



COUNTY OF SAN MATEO
Inter-Departmental Correspondence
County Council



DATE: August 29, 2011
BOARD MEETING DATE: September 13, 2011
SPECIAL NOTICE/HEARING: None Required
VOTE REQUIRED: Majority

TO: Honorable Board of Supervisors
FROM: John C. Beiers, County Counsel *JB*
SUBJECT: Authorization to Execute a Second Amendment to Declaration of Covenants and Restrictions on Real Property on San Bruno Mountain (Owner – Brookfield Northeast Ridge II, LLC)

RECOMMENDATION:

Adopt a resolution authorizing the President of the Board to execute a Second Amendment to Declaration of Covenants and Restrictions on Real Property on San Bruno Mountain.

BACKGROUND:

The terms of the San Bruno Mountain Area Habitat Conservation Plan (HCP) require that owners of property on San Bruno Mountain who are participants in the HCP execute and record covenants and restrictions with respect to developable parcels that the owners intend to develop, including annual assessments to be paid by landowners into the HCP Trust Fund. In January 2007, Brookfield Northeast Ridge II, LLC (Brookfield), which owns property within the HCP area, recorded a Declaration of Covenants and Restrictions with respect to its property. This particular Declaration was significant in that it imposed an enhanced per unit annual assessment of approximately \$800 on remaining units to be created in the Northeast Ridge Landmark project, in accordance with a recently adopted amendment to the HCP. Currently, 17 units in the Landmark project are subject to this enhanced assessment. On August 12, 2008, by Resolution No. 069629, this Board approved a First Amendment to the Declaration of Covenants and Restrictions which was recorded on December 4, 2008.

DISCUSSION:

The document presented to the Board for review and execution by the President would further amend this set of covenants and restrictions on the property. After the First Amendment was approved, all parties realized that it contained an erroneous funding formula, thus requiring this Second Amendment. The Second Amendment will correct the error in the First Amendment by clarifying the application of the inflation factor to the annual assessments to be paid by the residential units covered by the Declaration. The Amendment is sought at this time because an additional 71 units in the Landmark

project will soon be created by subdivisions to be approved by the City of Brisbane, which will bring the total number of units subject to the enhanced annual assessment to 88. Upon execution by the County and the State of California, the document will be recorded.

Approval of this Second Amendment contributes to the Shared Vision 2025 outcome of a Collaborative Community by promoting collaboration with other public and private entities to ensure environmental stewardship of important natural resources through cooperative efforts.

FISCAL IMPACT:

None to the County. Provides for landowner payment into HCP Trust Fund.

RESOLUTION NO. _____

BOARD OF SUPERVISORS, COUNTY OF SAN MATEO, STATE OF CALIFORNIA

* * * * *

**RESOLUTION AUTHORIZING THE PRESIDENT OF THE BOARD TO EXECUTE A
SECOND AMENDMENT TO DECLARATION OF COVENANTS AND RESTRICTIONS
ON REAL PROPERTY ON SAN BRUNO MOUNTAIN.**

RESOLVED, by the Board of Supervisors of the County of San Mateo, State of California, that

WHEREAS, Section VI.2 of the Agreement with Respect to the San Bruno Mountain Area Habitat Conservation Plan requires each landowner who is a participant in the San Bruno Mountain Habitat Conservation Plan (HCP) to record a covenant with respect to any developable administrative parcel which said landowner proposes to subdivide, develop, or use, in the form attached as Exhibit "G" to said Agreement; and

WHEREAS, Brookfield Northeast Ridge II, LLC (Brookfield), a landowner participating in the HCP, presented a First Amendment to the Declaration of Covenants and Restrictions with respect to a project on San Bruno Mountain, which this Board approved on August 12, 2008 by Resolution 69629 and which was recorded on December 4, 2008 in the Official Records of the County of San Mateo as number 2008-131366; and

WHEREAS, due to an error in the funding formula contained in the First Amendment to the Declaration, it is necessary to adopt a Second Amendment to correct said error and which will be recorded in the Official Records of the County of San

Mateo; and

WHEREAS, Brookfield has presented such a Second Amendment to the Declaration of Covenants and Restrictions, and this Board has examined and approved it as to form and content and now desires to enter into it;

NOW THEREFORE, IT IS HEREBY DETERMINED AND ORDERED that the President of this Board of Supervisors is hereby authorized and directed to execute the Second Amendment to Declaration of Covenants and Restrictions on Real Property on San Bruno Mountain for and on behalf of the County of San Mateo, and the Clerk of this Board shall attest the President's signature hereto.

* * * * *

RECORDED AT THE REQUEST OF:

John Beiers, County Counsel
County of San Mateo

WHEN RECORDED RETURN TO:

John Beiers
San Mateo County Counsel
400 County Center, 6th Floor
Redwood City, CA 94063-1662

**SECOND AMENDMENT TO
DECLARATION OF COVENANTS AND RESTRICTIONS ON REAL
PROPERTY ON SAN BRUNO MOUNTAIN**

The County of San Mateo, the State of California and Brookfield Northeast Ridge II LLC, a Delaware limited liability company, (collectively "**the undersigned**") hereby make this Second Amendment to Declaration of Covenants and Restrictions on Real Property on San Bruno Mountain ("**Second Amendment**") on the terms and conditions herein stated.

R E C I T A L S:

The undersigned make this Second Amendment based on the following facts and intentions:

A. A Declaration of Covenants and Restrictions on Real Property on San Bruno Mountain executed by the undersigned and recorded on January 29, 2007 as Document No. 2007-014449 in the Official Records of the County of San Mateo, State of California. Said Declaration was amended by a First Amendment recorded on December 4, 2008, as Document No. 2008-131366 in said Official Records. Said Declaration, as amended by said First Amendment, is collectively referred to as the "**HCP Declaration**."

B. The HCP Declaration was executed by Brookfield Northeast Ridge II, LLC, a Delaware limited liability company, as the owner of all the real property and Improvements thereon located in the City of Brisbane, County of San Mateo, State of California, State of California, described as:

Lots 1 through 11, inclusive, as shown on the subdivision map of "Northeast Ridge Unit II Adjacent to Unit I – Golden Aster Court" filed for record on July 24, 2006 in Book 134 of Maps at Pages 31 through 37, inclusive, in the Official Records of the County of San Mateo, State of California and all subsequent lots annexed under and subject to the Declaration of Covenants, Conditions and Restrictions of Landmark at the Ridge recorded on October 14, 2003, as Document No. 2003-295992, as amended by the First Amendment to Declaration of Covenants, