477,000 acre-feet based on current cropping patterns and irrigation practices. Semitropic has entered into contracts with individual landowners comprising 42,328 acres of land which is designated as the Surface Water Service Area ("**SWSA**"). Semitropic has commitments to deliver 145,240 acre-feet per year to the SWSA. Additional lands outside the SWSA, in the amount of

approximately 24,500 acres, have also been connected to Semitropic's distribution system so such lands may receive surface water when available. These additional lands are designated as the Temporary Water Service Area ("TWSA"), and may sometimes be referred to as the Non-Contract Service Area. Total landowner demand within the SWSA and TWSA for surface water supplies is greater than water available under Semitropic's entitlement for Agency SWP water and other surface water supplies. The construction of additional distribution facilities by Semitropic, as provided by this Agreement and agreements with other Banking Partners, will allow Semitropic to take delivery of additional imported water delivered to Semitropic by Newhall pursuant to this Agreement.

C. Semitropic has constructed a seventy-eight inch (78") pumpback pipeline that is capable of conveying water withdrawn from the groundwater basin underlying the area within Semitropic's boundaries (the "**Semitropic Basin**") directly to the California Aqueduct at a maximum rate of 300 cubic feet per second ("CFS"). Pumpback operations to return stored water will take place primarily during the "off-peak" irrigation season, (i.e., generally between September 1 of any year and March 1 of the following year) when groundwater pumping and conveyance capacity are more likely available. Semitropic has also constructed an energy project, including, but not limited to, a hydroelectric generator, gas generators, and a 12 kilovolt transmission system, to provide a portion of the electric power required for Semitropic's pumping operations

D. Newhall and Semitropic find that it will be mutually advantageous to enter into a groundwater banking and exchange program whereby Semitropic will hold in trust for Newhall the water deposited by Newhall hereunder (or its equivalent), together with (i) an easement and right to withdraw from lands owned or controlled by Semitropic an amount of water equal to Newhall's Stored Water on deposit with Semitropic, and (ii) an easement and right to transport such water from the Semitropic Basin to the California Aqueduct for delivery to Newhall, all in accordance with the terms of this Agreement. This Agreement will provide additional



groundwater storage for Newhall resulting in better utilization of its water supplies, and will provide improved reliability of supplies and overall higher groundwater levels for Semitropic.

E. This Agreement is consistent with the goal of making optimum use of water and facilities and is consistent with conservation objectives of Newhall, Semitropic, Agency and DWR. This Agreement is one component in securing water supplies for Newhall's development properties, and, in so doing, increase the availability and reliability of water supplies to those properties.

F. Consistent with the California Environmental Quality Act ("CEQA"), Semitropic, acting as lead agency has completed an environmental impact report concerning the proposed water banking and exchange program (the "EIR"). Semitropic's Board of Directors, on July 13, 1994, certified the EIR as being in compliance with CEQA (The EIR was prepared for the full program of 1,000,000 acre-feet). Semitropic is also responsible for implementing and monitoring the mitigation measures defined in "Findings and Mitigation Monitoring Plan" dated July 1994, adopted as part of the Final EIR. Newhall represents it is not subject to any regulatory approval in order to enter into this agreement. On April 12, 2001, Semitropic filed a Notice of Exemption under CEQA for its approval of the partial assignment of 29.9297% of Vidler's interest in the Program to Newhall.

G. Semitropic has also entered into a Memorandum of Understanding ("MOU") with neighboring districts, dated September 14, 1994, to implement in part said monitoring and mitigation measures, which this Agreement is subject to. The MOU is on file with Semitropic and has been provided to Newhall.

H. The Semitropic Water Banking and Exchange Program authorized in the above-referenced EIR (the "Program") has a defined total storage capacity of 1,000,000 acre-feet. The estimated absorptive capacity, based on the approximately 23,000 acres of In-Lieu Service Area (as defined in Article 1 below) and the current cropping patterns and irrigation efficiencies, is 80,500 acre-feet per year. An estimated additional 10,000 acre-feet per year

of absorptive capacity is anticipated as a result of Semitropic improving the delivery capability of the distribution system to the existing SWSA and TWSA, as contemplated by the Program.

The estimated withdrawal capacity is 90,000 acre-feet per year, at a maximum flow rate of 300 CFS, through the pumpback facility. In addition, Stored Water (as defined in Article 1) may be returned from any Semitropic SWP Entitlement Water allocation in excess of 22,000 acre-feet, as described in Exhibit A hereto. Facilities necessary to accomplish the foregoing will increase the absorptive and withdrawal capabilities of Semitropic over and above the pre-Program conditions. Newhall's participation may not fully utilize these capacities. Therefore, Semitropic has developed and has offered and will continue to offer other potential Banking Partners (as defined in Article 1) the opportunity to participate in the Program on substantially the same terms and conditions as Newhall. Currently there are five other banking partners; The Metropolitan Water District of Southern California (Metropolitan) with the right of up to thirty-five percent (35%) of the program, Santa Clara Valley Water District (Santa Clara) with the right of about thirty-five percent (35%) of the program, the Alameda County Water District (Alameda) with the right of about five percent (5%) of the program, Alameda County Flood Control and Water Conservation District, Zone 7 ("Zone 7") with the right to about six and one half percent (6.5%) of the program, Vidler with the rights to about thirteen percent (13.0%) of the program.

Newhall has reviewed the terms and conditions of that certain document entitled "Semitropic Groundwater Banking Program Payment and Banking Capacity Rights Options" dated August 1, 1994, setting forth the terms on which other parties may participate in the Program as Banking Partners (the "**Program Options**"). A copy of that document is on file with both Semitropic and Newhall. Newhall has agreed that anyone who is a party to an agreement with Semitropic which includes one or more of options 1 through 4 of the Program Options and which does not violate any of the requirements of this Agreement will be a Banking Partner. Newhall's participation under this Agreement is under Option 3; Alameda's, Metropolitan's and Santa Clara's current participation are under Option 2, Zone 7 is under Option 3 and Vidler is under Option 3.

I. As a part of this Agreement, Semitropic, as trustee, will hold in trust for Newhall, in accordance with the terms of this Agreement, the water deposited by Newhall (or its equivalent), together with the right to withdraw it and to deliver it to the California Aqueduct or other mutually agreeable facility by direct delivery or by exchange. The Parties create this trust relationship for the purpose of protecting Newhall's ability to recover Stored Water, and Semitropic's fiduciary duty is limited to Semitropic's responsibilities as set forth in this Agreement. The Parties acknowledge that, as of the date of this Agreement and pursuant to the Assignment Agreement, Semitropic holds 2,654 acre feet of Stored Water in trust for Newhall under the Program. In addition, Semitropic, in a non-fiduciary capacity, will provide such water resource management services as are necessary to implement and operate the Program. Semitropic's non-fiduciary obligations include taking such actions, including the construction of facilities, securing agreements and entering into operational arrangements, as are necessary to receive from Newhall water delivered by Newhall for storage hereunder and to return equivalent water to Newhall in accordance with the terms of the Agreement. The Program, as implemented with respect to Newhall by this Agreement, when combined with other necessary actions undertaken by Newhall will thus allow the delivery of Stored Water to Newhall. These actions will include obtaining any necessary agreements between agencies responsible for transferring water to and from Program Storage (Delivery Agreement as provided in Article 8). When such services are provided by Semitropic, Newhall will make payments to Semitropic, as provided for in this Agreement, to compensate Semitropic for its services and expenses. These include: payments for storage, as provided in Section 6.2; payments when water is returned from storage, as provided in Section 6.3; payments with respect to energy used to recover water from the groundwater basin and to deliver that water to the California Aqueduct, as provided in Section 6.3.3; and payments for operation and maintenance expenses under certain circumstances, as provided in Section 6.5.

Newhall will acquire at least 5.5 percent of the Program's capabilities, rights and capacities described in Recital H and elsewhere in this Agreement. Under Option number 3 of the Program Options, Vidler has made the first three annual payments for 18.5% of the

program (\$7,000,920 paid to date), of which \$2,081,353 has been paid by Vidler attributed to the interest Newhall has under this Agreement. Therefore, Newhall will pay \$4,856,489 in seven equal annual payments within 45 days of October 8 of each year starting in 2001 to store water as provided for in Section 6.2.1. After Newhall has made all seven payments Newhall may elect to acquire additional Permanent Storage Allocation under Section 6.4, if available.

Until Newhall has stored an initial amount of water equal to its Permanent Storage Allocation there will be no additional storage fee. After Newhall has stored an initial amount of water equal to its Permanent Storage Allocation, Newhall will pay \$50 per acre-foot to store water.

Until Newhall has recovered an initial amount of water equal to its Permanent Storage Allocation, Newhall will pay \$10 per acre-foot plus power costs for water recovered. After Newhall has recovered an initial amount of water equal to its Permanent Storage Allocation, Newhall will pay \$50 per acre-foot plus power costs for water recovered.

Under the terms of this Agreement, the \$10 per acre-foot payment for withdrawal of the first 55,000 acre-feet will be adjusted using the Engineering News Record Index and all other amounts will be adjusted using the Consumer Price Index, as hereinafter provided.

J. The trust relationship between Newhall, as settlor and beneficiary, and Semitropic, as trustee, created by this Agreement and described in these Recitals, is entered into by the Parties solely for the purpose of protecting Newhall's interest in water delivered by Newhall to Semitropic hereunder for storage, and the right of Newhall also held in trust by Semitropic for Newhall to recover from the Semitropic Basin, water in a quantity sufficient to return to Newhall a quantity equal to Newhall's Storage Account Balance, such right to be exercised by Semitropic, as trustee, through the lands, facilities, rights and interests of Semitropic, or by its successor in interest in and to the trust property, all in accordance with the terms of this Agreement. Semitropic acknowledges and agrees that all water delivered to it by Newhall hereunder will be received, held, exchanged, accounted for, and returned or otherwise disposed of by Semitropic in its capacity as trustee for Newhall with respect to such water and the easements and rights relating thereto provided for herein. Newhall has herein authorized

Semitropic, as trustee, to commingle, exchange or otherwise dispose of the water delivered by Newhall hereunder. In exchange for those rights and for water delivered hereunder, Semitropic has granted, and does hereby grant, to Newhall the right to an equal quantity of water from the lands, facilities, rights and interests of Semitropic (subject, however, to the loss provisions of Article 4), together with such easements and other rights as are necessary to transport the recovered water to the California Aqueduct for delivery to Newhall as specified in the Delivery Agreement therein, all upon, and subject to the provisions of, this Agreement (all of which rights and easements may be referred to herein, collectively, as the "**Trust Property**"). Newhall has granted, and does hereby grant, to Semitropic said Trust Property, in trust, for the use and benefit of Newhall. The trust relationship created by this Agreement is not otherwise intended to apply to or affect the obligations of Semitropic or Newhall hereunder, or the remedies in the event of default; it being expressly understood and agreed that Semitropic's obligations hereunder to, among other things, construct facilities and enter into agreements with others in furtherance of the Program shall not be fiduciary in nature. Notwithstanding creation of a trust under this Agreement, Semitropic may benefit from the Program set forth in this Agreement.

## DECLARATION OF TRUST

Newhall hereby appoints Semitropic to hold, and Semitropic hereby accepts such appointment and agrees to hold, in trust, for the use and benefit of Newhall as beneficiary, Newhall's Stored Water (as hereinafter defined), together with all of the other Trust Property (as defined in Recital I above), upon the terms set forth in this Agreement. The trust created under this paragraph exists only for the purposes described in Recitals I and J above, relating to protection of Newhall's ability to recover its Stored Water if Semitropic fails or refuses to do so when required to do so by this Agreement, and only with respect to the Stored Water and the other Trust Property. The creation of a trust under this paragraph does not otherwise enlarge or reduce the rights or obligations of the Parties. If and to the extent Semitropic performs its obligations as provided in this Agreement, Semitropic will not be deemed or construed to have breached any fiduciary duty to Newhall arising out of the trust provided for in this Agreement.

## ARTICLE 1. DEFINITIONS

As used in this Agreement, each of the following terms shall have the respective meaning given to it in this Article 1 unless expressly stated to the contrary where such term is used. Further, each provision in this Article or in the Recitals which is stated in declarative form (for example, "will be adjusted") or is otherwise stated as an agreement between the Parties, rather than as a statement of their intent or purpose, shall be construed to be an operative part of this Agreement and shall be enforceable.

1.1 **"Agreement"** means, as of any particular time, this Agreement for a Newhall Semitropic Water Banking and Exchange Program, as amended or supplemented by the Parties through that time.

1.2 **"Banking Partner"** means, as of any particular time, Newhall and any other entity which is then a party to a water banking and exchange agreement with Semitropic which

includes one or more of options 1 through 4 of the Program Options and which does not violate the requirements of this Agreement. The term "Banking Partner" does not include a Lower Priority Banking Partner.

1.3 **"In-Lieu Service Area"** means lands which have at least a five year history of cultivation using groundwater, the owners of which have executed surface water service contracts with Semitropic acknowledging and agreeing to cooperate with Semitropic in fulfilling its obligation to carry out the Program, that provide for the reasonable and beneficial use of water made available to Semitropic for banking and other purposes on that land in lieu of pumping groundwater, and whose on-farm systems have been connected to Semitropic's surface water distribution system to receive water delivered to Semitropic for storage purposes. It is estimated that, upon completion of all Program facilities as identified in the EIR, the In-Lieu Service Area will be 23,000 acres.

1.4 **"Interim Storage Allocation"** means, as of any particular time, and with respect to any particular Banking Partner who has elected Option 2 of the Program Options, that portion of the total 1,000,000 acre-foot Program storage capacity then allocated to that Banking Partner which has not yet become Permanent Storage Allocation of a Banking Partner. As Permanent Storage Allocation is acquired by a Banking Partner, the Interim Storage Allocation of that Banking Partner is reduced by an identical amount.

1.5 **"Lower Priority Banking Partner"** means an entity which enters into an agreement with Semitropic to utilize all or part of Program Delivery Capability, Unused Semitropic Delivery Capability, Program Pumpback Capacity or Program Entitlement Exchange Rights during such time period when not required to be available for use by Semitropic or Banking Partners.

1.6 **"Newhall's Share of Total Program Capital Cost"** means, as of December 31, 1995, \$7,370,000 (which is five and one-half percent (5.5%) of the Total Program Capital Cost). When required under Article 6 the **"Adjustment Index"** shall be used.

The "**Adjustment Index**" for the calendar year with respect to which the redetermination is being made means a fraction, the numerator of which is the Construction Costs Index for Los Angeles published by the Engineering News Record (the "**Construction Costs Index**") for December of the calendar year immediately preceding the calendar year with respect to which the determination is being made (that is, for December 1996 with respect to the determination of Newhall's Share of Total Program Capital Cost for 1997) and the denominator shall be the Construction Cost Index for June 1994, which the parties agree is 6,550.36 (based on a 1913 value of 100). If Construction Costs Index ceases to be published or if the base year for the Construction Costs Index or the methodology by which the Construction Costs Index is determined is modified, then the Construction Costs Index to be used in the calculations required by this Section 1.6 shall be modified as provided for in Section 6.2.3.

1.7 "**Permanent Storage Allocation**" means, with respect to any particular Banking Partner and as of any particular time, the portion of the total 1,000,000 acre-foot Program storage capacity which is allocated to that Banking Partner as of that time. Newhall's Permanent Storage Allocation equals 55,000 acre-feet which may be increased under provisions of Section 6.4.

1.8 "**Program**" means those facilities, agreements and operational activities, described in Recital H and elsewhere, necessary for Semitropic to provide the water storage, management, pumpback and exchange services specified in this Agreement and in other water banking and storage agreements contemplated by this Agreement.

1.9 "**Program Delivery Capability**" means the capability to deliver water for storage made available as a result of the construction of Program facilities as identified in the EIR, agreements and operational activities. The absorptive capability of the proposed 23,000 acre In-Lieu Service Area plus improvements in the delivery capability to the existing SWSA and TWSA are currently estimated to be 90,500 acre-feet per year, based on current cropping



patterns and irrigation efficiencies. Program Delivery Capability for this Agreement is as shown on Exhibit B.

1.10 **"Program Entitlement Exchange Rights"** means the rights of Banking Partners to exchange an amount of Stored Water through entitlement exchange for an equal amount of Semitropic's allocation of Agency's SWP Entitlement Water from the California Aqueduct pursuant to this Agreement or other similar agreements between Semitropic and other Banking Partners. Upon completion of such an exchange by Newhall, Newhall's beneficial interest in the Stored Water that was the subject of the exchange shall vest in Semitropic and the quantity so exchanged shall be deducted from Newhall's Storage Account Balance. Upon completion of necessary Program facilities as identified in the EIR, the total amount of Program Entitlement Exchange Rights available to Banking Partners each year will be equal to Semitropic's SWP Entitlement allocation less the first 22,000 acre-feet (was 25,000 acre-feet prior to the implementation of Monterey Amendments). If the nature or description of Semitropic's allocation of the Agency's SWP Entitlement Water is modified, such alternative supply from the SWP shall to such extent be substituted for Semitropic's allocation of Agency's SWP Entitlement Water. Alternative supplies shall include water purchases by the SWP or from sources generally available to State water contractors, as well as water from facilities in which participation is generally made available to State water contractors. Nothing in the preceding sentence shall obligate Semitropic to participate in such programs. When all necessary Program facilities are constructed and fully vested, the maximum Program Entitlement Exchange Rights of the Banking Partners at any time will be 133,000 acre-feet per year (derived from 158,000 acre-feet minus 25,000 acre-feet or after implementation of the Monterey Amendments derived from 155,000 acre-feet minus 22,000 acre-feet) times the sum of all Banking Partners Permanent Storage Allocation divided by 1,000,000 acre-feet. Exhibit A specifies the maximum Program Entitlement Exchange Rights as Banking Partners' Permanent Storage Allocation is accumulated. Until such time as the Permanent Storage Allocation is fully vested, the Program Entitlement Exchange Rights of each Banking Partner

shall be computed as a percentage of all Banking Partners' Interim and Permanent Storage Allocation.

1.10.1 **"Unused Program Entitlement Exchange Rights"** means those exchange rights established under paragraph 1.10 and Exhibit A of this Agreement that are not used by the Banking Partners that established those rights.

1.11 **"Program Pumpback Capacity"** means the capacity, measured in acre-feet per year and CFS, to return Stored Water to the California Aqueduct. Upon completion of all necessary Program facilities, the minimum annual Program Pumpback Capacity shall be 90,000 acre-feet per year at a maximum instantaneous flow rate of 300 CFS. Exhibit A establishes the minimum Program Pumpback Capacity available as the Banking Partners' accumulate Permanent Storage Allocation.

1.11.1 **"Unused Program Pumpback Capacity"** refers to that minimum pumpback capacity established under Section 1.11 and Exhibit A of this Agreement that is not used by Semitropic or by the Banking Partners that established the Program Pumpback Capacity.

1.12 **"SWP Entitlement Water"** means entitlement water as provided for in the state water contracts, as well as the alternative supplies provided for in the definition of Program Entitlement Exchange Rights.

1.13 **"Storage Account Balance"** means, with respect to a particular Banking Partner, that Banking Partner's accumulated total Stored Water less the accumulated withdrawals of Stored Water by that Banking Partner. Records of these accounts shall be maintained by Semitropic and they shall be subject to audit, review and approval by the Banking Partners, at the expense of the auditing or reviewing Banking Partner, on an annual basis.

1.14 **"Stored Water"** means, with respect to any particular Banking Partner, water delivered for storage by that Banking Partner as measured at Semitropic's turnout in Reach 10A of the California Aqueduct or at other locations approved by the Delivery Agreement referred to in Article 8, less losses deducted in accordance with Article 4, which losses shall be accounted for concurrently with the delivery of water to Semitropic for storage. Newhall acknowledges that Newhall's Stored Water may be commingled with other water. At all times during the term of this Agreement, an amount of water available to Semitropic in the Semitropic Basin equal to the amount of the Newhall Storage Account Balance shall be deemed to be Newhall's Stored Water. So long as water in the amount of Newhall's Storage Account Balance remains in the Semitropic Basin, Semitropic, as trustee, shall be deemed to remove Newhall's Stored Water from storage only as and when requested by Newhall pursuant to the terms of this Agreement and any other removal of water by Semitropic from the Semitropic Basin shall be deemed to be the removal of water that is not Newhall's Stored Water. If at any time the amount of water in the Semitropic Basin is less than the sum of the Storage Account Balances of the Banking Partners (an event which the parties believe is extremely unlikely), any additional water subsequently available to Semitropic from the Semitropic Basin without interfering with the rights of landowners or other public agencies, shall be shared by the Banking Partners in proportion to their respective Storage Account Balances, until such time as the amount of water so available to Semitropic from the Semitropic Basin equals or exceeds the total of the Storage Account Balances of the Banking Partners.

1.15 **"Total Program Capital Cost"** means \$134,000,000.00 in 1994 dollars, which amount shall be adjusted annually, as of the first day of each calendar year for such calendar year, beginning January 1, 1996, said \$134,000,000.00 shall be adjusted on the same basis as in Section 6.2.1.

1.16 **"Unused Semitropic Delivery Capability"** means that portion of Semitropic's pre-Program Delivery Capability (i.e., approximately 220,000 acre-feet per year plus approximately 10,000 acre-feet per year of direct percolation capability) which is not used for

delivery of Semitropic's SWP Entitlement Water, Agency Pool Water, Shafter-Wasco Irrigation District deliveries pursuant to Section 5.9 or other water available to be used by Semitropic for non-banking purposes.

**ARTICLE 2.**  
**ALLOCATION AMONG BANKING PARTNERS**

2.1 Banking Partners shall have the first priority to utilize their shares of Program Delivery Capability, Program Pumpback Capacity and Program Entitlement Exchange Rights as described in this Agreement. Banking Partners in all cases shall have the first priority to use any Program Delivery Capability, Unused Semitropic Delivery Capability, Program Pumpback Capacity or Program Entitlement Exchange Rights during such time periods when not required for use by other Banking Partners. Semitropic shall notify each Banking Partner not using its respective share of said Program capability, capacity or right, when other entities including Banking Partners desire to utilize it and of any use made of it.

2.2 Semitropic shall not enter into any other water banking programs or other agreements which would interfere with the Program benefits and rights of the Banking Partners.

2.3 Then existing Banking Partners will be given an opportunity to review the terms and conditions of proposed agreements with potential Banking Partners and Lower Priority Banking Partners and to review Semitropic's records regarding administration of the Program. Such Lower Priority Banking Partners' agreements and activities shall not adversely impact Banking Partners' ability to utilize any benefits under this Agreement. If Semitropic or one or more then existing Banking Partners believe that other potential Banking Partners' proposed agreements or potential Lower Priority Banking Partners' proposed agreements violate any of the provisions of this Agreement or other such Agreement, any Party may seek dispute

resolution pursuant to Article 9 concerning such matter. In this event, Semitropic shall only enter into agreements in conformity with the result of the dispute resolution.

2.4 At no time under this Program shall the sum of all Banking Partners' Interim and Permanent Storage Allocations exceed 1,000,000 acre-feet.

2.5 With the exception of agreements which Semitropic enters into with agencies or districts within Kern County, Semitropic shall first offer to Metropolitan; then on an equal percentage basis, in proportion to their respective Permanent Storage Allocations, to Santa Clara, Alameda, and Zone 7; then on an equal percentage basis, in proportion to their respective Permanent Storage Allocations, to Vidler and Newhall, and then to all other Banking Partners a right of first refusal for any agreement which Semitropic proposes to enter into with a Lower Priority Banking Partner. Further, if after December 12, 1999, Semitropic negotiates an agreement with another potential Banking Partner, Semitropic shall first offer to Metropolitan; then on an equal percentage basis, in proportion to their respective Permanent Storage Allocations, to Santa Clara, Alameda, and Zone 7; then on an equal percentage basis, in proportion to their respective Permanent Storage Allocations, to Vidler and Newhall, and then to all other Banking Partners a right of first refusal for the Interim and Permanent Storage Allocation provided for in such agreement on the same terms and conditions, irrespective of the maximum amount specified in Section 2.5. Banking Partners must notify Semitropic in writing of the intent to exercise such options within forty-five (45) days of receiving written notice from Semitropic transmitting the proposed agreement.

**ARTICLE 3.**  
**DELIVERY OF WATER BY BANKING PARTNERS**  
**TO SEMITROPIC**

3.1 Under the terms of the Delivery Agreement referred to in Article 8, Newhall, at its sole cost and expense, may deliver water to Semitropic at the location in the California Aqueduct specified in the Delivery Agreement or to other agreed upon locations provided, however, such water shall not place institutional burdens on Semitropic beyond that applicable under Delivery Agreements and Point of Delivery Agreements with other Banking Partners. Newhall shall notify Semitropic of its intent as early in the year as possible, preferably no later than April 15. Such water will be scheduled and delivered to Semitropic at times and rates of delivery acceptable to Semitropic, the Agency and Newhall, and shall not exceed the Program Delivery Capability and Unused Semitropic Delivery Capability nor shall it exceed the available capacity of Semitropic's distribution system.

3.2 Semitropic will take control and possession of water delivered to Semitropic by any Banking Partner for storage, at the locations specified in their respective Delivery Agreements and will credit the Storage Account Balance of that Banking Partner with Stored Water in an amount equal to the water so delivered less the deduction for losses provided for in Article 4 with respect to such water (the "Stored Water"). At the time Semitropic takes control and possession of water delivered by Newhall, legal title to Newhall's water, together with the right to withdraw from the Semitropic Basin an amount sufficient to return to Newhall the Stored Water, shall vest in Semitropic, as trustee for Newhall. Upon taking control and possession of water delivered hereunder for storage by Newhall, Semitropic, at its sole cost and expense, will do either of the following: (i) transport and store such water by direct percolation; or (ii) exchange that water for an interest in and right to withdraw from the Semitropic Basin an amount of water sufficient to return to Newhall the Stored Water (which interest and right shall thereafter be Trust Property). In either case, Semitropic shall thereafter hold and return or otherwise dispose of the Trust Property as provided for in this Agreement.

Upon crediting Newhall's Storage Account Balance for the amount of any water exchanged as described in clause (ii) above, Semitropic may deliver the exchanged water to water users for surface water service in lieu of pumping groundwater. Semitropic shall retain the right to use its facilities to deliver water supplies made available to it by Banking Partners and acquired by Semitropic by exchange pursuant to clause (ii) above as it deems appropriate.

3.3 Program Delivery Capability shall be allocated among Banking Partners in accordance with the ratio of the Banking Partner's portion of Permanent Storage Allocation to the sum of all Banking Partners' Permanent Storage Allocations.

3.4 If, due to hydrologic conditions, changes in cropping patterns or other reasons, Program Delivery Capability is reduced, the Banking Partners may request, and Semitropic shall provide, information accounting for such reduction. If such reduction is not due to temporary conditions, Semitropic shall take all actions necessary to comply with Exhibit B.

3.5 Unused Semitropic Delivery Capability shall be allocated among the Banking Partners requesting the use of such Unused Semitropic Delivery Capability according to the ratio of the sum of such Banking Partner's Interim and Permanent Storage Allocation, to the sum of all such Banking Partners' Interim and Permanent Storage Allocations.

3.6 If, after reasonable efforts by Semitropic to accommodate the Banking Partners' storage scheduling requests, such requests nevertheless exceed the instantaneously available Program Delivery Capability and Unused Semitropic Delivery Capability, Semitropic shall allocate available capacities in proportion to the total of each Banking Partners' Interim and Permanent Storage Allocations.

#### **ARTICLE 4. LOSSES AND STORED WATER**

Semitropic's distribution system, evaporative and aquifer losses, for purposes of this Agreement and similar agreements between Semitropic and other Banking Partners, are

collectively assumed to be ten percent (10%) of the amount of water furnished by Banking Partners for storage as measured at Semitropic's turnout in Reach 10 A of the California Aqueduct and at other turnouts as provided in the Delivery Agreement referred to in Article 8.

Because such losses have already been assessed against the water resulting in the in 2,654 of Stored Water in Newhall's account as of the date of this Agreement, no such losses shall be assessed against such water. However, this amount and the Storage Account Balance shall be modified in the future, if the results of studies to be conducted jointly by Newhall, other Banking Partners and Semitropic under a mutually agreeable procedure establish the actual loss to be different than the assumed ten percent (10%) losses. The Storage Account Balance shall be adjusted accordingly and resulting adjustments in compensation payments shall be in accordance with Section 6.8.

#### **ARTICLE 5. RETURN OF WATER BY SEMITROPIC TO NEWHALL**

5.1 In any year, upon request by Newhall, Semitropic shall return Stored Water to Newhall by the method set forth in Section 5.1.1 or the method set forth in Section 5.1.2 or both.

5.1.1 Semitropic may exchange an amount of Newhall's Stored Water for an equal amount of Semitropic's SWP Entitlement Water. Newhall hereby consents to such an exchange and Semitropic will be deemed to have effected such an exchange by delivering a portion of its SWP Entitlement Water to Newhall in compliance with the Delivery Agreement(s). Upon completion of such an exchange, Newhall's beneficial interest in the Stored Water that was the subject of the exchange and the right to withdraw such water shall be vested in Semitropic in its individual capacity, and Semitropic may thereafter deliver such water to its water users who would otherwise have received the portion of Semitropic's SWP Entitlement Water that was delivered to Newhall as a result of the exchange.



5.1.2 Semitropic may return Newhall's Stored Water to Newhall by pumping water from the groundwater basin back to the Aqueduct for delivery to Newhall as specified in the Delivery Agreement.

5.2 The return of Stored Water by Semitropic to Newhall shall be subject to the following terms and conditions:

5.2.1 Subject to the provisions of this Agreement, for each acre-foot of Stored Water held by Semitropic for Newhall, Semitropic shall ultimately return one acre-foot of water to Newhall.

5.2.2 Subject to the provisions of this Agreement, when Newhall requests the return of Stored Water, Semitropic shall return at a minimum the quantities of water calculated in accordance with the following, using its reasonable efforts to accommodate Newhall's delivery schedule:

5.2.2.1 Program Pumpback Capacity shall be allocated among Banking Partners according to the ratio of each Banking Partner's combined Interim and Permanent Storage Allocations divided by 1,000,000 acre-feet. Each Banking Partner shall have a right to any then existing Program Pumpback Capacity not used by other Banking Partners, subject to mitigation of impacts to other Banking Partners pursuant to Section 5.6. If requests by Banking Partners for unused Program Pumpback Capacity exceed such capacity, then the unused Program Pumpback Capacity shall be allocated to each Banking Partner according to the ratio of its combined Interim and Permanent Storage Allocations, divided by the sum of the combined Interim and Permanent Storage Allocations of all Banking Partners wishing to use the unused capacity times the amount of unused Program Pumpback Capacity.

5.2.2.2 Program Entitlement Exchange Rights shall be allocated to each Banking Partner according to the ratio of its combined Interim and Permanent Storage

Allocations divided by 1,000,000 acre-feet times the Program Entitlement Exchange Rights to be allocated. Each Banking Partner shall have a right to any Program Entitlement Exchange Rights not required for use by other Banking Partners, subject to mitigation of impacts to other Banking Partners pursuant to Section 5.6. If requests by Banking Partners for unused Program Entitlement Exchange Rights exceed such rights, then the unused Program Entitlement Exchange Rights shall be allocated to each Banking Partner according to the ratio of its combined Interim and Permanent Storage Allocations, divided by the sum of the combined Interim and Permanent Storage Allocations of all Banking Partners wishing to use the unused Program Entitlement Exchange Rights times unused Program Entitlement Exchange Rights.

5.2.3 In the event it is determined in the future under full Program development that the minimum annual Program Pumpback Capacity is less than 90,000 acre-feet per year but greater than 31,500 acre-feet per year and/or the maximum Program Entitlement Exchange Rights are less than 133,000 acre-feet per year but greater than 46,550 acre-feet per year on a permanent basis, and since Metropolitan was the first banking partner, and if Metropolitan's Permanent Storage Allocation is Fully Vested, and, during the first ten (10) years of the **“AGREEMENT BETWEEN THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA AND SEMITROPIC WATER STORAGE DISTRICT AND ITS IMPROVEMENT DISTRICTS FOR A METROPOLITAN - SEMITROPIC WATER BANKING AND EXCHANGE PROGRAM”** (Metropolitan's Agreement), dated December 12, 1994, whether or not Metropolitan's Permanent Storage Allocation is fully vested, Metropolitan's minimum guarantee of 31,500 acre-feet per year of Program Pumpback Capacity acquired under the December 12, 1994 Agreement and its maximum of 46,550 acre-feet per year (133,000 acre-feet per year times 35 percent) of Program Entitlement Exchange Rights shall not be reduced and shall not be used in any proration of capacity rights between Banking Partners. In the event said capacity and rights are less than Metropolitan's minimum guarantee of 31,500 acre-feet per year and less than 46,550 acre-feet per year of Program Entitlement Exchange Rights, and if Metropolitan's Permanent Storage Allocation is Fully Vested, and, during the first ten (10) years of Metropolitan's Agreement, whether or not Metropolitan's Permanent Storage Allocation is

fully vested, Metropolitan shall be allocated all of said capacity and rights. If, however, Metropolitan's Permanent Storage Allocation is reduced, below 350,000 acre-feet, such Program Pumpback Capacity and Program Entitlement Exchange Right shall be reduced to its vested rights. Temporary reductions in said capacity and rights are subject to Sections 5.2.2.1, 5.2.2.2 and 5.5. Except for Metropolitan's rights set forth in this Section 5.2.3, all Banking Partners established under this Program shall have equal priority within their allocated capacity and unused capacity.

5.3 Newhall shall notify Semitropic of its intent to take delivery of Stored Water as early in the year as possible, but no later than May 1 of the same year. If such notification is provided after May 1, Semitropic, at its sole discretion, may make reasonable efforts to comply with Newhall's request. In the event of an emergency need for water by Newhall, Semitropic shall endeavor to return Stored Water to Newhall to the maximum extent feasible considering the capacity rights of other Banking Partners.

5.4 Semitropic has obtained approval from DWR to deliver Stored Water by pumpback to the California Aqueduct. In addition it shall be Semitropic's responsibility to notify the Agency, each Banking Partner, and DWR, as to the amount of Program Entitlement Exchange Rights and Program Pumpback Capacity for that year. When Stored Water is returned by pumpback, it shall be returned during Semitropic's off-peak irrigation season and other periods which Semitropic determines to be operationally feasible, on a schedule acceptable to the respective Banking Partner, Agency and DWR and at varying rates of delivery. Banking Partner shall be responsible for all necessary approvals and costs to transport such water in the California Aqueduct once the Stored Water is returned to Newhall by either Program Pumpback or Program Entitlement Exchange.

5.5 Notwithstanding any other provision of this Agreement, Semitropic will temporarily reduce or terminate groundwater pumping for the purpose of returning Stored Water to Banking Partners to the extent required pursuant to the MOU referenced above in Recital G. However,

to the extent possible, Semitropic shall change the timing and location of pumping to avoid reduction or termination in the return of Stored Water pursuant to the MOU. Semitropic shall construct adequate facilities and/or secure agreements and/or operational arrangements to obtain the long term levels of service provided for in Exhibit A. Such long term levels of service may only be reduced to the extent required by the MOU referenced above in Recital G.

5.6 If the use by other Banking Partners, Lower Priority Banking Partners or Semitropic of unused Program Pumpback Capacity or unused Program Entitlement Exchange Rights referenced in Sections 5.2.2.1 and 5.2.2.2 interferes with the recovery of Newhall's or any other Banking Partner's Stored Water by causing a reduction or termination of pumping pursuant to the MOU, the Party or Parties responsible for the action(s) which impacts Newhall or any other Banking Partner shall reduce its withdrawal of Stored Water to make up Newhall's or other Banking Partner's loss and, to the extent reductions in the withdrawal of Stored Water are insufficient, shall provide, at the election of the impacted Banking Partner, an equivalent water supply in that year or cash in the amount of the replacement cost of such water, such water or cash to be for the benefit of and to be immediately distributed to the impacted Banking Partners. Semitropic shall adjust the Banking Partners' accounts to reflect any such water exchange.

Newhall recognizes that it may be required to reduce its withdrawal of Stored Water or furnish equivalent water or cash to another Banking Partner under the circumstances described above, if its own use of unused Program Pumpback Capacity or unused Program Entitlement Exchange rights interferes with other Banking Partner's recovery of Stored Water. Semitropic agrees promptly to pursue amendments to its existing Banking and Storage Agreements, and to include in all future such agreements, a similar provision which clarifies that Section 5.6 imposes obligations on the Banking Partner or Lower Priority Banking Partner, as well as providing benefits to it. Newhall will only be bound by Section 5.6 with respect to a Banking Partner which is reciprocally obligated to Newhall.

5.7 Wells within Semitropic can produce water that will meet DWR's water quality standards to return water to the California Aqueduct in effect October 8, 1998. Semitropic shall take no direct action which would knowingly cause the quality of recovered groundwater to not meet such water quality standards in effect. The preceding sentence shall not apply to delivery of water under non-banking programs or otherwise operating under this Program. In the event that future water quality standards change, or the quality of groundwater from Semitropic wells is such that Semitropic cannot meet acceptable DWR water quality requirements for pumping into the California Aqueduct, Stored Water shall be returned to Banking Partners by Program Entitlement Exchange or alternative methods satisfactory to the affected Banking Partners. Such alternative methods may include, but are not necessarily limited to: purchases, exchanges with others, and/or by improving Stored Water quality to acceptable standards for direct pumpback, with the additional costs of any such methods being paid by Banking Partners accepting such alternative methods. Semitropic's operations and financial situation shall not be adversely impacted as a result of these alternative methods.

5.8 This Agreement shall be subject to the "Agreement Between the Department of Water Resources of the State of California, Kern County Water Agency and Semitropic Water Storage District for 1990 Demonstration Semitropic Local Element," dated May 1, 1990, which provides for Semitropic to return all banked water to DWR solely by entitlement exchange. Said agreement expires when all banked water is withdrawn, or on December 31, 2010, whichever first occurs. Until such expiration, DWR has priority over Banking Partners in any year water is to be returned by entitlement exchange. The amount owed to DWR is 40,131 acre-feet as of January 1, 1998 with a maximum withdrawal rate of 10,033 acre-feet per year. Any amendment to such agreement shall be subject to this Agreement and the review of the Banking Partners.

5.9 Newhall also recognizes that Semitropic has entered into an "Agreement Between Shafter-Wasco Irrigation District and Semitropic Improvement District of Semitropic Water Storage District Providing for Construction and Operation of an Intertie Pipeline," dated

December 6, 1993, which implements a water banking and exchange program. Semitropic has committed to return water to Shafter-Wasco by delivery of either surface water in excess of its needs from any available source or by pumping groundwater. The agreement with Shafter-Wasco is based on the use of existing Semitropic facilities for the delivery of water to storage and for the withdrawal or return of water. Shafter-Wasco, therefore, has priority over Banking Partners in the use of existing facilities. Semitropic's obligation under said agreement does not require commitment of SWP entitlement nor the use of pumpback facilities required for the return of Banking Partners' Stored Water.

#### **ARTICLE 6. COMPENSATION**

Newhall shall make the payments set forth below to compensate Semitropic for (i) its services as trustee under this Agreement, (ii) costs and expenses incurred by Semitropic in connection with its obligations under this Agreement.

6.1 Semitropic commits to utilize Newhall's payments and other Semitropic funds, and to maintain such adequate financial flexibility, as it reasonably determines to be necessary to construct facilities needed to provide Newhall with Program Pumpback Capacity and Program Entitlement Exchange Rights in a timely manner as described in Exhibit A hereto and, as payments of Newhall's Share of Total Program Capital Cost are made, provide increases in Program Delivery Capability to Newhall's share of Program Delivery Capability as described in Exhibit B, all in accordance with this Agreement.

Newhall shall pay the following for services provided by Semitropic for storage and withdrawal of water. Semitropic shall pay all other costs not specified herein, and Semitropic shall not create and impose any other charges or fees upon Newhall.

## 6.2 Storage Payments.

6.2.1 Newhall's storage payments to provide capital contribution are based on 29.7297 percent of Vidler's 185,000 acre feet of Permanent Storage Allocation calculated as  $[(185,000 \text{ acre-feet}/1,000,000 \text{ acre-feet} \times \$134,000,000) - (185,000 \text{ acre-feet} \times \$10.00 \text{ per acre-foot})]$  or \$22,940,000. The amounts of \$134,000,000 and \$10.00 are in 1994 dollars and under Option 3 are escalated to 1998 (the year Vidler executed the Semitropic Agreement). As of January 1, 1998 escalation is derived from the ratio 6,663.55/6,550.36 adjusting the total Capital amount to \$23,336,400. The remaining portion of this amount payable by Newhall (i.e., \$4,856,488~~9~~) shall be paid in seven equal annual payments of \$693,784. The first payment due after the execution of this Agreement by Newhall shall be made within 45 days of October 8, 2001 and subsequent payments made within forty-five (45) days of October 8 of each year until paid with the last payment made within 45 days of October 8, 2007.

6.2.2 From and after the time when Newhall has delivered to storage 55,000 acre-feet of water, including the 2654 acre-feet acquired from Vidler, Newhall shall pay Fifty Dollars (\$50.00) per acre-foot for any additional Stored Water credited to Newhall's Storage Account Balance pursuant to Section 6.4, adjusted at the beginning of each year as provided in this Section 6.2.2, and the adjusted amount shall apply to all Stored Water credited to Newhall's Storage Account Balance for that year and to which this Section 6.2.2 is applicable. The adjusted amount under this Section 6.2.2 for any particular calendar year shall be the amount equal to Fifty Dollars (\$50.00) multiplied by a fraction, the numerator of which is the Consumer Price Index, All Urban Consumers, All Items Index, Western Cities with populations of 50,000 to 330,000 (the "CPI") for December of the calendar year immediately preceding the calendar year with respect to which the adjusted amount is being determined (that is, for December 2000 with respect to the adjusted amount for 2001; December 2001 for 2002; and so on), and the denominator of which shall be the CPI for June 1994 (which, the Parties agree, is 148.6 (based on 1982-84 index).

6.2.3 If publication of either of the indexes referred to in Section 1.6 or 6.2.2 ceases or if the basis for such indexes is substantially modified, the Parties shall negotiate and mutually agree on an alternative but equivalent index or, in the absence of agreement, the matter shall be resolved pursuant to Article 9.

### 6.3 Withdrawal Payments.

6.3.1 Newhall shall pay to Semitropic Ten Dollars (\$10.00) per acre-foot, for each acre-foot of water for the first 55,000 acre-feet of Newhall water removed from storage, when such water is returned to Newhall. Said Ten Dollar (\$10.00) charge shall be adjusted annually on the basis of the Engineering News Record Construction Cost Index as provided in this Section 6.3.1. Subsequent to calendar year 1995, the Ten Dollars (\$10.00) per acre-foot shall be adjusted at the beginning of each year as provided in this Section 6.3.1, and the adjusted amount shall apply to all water which is withdrawn from Newhall's Storage Account Balance under this Section 6.3.1. The adjusted amount for any particular calendar year after 1995 shall be the amount equal to Ten Dollars (\$10.00) multiplied by a fraction, the numerator of which is the Construction Cost Index for Los Angeles published by the Engineering News Record ("Construction Cost Index") for December of the calendar year immediately preceding the calendar year with respect to which the adjusted amount is being determined (that is, for December 1995 with respect to the adjusted amount for 1996; December 1996 for 1997; and so on), and the denominator of which shall be the Construction Costs Index for June 1994 (which the parties agree is 6,550.36 based on a 1913 value of 100).

6.3.2 Newhall shall pay Fifty Dollars (\$50.00) per acre-foot, for each acre-foot of water with respect to which storage payments have been made pursuant to Section 6.2.2, when such water is returned to Newhall. Said charge shall be adjusted on the same basis as in Section 6.2.2. No water shall be deemed or construed to be subject to the charge provided in this Section 6.3.2 until all water which is subject to the charge provided in Section 6.3.1 has been returned.



6.3.3 In addition to payment under Sections 6.3.1 and 6.3.2, when water is returned, Newhall shall pay the average unit power costs then actually incurred by Semitropic to pump such water from the groundwater basin for either direct delivery to the California Aqueduct or for entitlement exchange. In the case of direct delivery to the California Aqueduct, Newhall also shall pay the average unit power cost then actually incurred by Semitropic to convey the returned water through the distribution system and to pump such water into the California Aqueduct at the Semitropic turnout in Reach 10A. Said power costs shall be computed based on the amount of energy consumed to withdraw and when applicable to convey to the California Aqueduct Newhall's Stored Water in a given month times Semitropic's average actual unit power cost for the same pumping period. For ease in billing, Semitropic shall establish an estimated power rate for each calendar year with respect to which Newhall requests such information and shall provide Newhall with such estimate, including back-up documentation to justify the rate, within fourteen (14) days of the request. Such estimated rate shall be used for billing purposes for the following year and then the billing will be adjusted to actual by March 1 of the year following the estimated rate year, or as soon as possible thereafter. Once the variance amount has been agreed to by the Parties, any amount due by either Party shall be billed immediately and paid in accordance with Section 6.8. Semitropic has its own power production and distribution facilities and the unit cost of power shall be based upon the cost of Semitropic's energy project including, but not limited to, debt service for the energy project, fuel, operation and maintenance for the energy project, replacements, reserve deposit for the energy project, utility billings, and the cost of production and distribution of such power. The Parties agree that the initial calculation shall be consistent with the calculation in Exhibit C. For all Stored Water returned by Semitropic's exercise of Program Entitlement Exchange Rights, Semitropic shall pay all applicable SWP costs thru the Harvey O. Banks Pumping Plant to the turnout of the South Bay Aqueduct.

6.3.4 Exhibit C may be revised from time to time by written consent of the Parties, which consent shall not be unreasonably withheld. The intent of Exhibit C is to provide Semitropic with sufficient revenue to recover the power costs incurred by Semitropic for

Newhall's withdrawal of Stored Water and to allow Semitropic flexibility to change the calculation based on experience and the changing electric utility industry.

6.4 When Newhall's payments under Sections 6.2.1 have been made in full for 55,000 acre-feet of Permanent Storage Allocation, at Newhall's election and Semitropic's concurrence, Newhall may continue to deliver water for storage and make payments under Sections 6.2.1, 6.3.1 and 6.4, and such election and payments will result in an increase in Newhall's Permanent Storage Allocation to the extent the sum of all Banking Partners' Permanent and Interim Storage Allocation does not exceed 1,000,000 acre-feet. The additional payments shall be escalated in accordance with Sections 6.2.1 and 6.3.1. The amount of such increase shall be determined pursuant to Section 1.7.

6.5 Except as otherwise provided at Sections 6.5.1 or 6.5.2, Newhall shall be allocated an annual operations and maintenance fee (the "**O&M Fee**") of \$3.98 (the "**Base Amount**") per acre-foot of Permanent Storage Allocation held by Newhall. The Base Amount shall be adjusted in the same manner described and using the same index referenced in Section 6.2.2. The annual O&M Fee starts on the date of this Agreement. For the 2001 O&M Fee billed January 1, 2002, Vidler shall pay 70.0703% and Newhall shall pay 29.9297% of the billing attributed to Vidler's interest in the Program under its Original Agreement and thereafter Vidler and Newhall shall pay the O&M Fee, based on their respective Permanent Shortage Allocation.

6.5.1 In any year, Newhall shall pay in total, an amount equal to the greater of the sum of payments required under Sections 6.2.2 and 6.3.2 or the annual O&M Fee otherwise required under Section 6.5. The annual O&M Fee shall be billed on January 1 of each year. Any amounts due during that year under Section 6.2.2 and Section 6.3.2 shall be compared with the O&M Fee. No payments due under Sections 6.2.2 and 6.3.2 shall be payable until the amount owed under Sections 6.2.2 and 6.3.2 is greater than the O&M fee. Thereafter, only the amount payable under Sections 6.2.2 and 6.3.2 that is greater than the O&M fee paid that year is then due and payable to Semitropic.

6.5.2 If Semitropic or other Banking Partners use Program Delivery Capability, Program Pumpback Capacity or Program Entitlement Exchange Rights allocated to Newhall, such entity using said capacity shall pay a portion of Newhall's O&M Fee under Section 6.5. The portion to be paid shall be the then current O&M Fee of \$3.98 per acre-foot (Base Amount) prorated 20 percent to Program Delivery Capability, 50 percent to Program Pumpback Capacity and 30 percent to Program Entitlement Exchange Rights. This payment shall be based on that portion of the capacity or exchange rights shown on Exhibits A and B during the months they were actually used. The payment made for the use of Newhall's unused capacity rights shall be deducted from the next payment due from Newhall under this Agreement. This Section 6.5.2 shall not apply when Semitropic uses unused program capacity rights for its own groundwater recharge or other District purposes.

6.5.3 If Newhall uses another Banking Partner's unused Program Delivery Capability, Program Pumpback Capacity or Program Entitlement Exchange Rights, Newhall shall pay the share of the other Banking Partner's O&M Fee under this Section 6.5 that is represented by its use and determined in the same manner set forth in Section 6.5.2.

6.6 Semitropic may bill Newhall no more than monthly for payments under Sections 6.2.2, 6.3.1 or 6.3.2, 6.3.3, 6.5.1 and 6.5.3 hereof and annually for payments under Section 6.5, which payments shall be due Semitropic and shall become delinquent forty-five (45) days after Newhall receives the invoice under the terms of this Agreement. In addition to other remedies available, delinquent payments shall bear interest at the rate of one percent (1%) per month. Data supporting the amounts invoiced shall be provided upon the reasonable request of Newhall. Semitropic shall correct any erroneous billing promptly upon discovery of the error. If Newhall has been underbilled, payment of the underbilled amount shall be due and become delinquent forty-five (45) days after Newhall receives the corrective invoice and data justifying the change. Overpayments by Newhall shall be refunded to Newhall within forty-five days of discovery, together with interest thereon at the prime interest rate published by the Wall Street Journal as of the date of discovery.

6.7 Vidler has paid to Semitropic, which in turn has paid Metropolitan, an amount to reimburse Metropolitan for a portion of its expenses in developing the Program. Newhall's reimbursement for Metropolitan was equal to Vidler's original Permanent Storage Allocation multiplied by thirty cents (\$0.30 per acre-foot) per acre-foot adjusted in the same manner as in Section 6.2.2, and was included in the amount paid by Newhall to Vidler under the Assignment Agreement. No further payment from Newhall shall be required to reimburse Metropolitan for any of its expenses in developing the Program.

6.8 In the event there is an adjustment in Newhall's Storage Account Balance as provided at Article 4, applying the first-in-first-out method of accounting for water in the Storage Account Balance, previous payments shall be adjusted based on the payment charged in the year the quantity of water to be adjusted was delivered with no further adjustments using the applicable indexes cited in Section 6.2.1 or Section 6.2.2. In addition no interest shall be payable on the amount of money required for said adjustment. Financial obligations shall occur as follows:

6.8.1 To the extent the Storage Account Balance is reduced (i.e., losses are determined to exceed ten percent (10%)), Semitropic shall reimburse Newhall for the charges paid under Sections 6.2.2 and 6.4 within one year of such determination.

6.8.2 To the extent the Storage Account Balance is increased (i.e., losses are determined to be less than ten percent (10%)), Newhall shall pay Semitropic for charges that would have been paid under Sections 6.2.2 and 6.4 for such additional water determined to be in the Newhall Storage Account Balance within one year of such determination.

6.9 It is recognized that changes in Semitropic's actual costs of operating the Program may occur on or after the date this Agreement is executed as a result of enactments, amendments, changes in implementation or interpretation, or repeal of any federal or state law, rule, regulation or ordinance (each, a "**Regulatory Change**"). If either Party determines that a Regulatory Change has occurred that would result in a material change (upward or

downward) in Semitropic's costs for storing, recovering or transporting water pursuant to the terms of this Agreement, which change in Semitropic's costs is not reflected in the adjustments in the payments due from Newhall to Semitropic pursuant to Article 6 or other provision of this Agreement (including, but not limited to, this Section 6.9), such Party shall promptly inform the other Party of the nature and extent of such alleged Regulatory Change and of the reason why that party believes an adjustment pursuant to this Section 6.9 is warranted in the payments due from Newhall to Semitropic. Promptly thereafter, Semitropic shall provide Newhall with its calculation of the costs or cost savings associated with such Regulatory Change and the facts and assumptions underlying that calculation. Upon agreement by the parties hereto (i) that a charge or credit affecting any payment due from Newhall to Semitropic should be made as a result of a Regulatory Change, (ii) of the amount of such charge or credit, (iii) as to whether such charge or credit is to affect the basic payment amount or is to be separately accounted for (and, if so, in what manner), and (iv) as to the period during which such charge or credit is to apply, such charge or credit shall be incorporated into an amendment to this Agreement setting forth the foregoing and other particulars necessary to implement that adjustment. If such agreement cannot be reached within forty-five (45) days after Semitropic has provided the required notice and information to Newhall, the matter shall be resolved pursuant to Article 9, the qualified third party or arbitration panel being charged with determining (x) whether a Regulatory Change has occurred (if that is in dispute), (y) the amount of change, if any, in Semitropic's costs resulting from the Regulatory Change, and (z) the manner in which the payments due from Newhall to Semitropic are to be adjusted to fairly and equitably reflect that change in Semitropic's costs (it being the intent of the parties that no windfall or unwarranted compensation or benefit should result to any party as a result of any adjustment made pursuant to this Section 6.9). Any adjustment to the payments due from Newhall to Semitropic made pursuant to this Section 6.9 shall be effective as of the first day such Regulatory Change affects Semitropic's operations hereunder unless the parties otherwise agree and may be reconsidered thereafter at any time, at the request of any party, if the adjustment is unjustly undercompensating or overcompensating any party.

## ARTICLE 7. DIVISION OF RISK RESPONSIBILITIES

Semitropic and Newhall agree to cooperate, and Semitropic shall require other Banking Partners to cooperate, in reducing, to the greatest extent practicable, the risk from claims arising against any of the Parties from implementation of this Agreement. In the event of claims by third parties relating to this Agreement, the responsibilities of Semitropic, whether acting in its individual and/or trustee capacity, Newhall and the other Banking Partners shall be divided as follows:

7.1 Semitropic shall defend, indemnify and hold harmless Newhall and the other Banking Partners, and their respective directors, officers, agents and employees against any and all losses, claims, demands and causes of action (herein collectively referred to as "**claims**") and shall assume responsibility for payment of any settlements, judgements, costs and attorneys' fees arising from claims concerning the following:

- (a) Control, carriage, handling, use, disposal, or distribution of water in Semitropic's facilities;
- (b) Any contest or dispute by any landowner or water user within the service area of, or otherwise served by, Semitropic concerning the allocation of benefits among or the assessment of charges to Semitropic landowners or water users;
- (c) Construction, repair, modification, or replacement of any Semitropic facilities;
- (d) Semitropic's operation of the Program or Semitropic facilities or the actions of its officers, employees or agents; and
- (e) Any other activities under Semitropic's exclusive control.

If Newhall is named in any such action, it may submit its defense to Semitropic, which shall bear the full cost of defense, except to the extent that Newhall utilizes its own counsel for such defense. Notwithstanding the foregoing, the responsibility for any claims challenging the validity, underlying authority or enforceability of the Program under this Agreement shall be as provided at Section 7.3.

7.2 Each Banking Partner (including Newhall) shall defend, indemnify and hold harmless Semitropic and the other Banking Partners, and their respective directors, officers, agents and employees, against any and all claims and shall assume responsibility for payment of any settlements, judgements, costs or attorneys' fees arising from claims concerning the following:

- (a) Control, carriage, handling, use, disposal or distribution of Stored Water in facilities of that Banking Partner or in SWP facilities, to the extent that the claim relates to use of SWP facilities to implement this Agreement with respect to that Banking Partner;
- (b) Any claim by a landowner, resident, public agency or other entity within the service area of, or otherwise served by, that Banking Partner challenging the appropriateness of that Banking Partner entering into this Agreement;
- (c) Construction, repair, modification or replacement of any of the facilities of that Banking Partner;
- (d) Operation of the facilities of or the actions of the officers, employees or agents (other than Semitropic) of that Banking Partner; and
- (e) Any other activities under the exclusive control of that Banking Partner.

If Semitropic is named in any such action, it may submit its defense to the Banking Partner involved, which Banking Partner shall bear the full cost of defense, except to the extent Semitropic utilizes its own counsel for such defense. Notwithstanding the foregoing, the responsibility for any claims challenging the validity, underlying authority or enforceability of the Program under this Agreement shall be as provided at Section 7.3. Semitropic shall not be entitled to any indemnification from Newhall except as set forth in this Section 7.

7.3 As for any claims by a third party with respect to the Program which are not otherwise provided for at Sections 7.1 or 7.2, including any claims challenging the underlying authority for or the validity or enforceability of the Program under this Agreement, each Banking Partner shall be responsible for payment of its allocable share of any settlements or judgments to which it is a party with respect to such claims. If Semitropic is named in any action with respect to such a claim, it may submit its defense to the Banking Partners which are parties to that action with respect to that claim and those Banking Partners shall bear the full cost of defense, except to the extent Semitropic utilizes its own counsel for such defense.

7.4 At the request of Newhall and/or other Banking Partners, Semitropic shall join in the defense of any claim which is not adverse to Semitropic's water supply or financial interests in which case the requesting Party shall reimburse Semitropic for all of its costs of defense. However, and notwithstanding Section 7.3 with respect to claims in which one or more of the plaintiffs resides or does business in Kern County challenging the recovery of groundwater under this Agreement, and with respect to any third party claim challenging this Agreement or the right of Newhall to the return of its Stored Water in accordance with the terms of this Agreement, Newhall may demand that Semitropic join in the defense of claims. In such case, Semitropic must comply with any such demand, the Parties shall jointly manage the litigation, and Newhall and other Banking Partners who are parties to such litigation shall pay one-half of Semitropic's defense costs, if one or more of the plaintiff resides or does business in Kern County; and in other such cases, shall reimburse Semitropic for all of its costs of defense.



7.5 In all other water banking and exchange agreements involving Semitropic and any Banking Partner, the division of risk and indemnification responsibilities between and among Semitropic and the Banking Partner(s) shall be identical to the responsibilities provided in Sections 7.1, 7.2, 7.3, 7.4 and 7.6. In particular:

7.5.1 Each Banking Partner shall be required to assume the duty to defend, indemnify and hold harmless Semitropic and the other Banking Partners from claims arising from or otherwise concerning the activities described in Section 7.2 of that Banking Partner.

7.5.2 Each Banking Partner shall be required to assume the duty to pay its allocable share of any claims of the type described in Section 7.3. Unless otherwise provided in the settlement or judgment, each Banking Partner's share of such settlements, judgments, or attorney fees as provided at Section 7.3 shall be determined according to the ratio of that Banking Partner's combined Interim and Permanent Storage Allocation divided by the sum of all involved Banking Partners' combined Interim and Permanent Storage Allocations.

7.6 In the event that payments are made in settlement of a claim, in satisfaction of a judgment or for defense costs where the claim arises from issues applying to both Semitropic and one or more Banking Partners, payments shall be divided in proportion to the relative liability of each arising from the common claim. If the Parties cannot agree on the proportion, then the share to be paid by each of Semitropic and the Banking Partners shall be submitted to binding arbitration as provided at Article 9 hereof.

## **ARTICLE 8. REQUIRED FOR IMPLEMENTATION**

Implementation of this Agreement is contingent upon:

1. Execution of appropriate Delivery Agreement(s) or other documentation allowing for water transfer and delivery which is acceptable to Semitropic, between Newhall and all affected parties such as DWR, the Agency, etc.

2. Semitropic and Vidler having executed the Amended and Restated Agreement between Semitropic and Vidler reducing Vidler's participation in the Program to approximately 13.0%.

The Parties will keep each other informed concerning the satisfaction of Article 8 Conditions.

#### **ARTICLE 9. DISPUTE RESOLUTION**

9.1 In the event of a dispute regarding interpretation or implementation of this Agreement, or if the parties are unable to agree upon a matter as to which their agreement is provided for hereunder, the Parties will endeavor to resolve the dispute by using the service of a mutually acceptable consultant. The fees and expenses of the consultant shall be shared equally by the Parties.

9.2 If a consultant cannot be agreed upon, or if the consultant's recommendations are not acceptable to the Parties, and unless the Parties otherwise agree, the matter shall be resolved by arbitration as provided in this Article 9 and in the California Arbitration Act (Part 3 [commencing with § 1280], Tit. 9, Calif. Code Civ. Proc.), including Section 1283.05. The Parties agree to be bound by the majority decision of a three-member panel to be selected as follows:

- (a) One member shall be selected by Newhall (or if the dispute is between various Banking Partners and Semitropic, the Banking Partners involved shall collectively agree on the member).
- (b) One member shall be selected by Semitropic; and
- (c) The third member shall be selected by the other two (2) members.

If the two (2) members selected by the Banking Partner(s) and Semitropic are unable to agree on the selection of a third member or if Banking Partners are unable to agree on a member among themselves, either Party may petition a court to appoint such member pursuant to Code of Civil Procedure Section 1281.6. The fees and expenses of the panel members shall be paid as follows: Semitropic pays for its member, Newhall pays for its member (or if the dispute involves more than one Banking Partner, the participating Banking Partners share the fees and expenses of the member according to the ratio of each participating Banking Partner's Permanent Storage Allocation divided by the sum of all participating Banking Partner's Permanent Storage Allocations), and the fees and expenses of the third member of the panel shall be shared fifty percent (50%) by Semitropic with the remainder to be shared among the other Banking Partners participating in the dispute resolution process according to the ratio of each participating Banking Partner's Permanent Storage Allocation divided by the sum of all participating Banking Partner's Permanent Storage Allocations. Alternatively, if the dispute is between Banking Partners and Semitropic has no direct interest in the outcome, the total costs of arbitration shall be paid by the Banking Partners according to the ratio of each participating Banking Partner's Permanent Storage Allocation divided by the sum of all participating Banking Partner's Permanent Storage Allocations.

If a Party asserts that another Party has breached obligations under this Agreement, it may request that the arbitration panel order the other Party to comply with this Agreement. Upon the panel finding that a Party has in fact breached this Agreement, the panel shall order compliance. The panel may order any other equitable relief permitted by California law, including declaratory or injunctive relief, applicable to the matter before the panel for resolution. If termination is sought by a party pursuant to the terms hereof, the panel may determine the issues of whether a default has occurred or other condition precedent to the termination alleged has been satisfied and, if so, may issue orders implementing that termination. The orders of the panel shall be judicially enforceable. The panel may order that the effective date of its order be the date of the breach, if appropriate. If Newhall has suspended payments under Section 11.1.2, it shall reimburse Semitropic for any monies withheld and then due to

Semitropic as soon as Semitropic again fully complies with this Agreement. The panel may not order any damages (including consequential or punitive damages) beyond those provided for or permitted under this Agreement.

9.3 All future new, renewed, or amended water banking agreements between Semitropic and Banking Partners or potential Banking Partners shall contain language consistent with this Section 9.1 and 9.2. Until such time as the agreement between Semitropic and Metropolitan is amended, Sections 9.1 and 9.2 of that agreement shall control disputes involving Metropolitan.

#### ARTICLE 10. TERM OF AGREEMENT

Unless this Agreement is earlier terminated pursuant to this Article 10 or pursuant to Sections 11.1.3, 11.2, 11.3, or 12.2, this Agreement shall terminate on December 31, 2035, the date of termination of the Agency's Long-Term Water Supply Contract; provided, however, that, if Newhall has timely requested return of Stored Water pursuant to Article 5 at such a time and in such a manner that Newhall's Stored Water could have been returned prior to December 31, 2035 but, because of conditions beyond the control of Newhall all of Newhall's Stored Water has not been returned by that date, the provisions of Articles 1, 5, 6, 7, 9, 11, 12 and 13 of this Agreement shall continue in full force and effect for such additional period of time as is necessary for Newhall to receive its Stored Water as requested; and provided, further, that if a claim arising under or with respect to the terms of this Agreement has not been resolved when this Agreement terminates, or if such a claim is brought after this Agreement has terminated but within the period of time for bringing such a claim under California law (such a claim being referred to herein as a "**Late Arising Claim**"), the provisions of Articles 1, 7, 9 and 13 of this Agreement shall continue in full force and effect for such additional period of time as is necessary to resolve such claim and to satisfy the rights and obligations of the Parties hereto with respect to it pursuant to such Articles. This Agreement may be renewed by mutual agreement of the parties, which renewal shall unless otherwise agreed effect a continuation of Semitropic's duties under this Agreement. Newhall may elect to terminate this Agreement

at any time by giving written notice to Semitropic of Newhall's intent to terminate not less than one year in advance of the termination date selected by Newhall and specified in the notice and by conveying its beneficial interest, as agreed upon between the parties, in the amount of Newhall's Stored Water in Newhall's Storage Account Balance on that termination date to Semitropic. Upon Newhall's conveyance of such beneficial interest, this Agreement shall be fully terminated except as provided in this Article 10 with respect to Late Arising Claims.

## **ARTICLE 11. REMEDIES**

### **11.1 Remedies in Event of Semitropic's Voluntary Failure to Perform.**

11.1.1 If Newhall alleges that Semitropic has not substantially performed according to the terms of this Agreement (including, but not limited to, by failing to construct adequate Program facilities and/or securing agreements or operational arrangements, all as necessary to provide those levels of capabilities, capacities and rights described in Exhibits A and C, or by causing (or, if within Semitropic's jurisdiction, permitting) other entities or persons to interfere with Program operation, or by attempting to resign its obligations as trustee under this Agreement or by failing to accept or return water as and when required by this Agreement), or if Semitropic has otherwise breached its obligations under this Agreement, which failure to perform or breach is not subject to Section 12.2, and notice has been provided to Semitropic pursuant to Section 13.4 and Semitropic has failed to cure the alleged breach within the time provided in Section 13.4, Newhall may, at any time thereafter while the default is continuing, advise Semitropic of the remedy or remedies provided in Article 9 (Dispute Resolution), and Sections 11.1.2 and 11.1.3 below which Newhall intends to pursue with respect to such default. Semitropic may challenge at any time, through Article 9, whether in fact there has been a breach of or default under this Agreement by Semitropic.

11.1.2 In the event of an alleged breach as to which Newhall has given notice to Semitropic pursuant to Section 11.1.1, Newhall may elect to suspend any payment obligations it may have under Article 6 of this Agreement until Semitropic complies with the terms of this Agreement and cures such breach or default or is determined, pursuant to Article 9, not to have

violated the Agreement. Notwithstanding such suspension of Newhall's payment obligations, this Agreement shall remain in effect unless and until Newhall elects to terminate the Agreement under Section 11.1.3 or Article 10, in which case termination shall occur in accordance with and as provided in such provision. Notwithstanding an election by Newhall under this Section 11.1.2 to suspend payment obligations, Newhall or Semitropic may thereafter also seek relief under Article 9.

11.1.3 If, pursuant to Section 11.1.1, Newhall elects to terminate this Agreement, Semitropic will purchase the amount of Newhall's Stored Water in its Storage Account Balance for an amount equal to Newhall's direct previous payments with respect to such Stored Water plus any unrefunded portion of monies described in Section 6.9, all adjusted based on the index referenced at Section 6.2.2, plus twenty percent (20%) of said payments, all payable within one (1) year of said election by Newhall to terminate. Once such payment has been fully made, this Agreement shall be fully terminated except for Articles 1 (Definitions); 7 (Division of Risk Responsibilities); 9 (Dispute Resolution); and Article 13 (Miscellaneous Provisions). Upon payment in full by Semitropic as provided above, Newhall's beneficial interest in the amount of Newhall's Stored Water in Newhall's Storage Account Balance shall vest in Semitropic and Semitropic shall be entitled to produce and use such water for its own account.

## **11.2 Remedies in the Event of Newhall's Voluntary Failure to Perform.**

If Newhall has not substantially performed according to the terms of this Agreement, and notice has been provided to Newhall pursuant to Section 13.4 and Newhall has failed to cure the alleged breach within the time provided in Section 13.4, Semitropic may at its election, at any time thereafter while the default is continuing, either (1) suspend further performance (except that Semitropic shall continue to hold the Trust Property in trust) and thereafter seek relief under Article 9, and shall recommence performance once Newhall complies with the Agreement, or (2) terminate this Agreement, except that Articles 1, 7, 9 and 13 shall remain in effect. If Semitropic elects to terminate this Agreement, Semitropic shall purchase the amount of Newhall's Stored Water in Newhall's Storage Account Balance in the

manner and for the price provided in Section 12.2, provided, however, if Semitropic has financed construction of facilities, all or in part, based in reliance upon this Agreement, and such financed securities have not been prepaid, Semitropic shall not be required to pay such amount if it so elects nor shall Semitropic be required to pay such amount to the extent it incurs damages as a result of Newhall's failure to perform. Newhall may challenge at any time, through Article 9, whether in fact there has been a breach of this Agreement by Newhall.

### **11.3 Remedies in Event of Failure of Certain Other Remedies.**

If: (i) Semitropic has breached or defaulted in the performance of its obligations under this Agreement, and (ii) Newhall has given notice of the breach or default pursuant to Section 11.1.1, and (iii) Semitropic has failed to cure that breach or default within thirty (30) days as required by Section 13.4, and (iv) Newhall has elected a remedy for that breach or default pursuant to Section 11.1.1, and (v) Semitropic has agreed to such remedy or, if Semitropic has not so agreed, Newhall has obtained a judgment or court order against Semitropic (whether based on an order of an arbitration panel under Article 9 or otherwise) which judgment or court order Semitropic has failed or refused to perform, *then* Newhall may notify Semitropic that Newhall is entitled to and intends to exercise its right to appointment of a successor trustee in place of Semitropic and, thereafter, Newhall may apply to a court of competent jurisdiction for such appointment of a successor trustee who shall be charged with performing the duties of the trustee pursuant to the terms of this Agreement. The successor trustee, when appointed, shall be entitled to exercise any and all rights theretofore held by Semitropic as trustee for Newhall including, without limitation, those under or relating to the Trust Property (excepting, however, the right to receive additional water for storage hereunder), until such time as the successor trustee has collected and recovered water from the property of Semitropic in an amount sufficient to return water in an amount equal to the amount of Newhall's Stored Water in Newhall's Storage Account Balance and has transported that water to the California Aqueduct at Reach 10A for exchange to Newhall pursuant to Section 5.1 of this Agreement. Upon the receipt by Newhall of water in an amount equal to Newhall's Storage Account Balance pursuant to the exercise by such successor trustee of its rights in the Trust Property,

this Agreement shall be fully terminated except for Articles 1 (Definitions); 7 (Division of Risk Responsibilities); 9 (Dispute Resolution); and 13 (Miscellaneous Provisions), all in accordance with the terms of this Agreement.

## ARTICLE 12. EARLY TERMINATION

**12.1 Resignation of Semitropic.** Because Semitropic is uniquely situated for performing its duties as trustee, Semitropic may not resign its duties and obligations under this Agreement for the term of this Agreement except as permitted by Sections 11.2 and 12.2, and any other attempt by Semitropic to resign shall be deemed to be a breach of its obligations hereunder.

**12.2 Involuntary Termination.** Notwithstanding Article 11, in the event that Semitropic is unable despite its best efforts to perform its obligations under this Agreement for reasons beyond its control, and that inability to perform includes the inability of Semitropic to return Stored Water which remains in the Newhall Storage Account Balance, Semitropic will purchase the Stored Water which Semitropic is unable to return for an amount equal to the costs which Semitropic would have incurred to purchase such water as entitlement water under its Member Unit contracts with the Agency referenced at Recital B (including all fixed and variable costs for delivery of such entitlement water to the Semitropic Turnout in Reach 10A) in the year Newhall delivered such Stored Water to Semitropic. "Reasons beyond its control" as used in the aforesaid sentence shall not include any reasons caused by Semitropic's breach of its obligations under this Agreement or other failure to comply with any of its legal obligations. Such payment by Semitropic to Newhall upon involuntary termination under this Section 12.2 shall be financed over time upon terms mutually agreeable to Newhall and Semitropic. If Newhall and Semitropic are unable to agree on such terms in a reasonable period of time, they shall resolve their disagreement pursuant to Article 9. Once such payments have been fully made, this Agreement shall be fully terminated except for Articles 1 (Definitions); 7 (Division of Risk Responsibilities); 9 (Dispute Resolution); this Section 12.2 and Article 13 (Miscellaneous Provisions). If payment is made as provided above, the



beneficial interest in the amount of Newhall's Stored Water in Newhall's Storage Account Balance which Semitropic is unable to return shall vest in Semitropic.

In addition to such payment, if, subsequent to such involuntarily termination, Semitropic is able to negotiate another arrangement or program with another entity which utilizes Program Delivery Capacity which was developed as a result of payments by Newhall pursuant to this Agreement, and which capacity would have been available to Newhall absent such involuntary termination, the Parties shall negotiate a payment schedule to reimburse Newhall for the undepreciated balance of capital costs which Newhall has paid, deducting payments made or to be made by Semitropic as provided above, and which does not render such new program infeasible. Attached as Exhibit D are the assumptions to be used in such calculation. If Newhall and Semitropic are unable to agree on the terms of a payment schedule in a reasonable period of time, they shall resolve their disagreement pursuant to Article 9.

### **ARTICLE 13. MISCELLANEOUS PROVISIONS**

**13.1 Successors and Assigns.** This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties; provided, however, neither Party shall assign any of their rights or obligations under this Agreement without the prior written consent of the other. Provided, further, that Newhall may subcontract with other entities to receive benefits under this Agreement, provided that Newhall shall remain responsible for performing all duties under this Agreement, notwithstanding such subcontracts. Notwithstanding the foregoing, Semitropic hereby consents to an assignment by Newhall to the Castaic Lake Water Agency or another agency or regulated public utility acceptable to Semitropic providing water service to Newhall's development properties and following such assignment Newhall shall be released from its obligations hereunder to the extent such obligations are expressly assumed by the transferee. Prior to December 31, 2004, Newhall shall assign its rights and obligations under this Agreement to Castaic Lake Water Agency; provided, however, if Newhall is unable to timely accomplish such assignment to another agency or regulated public utility acceptable to Semitropic providing water service to Newhall's development properties Newhall shall forfeit

the right to request return of Stored Water until such assignment is completed but such failure to timely assign shall not otherwise constitute a breach or failure to perform under this Agreement. Any successor to Semitropic shall be a successor Trustee hereunder. Nothing in this Agreement is intended to confer any right or remedy under this Agreement on any person other than the Parties to this Agreement and their respective successors and permitted assigns, or to relieve or discharge any obligation or liability of any person to any Party to this Agreement, or to give any person any right of subrogation or action over or against any Party to this Agreement.

**13.2 Allocation Among Semitropic Improvement Districts.** Semitropic shall allocate the rights and obligations under this Agreement between the water users and landowners of Semitropic Water Storage District, Semitropic Improvement District, Buttonwillow Improvement District and Pond-Poso Improvement District as it deems appropriate, so long as Newhall's and the other Banking Partners right to obtain the return of Stored Water is not adversely impacted. Regardless of such allocations, Semitropic shall remain the trustee under this Agreement.

**13.3 No Modification of Existing Contracts.** This Agreement shall not be interpreted to modify the terms or conditions of either the water supply contracts between the DWR and the Agency or Newhall or the water supply agreements between the Agency and Semitropic.

**13.4 Waiver/Cure of Defaults.** The failure of any Party to enforce against the other a provision of this Agreement shall not constitute a waiver of that Party's right to enforce such a provision at a later time. No Party shall be deemed to be in default of any provision of this Agreement unless the other Party has given written notice specifically stating the alleged default and the Party in default fails to cure the default within thirty (30) days of receipt of such written notice.

**13.5 Construction of Agreement.** The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any

of the parties hereto and Section 1654 of the Civil Code has no application to interpretation of this Agreement. Headings at the beginning of Sections, paragraphs and subparagraphs of this Agreement are solely for the convenience of the parties, are not a part of this Agreement and shall not be used in construing it. The preamble, recitals and all exhibits and schedules to this Agreement are part of this Agreement and are incorporated herein by this reference. When required by the context: whenever the singular number is used in this Agreement, the same shall include the plural, and the plural shall include the singular; and the masculine gender shall include the feminine and neuter genders and vice versa. Unless otherwise required by the context (or otherwise provided herein): the words "**herein**," "**hereof**" and "**hereunder**" and similar words shall refer to the Agreement generally and not merely to the provision in which such term is used; the word "**person**" shall include individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority and other entity of whatever nature; each of the words "**Newhall**" and "**Semitropic**" shall include the respective representatives, successors and permitted assigns, if any, of such person; the words "**including**," "**include**" or "**includes**" shall be interpreted in a non-exclusive manner as though the words "but [is] not limited to" or "but without limiting the generality of the foregoing" immediately followed the same; the word "**month**" shall mean calendar month; and the term "**business day**" shall mean any day other than a Saturday, Sunday or legal holiday. If the day on which performance of any act or the occurrence of any event hereunder is due is not a business day, the time when such performance or occurrence shall be due shall be the first business day occurring after the day on which performance or occurrence would otherwise be due hereunder. All times provided in this Agreement for the performance of any act will be strictly construed, time being of the essence of this Agreement.

**13.6 Entire Agreement.** This Agreement and other documents expressly referenced herein constitute the entire agreement between the Parties pertaining to the matters provided for herein and, except as herein provided, supersedes all prior and/or contemporaneous

agreements and understanding, whether written or oral pertaining between the Parties relating to the matters provided for herein.

**13.7 Severability.** In the event that a court of competent jurisdiction or a arbitration panel as provided at Article 9 determines that a provision included in this Agreement is legally invalid or unenforceable and such decision becomes final, the Parties to this Agreement shall use their best efforts to (i) within thirty (30) days of the date of such final decision identify by mutual agreement the provisions of this Agreement which must be revised, and (ii) within three (3) months thereafter promptly agree on the appropriate revision(s). The time periods specified above may be extended by mutual agreement of the Parties. Pending the completion of the actions designated above, to the extent it is reasonably practical and can be done without violating any applicable provisions of law, the provisions of this Agreement which were not found to be legally invalid or unenforceable in the final decision shall continue in effect. If the Parties cannot agree on appropriate revisions, this Agreement shall be involuntarily terminated in accordance with Section 12.2.

**13.8 Force Majeure.** All obligations of the Parties other than monetary or payment obligations shall be suspended for so long as and to the extent the performance thereof is prevented, directly or indirectly, not to exceed one year, by earthquakes, fires, tornadoes, facility failures, floods, drownings, strikes, other casualties, acts of God, orders of court or governmental agencies having competent jurisdiction, or other events or causes beyond the control of the Parties. Other events or causes beyond the control of the Parties shall have the same meaning as "Reasons beyond its control" in Section 12.2. In no event shall any liability accrue against a Party, to its officers, agents or employees, for any damage arising out of or connected with a suspension of performance pursuant to this Section 13.8. In event of such an occurrence of duration in excess of one year, Section 12.2 shall control, unless the Parties otherwise agree.

**13.9 Notices.** All notices, requests and demands hereunder ("**Notices**") shall be in writing and shall be deemed to have been duly given when delivered (or, if mailed, postage

prepaid, on the third business day after mailing, if that date is earlier than actual delivery). Notices shall be sent to a Party at the address of that Party set forth below or, if such Party has furnished notice of a change of that address as herein provided, to the address of that Party most recently so furnished. Notices for Semitropic shall be sent to the General Manager of Semitropic at Post Office Box Z, Wasco, California 93280, if mailed, and otherwise to the General Manager at 1017 Central Avenue, Wasco, California 93280. Notices for Newhall shall be sent to President, 23823 Valencia Boulevard, Valencia, CA 91355. Each Party hereto (a "**Recipient**") who receives from another Party hereto (a "**Sender**") by electronic facsimile transmission (telecopier) any writing which appears to be signed by that Sender is authorized to rely and act upon that writing in the same manner as if the original signed writing was in the possession of the Recipient upon oral confirmation of that Sender to the Recipient that the writing was signed by that Sender and is intended by that Sender to be relied upon by the Recipient. Each Party transmitting any writing to any other Party by electronic facsimile transmission agrees to forward immediately to that Recipient, by expedited means (for next day delivery, if possible), or by first class mail if the Recipient so agrees, the signed hard copy of that writing, unless the Recipient expressly agrees to some other disposition of the original by the Sender.

**13.10 Further Assurances.** Each party hereto, upon the request of the other, agrees to perform such further acts and to execute and deliver such other documents as are reasonably necessary to carry out the provisions of this instrument.

**13.11 Counterparts.** This Agreement, and any document or instrument entered into, given or made pursuant to this Agreement or authorized hereby, and any amendment or supplement 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. Any signature page of this Agreement or of such an amendment, supplement, document or instrument may be detached from any counterpart without impairing the legal effect of any signatures thereon, and may be attached to another

counterpart identical in form thereto but having attached to it one or more additional signature pages. In proving this Agreement or any such amendment, supplement, document or instrument, it shall not be necessary to produce or account for more than one counterpart thereof signed by the party against whom enforcement is sought.

**13.12 Recording of Memorandum.** A Memorandum of Partial Assignment in the form attached hereto as Exhibit E shall be recorded in the Office of the County Recorder, County of Kern.


**13.13 Agreement Independent of Vidler.** This Agreement, and the rights and obligations of the Parties hereunder, are independent of any contractual or other relationship between Semitropic and Vidler. Accordingly, no default by Vidler under any obligations it may have to Semitropic shall affect Newhall or this Agreement, and no default by Newhall hereunder or under any other obligations it may have to Semitropic shall affect Vidler or any amended Semitropic Agreement, including without limitation the Amended and Restated Agreement between Semitropic and Vidler.

Executed the day and year first hereinabove written.

**THE NEWHALL LAND AND FARMING COMPANY**

By: NEWHALL MANAGEMENT LIMITED PARTNERSHIP,  
Managing General Partner

By: NEWHALL MANAGEMENT CORPORATION,  
Managing General Partner

By:   
Steven D. Zimmer, Vice President

**SEMITROPIC WATER STORAGE DISTRICT**

By: Frank A. Franceschi  
Frank Franceschi, Vice President

By: Wilmar L. Boschman  
Wilmar L. Boschman, Assistant Secretary

**SEMITROPIC IMPROVEMENT DISTRICT  
OF SEMITROPIC WATER STORAGE DISTRICT**

By: Frank A. Franceschi  
Frank Franceschi, Vice President

By: Wilmar L. Boschman  
Wilmar L. Boschman, Assistant Secretary

**BUTTONWILLOW IMPROVEMENT DISTRICT  
OF SEMITROPIC WATER STORAGE DISTRICT**

By: Frank A. Franceschi  
Frank A. Franceschi, Vice President

By: Wilmar L. Boschman  
Wilmar L. Boschman, Assistant Secretary

**POND-POSO IMPROVEMENT DISTRICT  
OF SEMITROPIC WATER STORAGE DISTRICT**

By: Frank A. Franceschi  
Frank A. Franceschi, Vice President

By: Wilmar L. Boschman  
Wilmar L. Boschman, Assistant Secretary

**BUILDUP SCHEDULE  
FOR  
PROGRAM ENTITLEMENT EXCHANGE RIGHTS  
AND  
PROGRAM PUMPBACK CAPACITY**

Sum of All Banking Partners' Deliveries or Funds Paid to Establish Program Pumpback and Permanent Storage Allocation (acre-feet)	Maximum Program Entitlement Exchange Rights Available For All Banking Partners At Full SWP Supply Allocations <sup>1</sup> (acre-feet per year)	Minimum Program Pumpback Capacity <sup>1</sup> (acre-feet per year)
100,000	40,000	31,500
150,000	45,000	90,000 <sup>2</sup>
200,000	50,000	90,000
300,000	60,000	90,000
400,000	70,000	90,000
500,000	80,000	90,000
600,000	90,000	90,000
700,000	100,000	90,000
800,000	110,000	90,000
900,000	120,000	90,000
1,000,000	133,000	90,000

<sup>1</sup> Applies in the year after the Permanent Storage Allocation reaches the indicated amount, subject to the provisions of this Agreement.

The Maximum Entitlement Exchange Rights in any year is the lesser of the indicated amount in the table above or Semitropic's maximum available entitlement in that year shown in the table on the right.

<sup>2</sup> Maximum instantaneous flowrate at this level is 300 cfs.

SWP Water Supply Allocation (%)	Semitropic's Maximum Entitlement Available For Exchange (Ac. Ft. per year.)
T 14.2	- 0 -
20.0	9,000
30.0	24,500
40.0	40,000
50.0	55,500
60.0	71,000
70.0	86,500
80.0	102,000
90.0	117,500
100.0	133,000



## PROGRAM DELIVERY CAPABILITY

### INTRODUCTION:

The In-Lieu Service Area authorized in the EIR consists of 23,000 acres of actively farmed land. Semitropic's commitment to the Banking Partners is that at full development there will be 23,000 acres of In-Lieu Service Area. In the event cropping patterns or irrigation practices change the assumed average annual quantity of water each acre of land requires for irrigation, Semitropic shall not be obligated to increase its commitment to develop 23,000 acres of in-lieu land at full program development.

#### I. Maximum Annual Estimated Program Delivery Capability:

1.	In-Lieu Service Area: 23,000 acres x 3.5 AF/acre	=	80,500 AF/Yr
2.	Reduce existing delivery system constraints to lands already served by Semitropic's distribution system:		<u>10,000 AF/Yr</u>
	Total		90,500 AF/Yr

#### II. Newhall 's share of Maximum Estimated Program Delivery Capability:

1.	By Establishing an In-Lieu Service Area 23,000 acres x 0.055 = 1,265 acres 1,265 acres x 3.5 AF/acre	=	4,428 AF/Yr
2.	By Increasing System Capacity 10,000 AF/Y x 0.055	=	550 AF/Yr
	Total Newhall's Share of Maximum Estimated Program Delivery Capability		4,978 AF/Yr

Semitropic shall not be obligated to change its commitment to have developed 1,265 acres of in-lieu land by the time Newhall has paid Newhall 's share of Total Project Capital Cost before October 8, 2008. In the event that the Program Delivery Capability becomes less than that stated under Item II 1. above, Semitropic will make every effort to increase the Unused Semitropic Delivery Capability stated in Section 1.16 and then allocate to Newhall its prorated share of Unused Semitropic Delivery Capability, up to the amount of the deficiency under said Item II 1.

Expected Monthly Distribution of Newhall 's Share of Maximum Estimated Program Delivery Capability:

Historical Deliveries on 66,800 Acres+ Average of '84, '89 and '93			
	Acre-Foot	Percent	Estimated Monthly Distribution of Newhall 's share of "Program Delivery Capability " Acre-Foot Per Month
JANUARY	* 2,444	1.0	50
FEBRUARY	* 22,185	9.8	488
MARCH	21,185	9.6	478
APRIL	17,984	7.9	393
MAY	24,373	10.6	528
JUNE	36,138	15.9	791
JULY	41,123	18.1	901
AUGUST	34,084	15.1	751
SEPTEMBER	12,310	5.4	269
OCTOBER	6,373	2.8	139
NOVEMBER	4,015	1.9	95
DECEMBER	4,206	1.9	95
TOTAL	226,420 AF	100.0	4,978 AF

\* Average of 1984 and 1989 only

**SEMITROPIC WATER STORAGE DISTRICT**  
**CALCULATION OF POWER PAYMENTS UNDER SECTION 6.3.3**  
**Agreement for the Semitropic Water Banking and Exchange Program**

**BASIC FORMULA**

$$(\text{ENERGY CONSUMED to WITHDRAW WATER from STORAGE}) \times \frac{(\text{TOTAL SEMITROPIC ENERGY COSTS})}{(\text{TOTAL ENERGY CONSUMED BY SEMITROPIC})} = (\text{WITHDRAWAL PAYMENTS})$$

Summary of components

**ENERGY CONSUMED to WITHDRAW WATER from STORAGE (Water Banking activity to return stored water)**

1. Energy used to extract ground water for Banking Partners, including:
  - a) Actual electric meter readings from Semitropic operated wells
  - b) Actual PG&E meter readings from bills submitted for payment under pumping agreements for operation of Semitropic landowner wells
  - c) Energy use under pumping agreements with Semitropic landowners for operation of wells where the actual KWH is unavailable (as in engine driven wells) use the formula:  
KWH = 1.707 x (PUMPING LIFT in feet) x (ACRE-FEET EXTRACTED)  
Where 1.707 is the conversion factor assuming 60% wire to water efficiency  
Where the PUMPING LIFT is determined from the previous year's "Lines of Equal Pumping Lifts" by Bookman-Edmonston Engineering, Inc.  
Where the ACRE-FEET EXTRACTED is from actual Semitropic water meter readings
  - d) Estimated use for released Contract Water (on-farm ground water pumping) use the same formula as above
2. Energy used to reverse the flow of Semitropic canals
  - a) From the actual electric meter readings at reverse flow pumping structures  
The use shall be proportional to the water pumped for WITHDRAWAL for Banking Partners to the total water pumped by Semitropic
3. Energy used at the Semitropic's Pump-Back Pumping Plant to return water to the California Aqueduct
  - a) From the actual electric meter readings at the Pump-Back Pumping Plant  
The use shall be proportional to the water pumped for WITHDRAWAL for Banking Partners to the total water pumped by Semitropic
4. Estimated energy use for other facilities as may be required by Semitropic

**TOTAL ENERGY COSTS (Costs to secure energy required for all Semitropic activities)**

5. Costs to feed energy into the Semitropic Grid
  - a) PG&E billing at Semitropic Substation (single point of service with Semitropic power grid)
  - b) All costs for other electrical feeds into Semitropic Grid (i.e. external cogeneration facilities)
  - c) All costs for power generated by Semitropic's Energy Project including:  
(currently 4 MW of natural gas engine generation and 850 KW of hydroelectric generation)  
Fuel  
Operation & Maintenance  
Replacement Reserve deposits  
Debt Service
6. Costs for energy not fed into Semitropic Grid
  - a) All PG&E billings for Semitropic facilities not on Semitropic Grid
  - b) Engine/generator rental and diesel to operate temporary Semitropic facilities
  - c) All payments to Semitropic landowners under ground water pumping agreements for operation of Semitropic landowner wells
  - d) All payments to Contract Water Users for release of Contract Water (on-farm ground water pumping) for energy use identified in 1.d) above
  - e) Costs of other facilities as may be required by Semitropic

**TOTAL ENERGY CONSUMED (Energy required for all Semitropic activities)**

7. Energy fed into the Semitropic Grid
  - a) PG&E meter readings at Semitropic Substation (single point of service with Semitropic power grid)
  - b) Any other electrical service metered into Semitropic Grid (i.e. external cogeneration facilities)
  - c) Energy metered at each Semitropic operated natural gas engine-generator
  - d) Energy metered at each Semitropic operated hydroelectric generator
8. Energy not fed into the Semitropic Grid
  - a) All PG&E meter readings for Semitropic facilities not on Semitropic Grid
  - b) Actual PG&E meter readings from bills submitted for payment under pumping agreements for operation of Semitropic landowner wells
  - c) Energy use under pumping agreements with Semitropic landowners for operation of wells where the actual KWH is unavailable (as in engine driven wells) use the formula:  
KWH = 1.707 x (PUMPING LIFT in feet) x (ACRE-FEET EXTRACTED)  
Where 1.707 is the conversion factor assuming 60% wire to water efficiency  
Where the PUMPING LIFT is determined from the previous year's "Lines of Equal Pumping Lifts" by Bookman-Edmonston Engineering, Inc.  
Where the ACRE-FEET EXTRACTED is from actual Semitropic water meter readings
  - d) Estimated use for released Contract Water (on-farm ground water pumping) use the same formula as above
  - e) Estimated energy use for other facilities as may be required by Semitropic

**DEPRECIATION ASSUMPTIONS  
TO BE USED  
FOR SECTION 12.2 OF THIS  
AGREEMENT**

- I. Depreciation is to be calculated on a straight line basis.
- II. The average useful lives of facilities is as follows:

<u>Facility</u>	<u>Average Useful Life (years)</u>
Canals	50
Structures	50
Pipelines and Appurtenances	50
Pumps and Motors	25
Wells	25

**EXHIBIT D**

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### Journal of Applied Gerontology 33(4) 450-465

The Journal of Applied Gerontology is a peer-reviewed journal that focuses on the application of gerontological theory and research to practice. It covers a wide range of topics, including aging, health, and social services. The journal is published quarterly and is a key resource for researchers and practitioners in the field of aging studies.

The journal's content is organized into several sections, including research reports, empirical studies, and theoretical discussions. It provides a platform for scholars to share their findings and insights into the complexities of aging and the needs of older adults. The journal is highly cited and is considered an essential read for anyone interested in gerontology.

The journal's focus on applied gerontology makes it particularly relevant for social workers, nurses, and other professionals who work with older populations. It offers practical insights and evidence-based strategies for addressing the challenges of aging. The journal is also a valuable resource for students and researchers looking to advance the field of aging studies.

The Journal of Applied Gerontology is a leading journal in the field of aging studies. It provides a comprehensive and up-to-date overview of the latest research and practice in gerontology. Its commitment to high-quality, peer-reviewed content ensures that it remains a vital resource for the gerontological community.

RECORDING REQUESTED BY AND  
AFTER RECORDING RETURN TO:

SEMITROPIC WATER STORAGE DISTRICT  
P. O. BOX Z  
WASCO, CA 93280-0877

**MEMORANDUM OF PARTIAL ASSIGNMENT OF  
VIDLER-SEMITROPIC WATER BANKING  
AND EXCHANGE PROGRAM**

This Memorandum, dated as of May 21, 2001, is provided by **VIDLER WATER COMPANY, INC.**, ("Vidler"), **THE NEWHALL LAND AND FARMING COMPANY**, ("Newhall"), and the **SEMITROPIC WATER STORAGE DISTRICT**, and **SEMITROPIC IMPROVEMENT DISTRICT**, **BUTTONWILLOW IMPROVEMENT DISTRICT** and **POND-POSO IMPROVEMENT DISTRICT** of **SEMITROPIC WATER STORAGE DISTRICT**, (collectively called "**Semitropic**").

**WHEREAS**, on October 8, 1998, Vidler and Semitropic entered into an "Agreement Between Vidler Water Company, Inc. and the Semitropic Water Storage District and its Improvement Districts for a Vidler-Semitropic Water Banking and Exchange Program" ("Vidler-Semitropic Agreement") and in furtherance thereof also executed the same date a "Memorandum of Agreement for a Vidler-Semitropic Water Banking and Exchange Program" ("Memorandum of Agreement"), which was recorded on November 3, 1998, as Document No. 0198152868, of the Official Records of Kern County, which provide for Vidler acquiring 18.5% of the rights and obligations of the Semitropic Water Banking and Exchange Program ("Program"); and

**WHEREAS**, on March 22, 2001, Vidler and Newhall entered into an Assignment Agreement providing for Newhall acquiring 29.9297% of Vidler's rights and obligations under the Vidler-Semitropic Agreement, and to that end, this date Vidler and Semitropic have entered into an "Amended and Restated Agreement between Vidler Water Company, Inc. and Semitropic Water Storage District and its Improvement Districts for a Vidler-

Semitropic Water Banking and Exchange Program" ("Amended Vidler-Semitropic Agreement"), and Newhall and Semitropic have entered into an "Agreement Between The Newhall Land and Farming Company and Semitropic Water Storage Districts and its Improvement Districts for a Semitropic Water Banking and Exchange Program," ("Newhall-Semitropic Agreement"), such that Vidler now has 13% of the rights and obligations of the Program and Newhall has 5.5% of the rights and obligations of the Program.

**NOW, THEREFORE**, it is acknowledged by Vidler, Newhall and Semitropic that the parties' rights and obligations with respect to the Program are as set forth in the respective agreements among the respective parties to the Amended Vidler-Semitropic Agreement and the Newhall-Semitropic Agreement.

**IN WITNESS WHEREOF**, the parties have caused this Memorandum of Partial Assignment to be duly executed and delivered as of the date first set forth above.

**VIDLER WATER COMPANY, INC.**

By: \_\_\_\_\_  
John R. Hart, Chief Executive Officer

By: \_\_\_\_\_  
James F. Mosier, Secretary

**THE NEWHALL LAND AND FARMING COMPANY**

By: NEWHALL MANAGEMENT LIMITED PARTNERSHIP  
Managing General Partner

By: NEWHALL MANAGEMENT CORPORATION,  
Managing General Partner

By: \_\_\_\_\_  
Steven D. Zimmer, Vice-President

**SEMITROPIC WATER STORAGE DISTRICT**

By: \_\_\_\_\_  
Frank Franceschi, Vice President

By: \_\_\_\_\_  
Wilmar L. Boschman, Assistant Secretary

**SEMITROPIC IMPROVEMENT DISTRICT  
OF SEMITROPIC WATER STORAGE DISTRICT**

By: \_\_\_\_\_  
Frank Franceschi, Vice President

By: \_\_\_\_\_  
Wilmar L. Boschman, Assistant Secretary

**BUTTONWILLOW IMPROVEMENT DISTRICT  
OF SEMITROPIC WATER STORAGE DISTRICT**

By: \_\_\_\_\_  
Frank A. Franceschi, Vice President

By: \_\_\_\_\_  
Wilmar L. Boschman, Assistant Secretary

**POND-POSO IMPROVEMENT DISTRICT  
OF SEMITROPIC WATER STORAGE DISTRICT**

By: \_\_\_\_\_  
Frank A. Franceschi, Vice President

By: \_\_\_\_\_  
Wilmar L. Boschman, Assistant Secretary



**FIRST AMENDMENT TO AGREEMENT BETWEEN  
NEWHALL LAND AND FARMING COMPANY AND  
SEMITROPIC WATER STORAGE DISTRICT AND ITS  
IMPROVEMENT DISTRICTS FOR A NEWHALL-SEMITROPIC  
WATER BANKING AND EXCHANGE PROGRAM**

**THIS FIRST AMENDMENT TO THAT CERTAIN AGREEMENT ("Agreement")** dated as of May 21, 2001, by and between **NEWHALL LAND AND FARMING COMPANY ("Newhall")**, and the **SEMITROPIC WATER STORAGE DISTRICT** and **SEMITROPIC IMPROVEMENT DISTRICT**, **BUTTONWILLOW IMPROVEMENT DISTRICT** and **POND-POSO IMPROVEMENT DISTRICT** of the **SEMITROPIC WATER STORAGE DISTRICT** (collectively called "**Semitropic**") is entered into as of this 15<sup>th</sup> day of April, 2003.

**RECITALS**

A. Newhall and other parties have previously entered into agreements with Semitropic pursuant to which they participate in a water banking and exchange program developed by Semitropic in Kern County and have prior rights to the one million acre feet of storage originally developed therein ("Original Banking Program").

B. On July 24, 2002, Semitropic entered into an agreement with Layne Water Development and Storage, LLC ("LWDS"), pursuant to which LWDS is to participate in a Stored Water Recovery Unit ("SWRU") which is to develop an additional 650,000 acre feet of storage together with other capabilities and facilities in the same general area as the Original Banking Program.

C. Certain other Original Banking Partners objected to Semitropic's agreement with LWDS asserting that it violated their prior rights to store and recover water in the Original Banking



Program, including but not limited to their rights under Section 2.2 and Section 5.7 of their Original Banking Program Agreements.

D. The purpose of this First Amendment is to confirm and clarify the rights of Newhall and other Original Banking Partners in light of the SWRU and the July 24, 2002 Agreement between Semitropic and LWDS.

**NEWHALL AND SEMITROPIC AGREE AS FOLLOWS:**

**Section 1.** Article 1 ("Definitions") of the Agreement is amended by adding the following definitions:

- 1.17 "Original Banking Partners" means the parties to the Original Banking Program which are Alameda County Water District (ACWD), Metropolitan Water District of Southern California (MWD), Newhall Land and Farming (Newhall), Santa Clara Valley Water District (SCVWD), Vidler Water Company (Vidler) and Zone 7 Water Agency (Zone 7), and which may change from time to time in event of assignments in accordance with Section 13.1 (Successors and Assigns).
- 1.18 "Original Banking Program" means the original one million acre-feet (MAF) banking program developed by Semitropic within the Semitropic Bank, referred to as "Program" in Section 1.8 of the Original Banking Program Agreements, as described in Exhibit F-1 and shown on Exhibit F-2 (dated 2/19/03) (herein collectively referred to as Exhibit F).
- 1.19 "Original Banking Program Agreements" means the agreement (or agreements) that each Original Banking Partner has entered into with Semitropic containing rights and obligations related to the Original Banking Program.
- 1.20 "Original Banking Program Facilities" means the water facilities, consisting of canals, pipelines, associated pumping plants and recovery wells required



to recharge a minimum of 90,500 acre feet per year and to recover a minimum of 90,000 acre feet per year at a maximum instantaneous flow rate of 300 cfs (Program Pumpback Capacity), the locations and description of which are shown on Exhibit F within Area A.

- 1.21 "Semitropic Bank" means the entire groundwater-banking program developed, operated, and maintained by Semitropic. The Semitropic Bank is to be expanded to a 1.65 million acre-feet (MAF) banking program, consisting of the existing one MAF Original Banking Program and the additional 650,000 AF Stored Water Recovery Unit.
- 1.22 "Stored Water Recovery Unit" (SWRU) means the program within the Semitropic Bank, developed by Semitropic in part in cooperation with Layne Water Development and Storage, LLC (LWDS) to create, in addition to the Original Banking Program, an additional 650,000 acre-feet of storage (up to 450,000 acre-feet of which have been allocated to LWDS), approximately 50,000 acre-feet per year of recharge and approximately 200,000 acre-feet per year recovery capacity, of which 50,000 acre-feet per year of recovery capacity may be acquired by the Original Banking Partners, as provided in the Stored Water Recovery Unit Agreement, and the new facilities built specifically to accommodate said program.
- 1.23 "Stored Water Recovery Unit Agreement" means the July 24, 2002 Agreement between Semitropic and LWDS related to the Stored Water Recovery Unit (SWRU).
- 1.24 "Stored Water Recovery Unit Facilities" means the proposed facilities shown and described on Exhibit F within Area B and recovery facilities for up to 50,000 acre-feet per year within Area A.



1.25 "Technical Advisory Committee" means the Committee established pursuant to Section 14.4 hereof.

**Section 2.** Add Article 14 to read as follows:

**"ARTICLE 14. STORED WATER RECOVERY UNIT (SWRU)**

**14.1 General Provisions**

**14.1.1** Semitropic shall use, on a first priority basis, Original Banking Program Facilities and any additional capacity available in those facilities annually, to meet its obligations under this Agreement and the other Original Banking Program Agreements to convey water to storage and to recover stored water on behalf of the Original Banking Partners.

**14.1.2** The Stored Water Recovery Unit Facilities are planned to recharge up to 50,000 acre-feet per year and to recover, and convey to the California Aqueduct, up to 150,000 acre-feet per year of LWDS Stored Water from Area B as shown in Exhibit F. In addition, the SWRU may recover up to 50,000 acre-feet per year of LWDS Stored Water from Area A as shown in Exhibit F and convey it to the California Aqueduct for the benefit of the SWRU on a second priority basis (i.e., as a Lower Priority Banking Partner). Whenever pumpback capacity is available from the Original Banking Program Facilities during Semitropic's off-peak irrigation season and other times Semitropic determines to be operationally feasible (as provided at Section 5.4), it shall be offered to the Original Banking Partners (on a first priority basis) and the SWRU (on a second priority basis).

**14.1.3** The Original Banking Partners shall have second priority use of SWRU facilities, provided that (i) the rights of LWDS and other SWRU participants to use unused capacities within the SWRU have been met and (ii) such Original Banking Partner's use shall not reduce the SWRU's expected returns or cause water quality to be unacceptable for return to the California Aqueduct.





**14.1.4** Subject to Section 5.6, the SWRU will have second priority use of Original Banking Program facilities provided that: (i) all rights of the Original Banking Partners to use unused capacity have been met, and (ii) such SWRU use shall not reduce the Original Banking Partners' expected returns or cause water quality to be unacceptable for return to the California Aqueduct.

**14.1.5** If Semitropic utilizes the SWRU facilities in accordance with Section 14.1.3, on behalf of and with the consent of, an Original Banking Partner, then the Original Banking Partner shall pay an Operations and Maintenance fee to Semitropic for such use, equal to the lowest rate that Semitropic would charge LWDS or another SWRU participant at that time for such use. If LWDS or another SWRU participant utilizes Original Banking Program Facilities, the Operations and Maintenance fee shall be paid in accordance with Section 6.5.2. If Semitropic utilizes, or permits utilization of, Original Banking Program Facilities by other than an Original Banking Partner, Semitropic shall pay the Operations and Maintenance fee specified in Section 6.5.2, or ensure that it is paid to the respective Original Banking Partner(s). The Original Banking Partners shall not be obligated to pay any fees for usage of the SWRU, nor shall LWDS or other SWRU participants be obligated to pay any fees for usage of Original Program Banking Facilities, other than as detailed in this section.

**14.1.6** Neither party's second priority rights specified in Sections 14.1.2 through 14.1.5 shall apply to water treatment facilities which may be constructed.

**14.1.7** There shall be no increase in costs to the Original Banking Partners for modeling, monitoring, and any other activities resulting from the SWRU or any future expansion of the Semitropic Bank.

**14.1.8** Nothing in this Agreement affects, acknowledges or establishes (i) rights as to use of any facilities other than the Original Banking Program Facilities and the Stored Water Recovery Unit Facilities, or (ii) rights as to the manner in which Stored Water, once



recovered, is to be utilized; provided, however, that such use is consistent with the terms and conditions of this Agreement and the other Original Banking Program Agreements.

**14.2 Water Quality**

**14.2.1** In addition to complying with its obligations under Section 5.7, Semitropic shall not operate, or permit operation of, the SWRU to cause Stored Water recovered for the benefit of the Original Banking Partners, which would otherwise meet applicable water quality standards for delivery into the California Aqueduct, to exceed such standards. Semitropic shall design and construct all groundwater recovery components of the SWRU to allow the SWRU and the groundwater recovery facilities and operations of the Original Banking Program to be operated in complete physical isolation from each other. Semitropic shall operate the recovery components of the SWRU in isolation from the Original Banking Program except as provided in Section 14.2.2.

**14.2.2** If Semitropic desires to co-mingle recovered SWRU Stored Water from the North-West well field in Area B, as shown on Exhibit F, with recovered Stored Water from the Original Banking Program for delivery into the California Aqueduct through the existing pumpback pipeline, it shall provide written notice to each of the Original Banking Partners, in the manner provided for in Section 13.9 at least 30 days in advance of the date on which such co-mingling would begin. The notice shall describe the reasons that co-mingling is desired, the amount of Stored Water proposed to be co-mingled, the period of time during which co-mingling is proposed to occur and any other information that Semitropic considers relevant, including expected water quality at the point of entry into the California Aqueduct.

Semitropic shall furnish any other information requested by any Original Banking Partner and shall send a copy of such information to all Original Banking Partners.

If an Original Banking Partner does not respond in writing to Semitropic within 30 days after its receipt of the original notice, it shall be deemed to have agreed to the



proposed co-mingling. If any Original Banking Partner objects in writing (stating the basis of such objection) to the proposed co-mingling within such 30 day period, Semitropic shall not co-mingle SWRU Stored Water.

**14.2.3** Semitropic shall operate the SWRU in a manner designed so that its operation does not cause the Original Banking Program to be impaired in its ability to meet DWR water quality standards for return of Stored Water to the California Aqueduct. Nothing in this Section 14.2.3 modifies the rights and duties of the parties under Section 5.7.

**14.2.4** If operation of the SWRU causes Stored Water recovered for the benefit of ~~Alameda~~ <sup>NEW HALL</sup> and the other Original Banking Partners to violate applicable water quality standards, such that such Stored Water cannot be returned to the California Aqueduct, then Semitropic shall pay the cost of additional treatment or alternative methods as necessary to correct the water quality impairment caused by the SWRU resulting in exceeding the applicable quality standard. Further, inasmuch as the SWRU will also rely on Unused Program Entitlement Exchange Rights, in the event of such degraded water quality caused by the SWRU, the Original Banking Partners shall have a first priority to (i) exchange up to 133,000 acre-feet per year of Semitropic's Table A entitlement allocations from DWR (i.e., to exercise the Program Entitlement Exchange Rights), and (ii) to exercise other options that may be available as provided in Section 5.7. Such options may include, but are not necessarily limited to, blending or substituting water that Semitropic purchases, exchanges with others, and/or by treating and improving Stored Water quality to acceptable standards for direct pumpback.

**14.2.5** In the event the SWRU causes applicable water quality standards to be violated, such that Stored Water cannot be returned to the California Aqueduct and, if resolution of impacts is delayed, Semitropic shall provide mitigation as described in Section 14.3.2.

**14.2.6** Semitropic shall provide DWR and downstream users of the California



Aqueduct which are Original Banking Partners water quality information applicable to each Semitropic SWP turn-in facility, including but not limited to turn-in facilities utilized by the SWRU and Original Banking Program. Additionally, Semitropic shall provide the Technical Advisory Committee ("TAC") information regarding the quantity and quality of water measured at locations sufficient to determine the water quality within each major Semitropic system.

**14.2.7** The Original Banking Partners shall have no responsibility and/or obligation to compensate or otherwise provide mitigation to Semitropic or SWRU participants as a result of any adverse impacts of the Original Banking Program on water quality that affects the SWRU.

**14.3 15-Foot/3 Year Rule**

**14.3.1** The Original Banking Partners shall have no responsibility and/or obligation to compensate or otherwise provide mitigation to Semitropic or SWRU participants as a result of any adverse impacts of the Original Banking Program on the SWRU, including but not limited to the "15 Foot/3 Year Rule" contained in the September 14, 1994 Memorandum of Understanding ("MOU") referred to in Section 5.5. The Original Banking Partners and Semitropic agree that the reference in the MOU to Exhibit E is erroneous since Exhibit E does not exist. Original Banking Program Facilities shall otherwise remain subject to the MOU.

**14.3.2** Semitropic shall endeavor to operate the SWRU to ensure that it has no adverse impacts to the Original Banking Program including, but not limited to, capability of the Original Banking Program to avoid reduction in or termination of groundwater pumping, in current and future years. If SWRU pumping directly or indirectly causes such an adverse impact, Semitropic shall assume all obligations to provide mitigation to the impacted Original Banking Partner(s), consisting of a like amount of water to be provided by





Semitropic, which is of quality acceptable for delivery into the California Aqueduct, on a schedule acceptable to the affected Original Banking Partner(s) and in Reach 10 of the California Aqueduct, all as would have been available to the Original Banking Partner(s) absent the SWRU operations. In the event the SWRU causes a violation of the 15-foot/3-year rule, such that Stored Water cannot be returned to the California Aqueduct and, if resolution of impacts is delayed, Semitropic shall provide mitigation. If resolution of impacts caused by SWRU operations is untimely, then mitigation shall be as selected by each affected Original Banking Partner, from the following:

- (a) Semitropic shall, if directed by an Original Banking Partner, and at such Partner's sole discretion, by whatever means and facilities are available at that time, credit an equivalent amount of water to the Original Banking Partner's Storage Account and shall not charge the Original Banking Partner the storage payment provided for by Section 6.2 (Storage Payments), with the result that the Original Banking Partner's Storage Account is credited with the amount of the "put"; without being debited the ten percent (10%) loss in Article IV; or
- (b) Semitropic shall reimburse the affected Original Banking Partner(s) for all costs associated with acquiring an equivalent amount of water; or
- (c) Other remedy mutually agreeable to the affected Banking Partner and Semitropic.

**14.3.3** For purposes of determining whether reduction or termination of groundwater pumping is required, SWRU groundwater level impacts, both for current conditions and forecasted conditions, shall be determined by Semitropic through groundwater modeling using the following methodology:

- (a) Groundwater levels shall be estimated based on no Semitropic banking operations occurring (i.e. without Original Banking Program or SWRU);
- (b) Groundwater levels shall be estimated based on only the Original



Banking Program operations and without the SWRU operations; and

(c) Groundwater levels shall be estimated based on combined operations of the Original Banking Program and SWRU operations (i.e., actual conditions).

The groundwater level impacts due to the Original Banking Program at any given location as prescribed by the September 14, 1994 MOU shall be the difference between groundwater levels in Paragraphs (a) and (b) above. The groundwater level impacts due to the SWRU at any given location as prescribed by the MOU shall be the difference between groundwater levels in Paragraphs (b) and (c) above. Groundwater level impacts due to the difference between groundwater levels in Paragraphs (a) and (c) shall be determined consistent with the process prescribed by the MOU.

Semitropic shall periodically provide the Technical Advisory Committee information regarding the change in groundwater elevation measured at locations needed to identify any impacts of the SWRU on the 15-foot/3 year rule.

#### **14.4 Technical Advisory Committee**

A Technical Advisory Committee ("TAC") shall monitor implementation of Original Banking Program Agreements, as amended and, the Stored Water Recovery Agreement. The Committee shall consist of one representative from each of the Original Banking Partners identified in Section 1.17 so long as each is a participant in the Program, one representative from the SWRU and one representative from Semitropic. Semitropic shall chair such Committee and provide for periodic communication with Committee members. The TAC shall meet at least annually to discuss implementation and operation of the SWRU and any future programs. Any two members of the TAC may call a meeting of the TAC. Meetings of the TAC shall be held at the District's headquarters, unless its members agree otherwise.

#### **14.5 Responsibility for Implementation.**



Semitropic may wish to require LWDS or others to perform certain of its responsibilities under this Article 14 to Original Banking Partners. Arrangements of this kind will not relieve Semitropic of its responsibilities to the Original Banking Partners under Article 14. Nothing in this section modifies Section 13.1 (Successors and Assigns), which also applies to Article 14."

**Section 3.** Except as expressly provided in Sections 1 and 2 of this Amendment, the rights and obligations of Semitropic and Newhall with respect to the Original Banking Program shall continue to be as provided in the Agreement.

**Section 4. Recording of Memorandum.** A memorandum of this Amendment in the form attached hereto as Exhibit 1 shall be recorded in the Office of the County Recorder, County of Kern.

Executed the day and year first hereinabove written.

**NEWHALL LAND AND FARMING COMPANY**  
(a California Limited Partnership)

By: **NEWHALL MANAGEMENT LIMITED**  
**PARTNERSHIP, Managing General Partner**

By: **NEWHALL MANAGEMENT CORPORATION,**  
**Managing General Partner**

By:   
Steven Zimmer, Vice President

**SEMITROPIC WATER STORAGE DISTRICT**

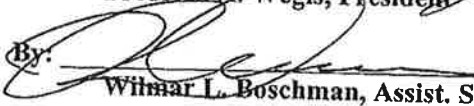
By:   
Fredrick A. Wegis, President

By:   
Wilmar L. Boschman, Assistant Secretary



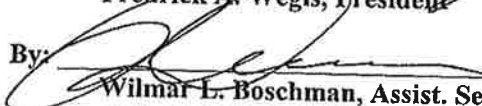
SEMITROPIC IMPROVEMENT DISTRICT OF  
SEMITROPIC WATER STORAGE DISTRICT

By:   
Fredrick A. Wegis, President

By:   
Wilmar L. Boschman, Assist. Secretary

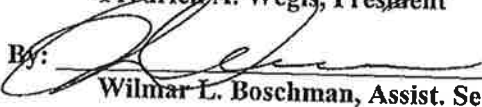
BUTTONWILLOW IMPROVEMENT DISTRICT OF  
SEMITROPIC WATER STORAGE DISTRICT

By:   
Fredrick A. Wegis, President

By:   
Wilmar L. Boschman, Assist. Secretary

POND-POSO IMPROVEMENT DISTRICT OF  
SEMITROPIC WATER STORAGE DISTRICT

By:   
Fredrick A. Wegis, President

By:   
Wilmar L. Boschman, Assist. Secretary





**Acknowledgement and Agreement by LWDS**

Layne Water Development and Storage, LLC (LWDS) has read the foregoing Amendment, has no objection to it, and agrees that its rights under the Stored Water Recovery Unit Agreement shall be consistent with this Amendment. LWDS also agrees that under the Stored Water Recovery Unit Agreement, LWDS is not, and its assignees will not be, an Original Banking Partner as defined in this Amendment, nor a "Banking Partner" for purposes of the amended Agreement, but may be considered a "Lower Priority Banking Partner" for purposes of the amended Agreement to the extent permitted by the foregoing Amendment. LWDS agrees that the Original Banking Partners, referred to as "Existing Banking Partners" in the Stored Water Recovery Unit Agreement dated July 24, 2002, may elect to participate in the SWRU as provided in Section 2.4 of the Stored Water Recovery Unit Agreement.

LWDS shall include a reference to the Original Banking Program Agreements and this Amendment in all of its contracts with third parties which will participate in the SWRU and an acknowledgement by such parties that they have been made aware of the Original Banking Partners' rights.

**LAYNE WATER DEVELOPMENT &  
STORAGE, LLC.**

By: \_\_\_\_\_



## EXHIBIT F-1

I. The Original Banking Program Facilities in existence as of the date of the First Amendment of the Agreement referred to in Sections 1.8 and 1.20 and shown in Area A on Exhibit F-2 (dated 2/19/03) include, but are not limited to the following:

(1) Main conveyance facilities used for both recharge and recovery of Stored Water are:

- (a) Intake Canal which includes the Main, North, South and East Reach, extending from the Semitropic turnout at Reach 10A of the California Aqueduct to the North Pumping Plant, East Pumping plant and South Pumping plant.
- (b) Buttonwillow Ridge Canal including the South pumping plant and Pumps at Check Structures extending from the "South" pumping plant to the "Wegis" Pumping plant.
- (c) Pond-Poso Canal including the Pond Poso Pumping Plant and Pumps at Check Structures extending from the "North" Pumping plant to the "Delta" Pumping plant.
- (d) Vido G. Fabbri Hydro Turbine Pumpback Pumping Plant and 78-inch Pumpback Pipeline and Penstock to California Aqueduct.

(2) Buried Pipeline Distribution Systems

(a) Reversible or Two-Way Systems including landowner wells that are made available to the District under long-term agreements.

- B-230 System (i.e. Mainline and Sub-laterals) With Turnouts and Recovery Wells Numbered L 2 thru L 198.
- P-384 System (i.e. Mainline and Sub-laterals) With Turnouts and Recovery Wells Numbered P 2 thru P 152.
- Interconnection Pipeline with Shafter-Wasco Irrigation District and Sub-laterals With Turnouts and Recovery Wells Numbered K 8 thru K 18.
- P-923 System (i.e. Mainline and Sub-laterals) With Turnouts and Recovery Wells Numbered H 1 thru H 133.
- P-667 System (i.e. Mainline and Sub-laterals) With Turnouts and Recovery Wells Numbered J 29 thru J 99.

(b) Primarily Recharge Systems

- East System (i.e. Mainline and Sub-laterals) With Turnouts S 67 thru S 131T.



- North System (i.e. Mainline and Sub-laterals) With Turnouts S 1 thru S 73.
  - A System (i.e. Mainline and Sub-laterals) With Turnouts 1 A thru 99 AT.
  - B System (i.e. Mainline and Sub-laterals) With Turnouts 2 B thru 51 BT.
  - C System(s) (i.e. Mainline and Sub-laterals) With Turnouts 1 C thru 88 C.
  - D System (i.e. Mainline and Sub-laterals) With Turnouts 1D thru 66 DT.
  - B 4 System (i.e. Mainline and Sub-laterals) With Turnouts B 1 thru B 10 .
  - B 21 System (i.e. Mainline and Sub-laterals) With Turnouts B 11 thru B 59T.
  - B 49 System (i.e. Mainline and Sub-laterals) With Turnouts B 101 thru B 145T.
- (3) 28 District owned recovery wells having a "DGW" designation on Exhibit F-2 (for example IC336DGW & PP1029DGW)
- (4) Landowner Wells (Approximately 60) Under "short term" Interruptible Agreements with the District for Recovery Purposes shown with an "X" within a circle and designated "GW Meter" on Exhibit F-2.
- (5) Direct Recharge Areas
- Buttonwillow Ridge Canal "Spillway Basin"
  - Intake Canal "Spillway Basin"
  - Pond-Poso Canal "Spillway Basin"
  - 320 Acres in E ½ of Sec. 21, T 25S, R 24E
  - Gravel Pit on north side of Schuster Road in Sec. 24, T 25S, R 24E
  - Poso Creek Flood Channel from the center of Sec. 11T26S,R24E to Corcoran Rd.

The locations of right-of-way for facilities enumerated above are specifically described and are available from Semitropic files and/or are a matter of record through recorded documents grading easements or fee title to various parcels to Semitropic.

II. Proposed Stored Water Recovery Unit Facilities referred to in Section 1.24 and shown in Area B on Exhibit F-2 are generally described as follows:

- \* (1) Main conveyance facilities used for both recharge and recovery of Stored Water are:
  - (a) 96-inch Pipeline including the Junction Reservoir and Pumping Plant. Some of the pipeline and all of the reservoir and pumping plants are located within Area A.



- (b) 84-inch Pipeline and/or Canal extending north from the Junction Pumping Plant to a future reservoir to be located near the Poso Creek Flood Channel in the vicinity of the North West Well Field.
- (2) Recharge Facilities
- (a) Unnamed Reversible or Two-way Recharge and Recovery Buried Pipeline Distribution System(s) designated as "In Lieu Recharge and Recovery Area" in Area B serving approximately 12,000 acres and second priority In lieu recharge capacity within Area A for up to a total capacity of 50,000 AF/Yr. of In-Lieu Recharge.
- (3) Recovery Facilities
- (a) Long-term Agreements for use of landowner wells in the above-mentioned In-Lieu recharge area within Area B.
  - (b) Approximately 65 wells designated as "Northwest Well Field" on Exhibit F-2
  - (c) Second priority use of Long-Term and Short-Term (or Interruptible) Agreements for use of landowner wells and District Wells that are part of the original Banking Program Facilities for recovery of up to 50,000 AF/Yr from within Area A shown on Exhibit F-2. As stated in Section 1.22, this recovery capacity will first be offered for the benefit of Original Banking Partners.





**SECOND AMENDMENT  
TO AGREEMENT BETWEEN THE NEWHALL LAND AND  
FARMING COMPANY AND SEMITROPIC WATER STORAGE DISTRICT  
AND ITS IMPROVEMENT DISTRICTS FOR A NEWHALL-SEMITROPIC  
WATER BANKING AND EXCHANGE PROGRAM**

THIS SECOND AMENDMENT TO THAT CERTAIN AGREEMENT dated May 21, 2001, ("Agreement") by and between NEWHALL LAND AND FARMING COMPANY ("Newhall") and the SEMITROPIC WATER STORAGE DISTRICT and SEMITROPIC IMPROVEMENT DISTRICT, BUTTONWHILLOW IMPROVEMENT DISTRICT and POND POSO IMPROVEMENT DISTRICT of the SEMITROPIC WATER STORAGE DISTRICT (collectively called "Semitropic") is entered into as of this 20<sup>th</sup> day of February, 2007.

NEWHALL AND SEMITROPIC AGREE AS FOLLOWS:

**Section 1.** In the forth sentence of Section 13.1 of the Agreement, "Prior to December 31, 2007. . ." shall be substituted in place of "Prior to December 31, 2004. . ."

**Section 2.** Except as expressly provided in this Amendment, the rights and obligations of Newhall and Semitropic with respect to the Original Banking Program shall continue to be as provided in the Agreement, as amended by the First Amendment, dated April 15, 2003.

Executed the day and year first hereinabove written.

**THE NEWHALL LAND AND FARMING COMPANY**


By: NEWHALL MANAGEMENT LIMITED PARTNERSHIP,  
Managing General Partner

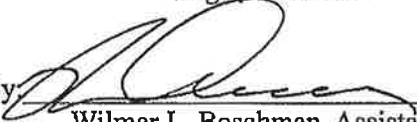
By: NEWHALL MANAGEMENT CORPORATION,  
Managing General Partner

By:   
Steven D. Zimmer, Vice President

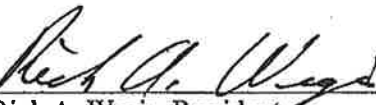



**SEMITROPIC WATER STORAGE DISTRICT**

By:   
Rick A. Wegis, President

By:   
Wilmar L. Boschman, Assistant Secretary

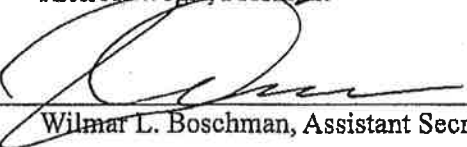
**SEMITROPIC IMPROVEMENT DISTRICT  
OF SEMITROPIC WATER STORAGE DISTRICT**

By:   
Rick A. Wegis, President


By:   
Wilmar L. Boschman, Assistant Secretary

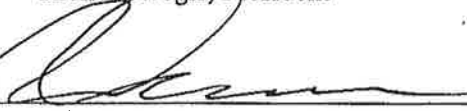
**BUTTONWILLOW IMPROVEMENT DISTRICT  
OF SEMITROPIC WATER STORAGE DISTRICT**

By:   
Rick A. Wegis, President

By:   
Wilmar L. Boschman, Assistant Secretary

**POND-POSO IMPROVEMENT DISTRICT  
OF SEMITROPIC WATER STORAGE DISTRICT**

By:   
Rick A. Wegis, President

By:   
Wilmar L. Boschman, Assistant Secretary



**THIRD AMENDMENT  
TO AGREEMENT BETWEEN THE NEWHALL LAND AND  
FARMING COMPANY AND SEMITROPIC WATER STORAGE DISTRICT  
AND ITS IMPROVEMENT DISTRICTS FOR A NEWHALL-SEMITROPIC  
WATER BANKING AND EXCHANGE PROGRAM**

THIS THIRD AMENDMENT TO THAT CERTAIN AGREEMENT dated May 21, 2001, ("Agreement") by and between NEWHALL LAND AND FARMING COMPANY ("Newhall") and the SEMITROPIC WATER STORAGE DISTRICT and SEMITROPIC IMPROVEMENT DISTRICT, BUTTONWILLOW IMPROVEMENT DISTRICT and POND POSO IMPROVEMENT DISTRICT of the SEMITROPIC WATER STORAGE DISTRICT (collectively called "Semitropic") is entered into as of this 13th day of February, 2008.

NEWHALL AND SEMITROPIC AGREE AS FOLLOWS:

**Section 1.** Section 13.1 of the Agreement (as previously amended) is deleted in its entirety and replaced with the following:

13.1 **Successors and Assigns.** This Agreement shall bind and inure to the benefit of the successors and assigns of the Parties; provided, however, neither Party shall assign any of their rights or obligations under this Agreement without the prior written consent of the other. Provided, further, that Newhall may subcontract with other entities to receive benefits under this Agreement, provided that Newhall shall remain responsible for performing all duties under this Agreement, notwithstanding such subcontracts. Notwithstanding the foregoing, Semitropic hereby consents to an assignment by Newhall to any of the following, which are referred to in this Section 13.1 as the "Permitted Assignees": the Castaic Lake Water Agency, the Valencia Water Company, a mutual water company formed and controlled by Newhall, or another agency or regulated public utility acceptable to Semitropic. Following such an assignment Newhall shall be released from its obligations hereunder to the extent such obligations are expressly assumed by the transferee. On not less than 12 months written notice from Semitropic, Newhall shall transfer its interest to a Permitted Assignee selected by Newhall; provided, however, if Newhall fails to timely accomplish such assignment to a Permitted Assignee, Newhall shall forfeit the right to request return of Stored Water until such assignment is completed but such failure to timely assign shall not otherwise constitute a breach or failure to perform under this Agreement. Any successor to Semitropic shall be a successor Trustee hereunder. Nothing in this Agreement is intended to confer any right or remedy under this Agreement



on any person other than the Parties to this Agreement and their respective successors and permitted assigns, or to relieve or discharge any obligation or liability of any person to any Party to this Agreement, or to give any person any right of subrogation or action over or against any Party to this Agreement.

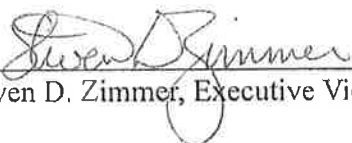
**Section 2.** Except as expressly provided in this Amendment, the rights and obligations of Newhall and Semitropic with respect to the Original Banking Program shall continue to be as provided in the Agreement, as amended by the First Amendment, dated April 15, 2003 and the Second Amendment, dated February 20, 2007.

Executed the day and year first hereinabove written.

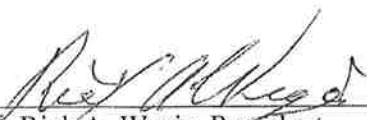
**THE NEWHALL LAND AND FARMING COMPANY**


By: NEWHALL MANAGEMENT LIMITED PARTNERSHIP,  
Managing General Partner

By: NEWHALL MANAGEMENT CORPORATION,  
Managing General Partner

By:   
Steven D. Zimmer, Executive Vice President

**SEMITROPIC WATER STORAGE DISTRICT**

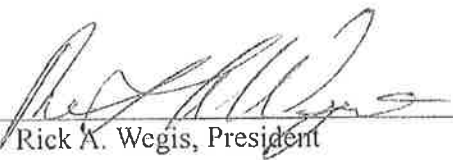
By:   
Rick A. Wegis, President

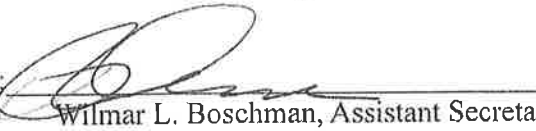
By:   
Wilmar L. Boschman, Assistant Secretary

**SEMITROPIC IMPROVEMENT DISTRICT  
OF SEMITROPIC WATER STORAGE DISTRICT**

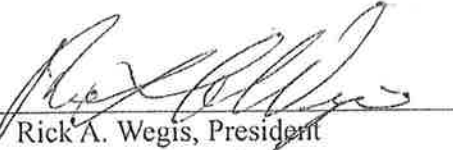




By:   
Rick A. Wegis, President

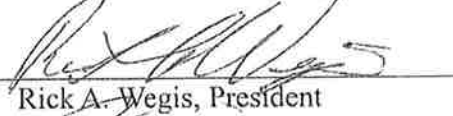
By:   
Wilmar L. Boschman, Assistant Secretary

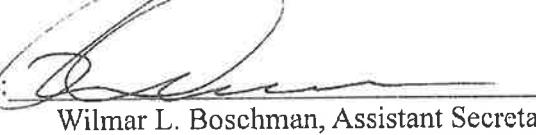
**BUTTONWILLOW IMPROVEMENT DISTRICT  
OF SEMITROPIC WATER STORAGE DISTRICT**

By:   
Rick A. Wegis, President

By:   
Wilmar L. Boschman, Assistant Secretary

**POND-POSO IMPROVEMENT DISTRICT  
OF SEMITROPIC WATER STORAGE DISTRICT**

By:   
Rick A. Wegis, President

By:   
Wilmar L. Boschman, Assistant Secretary

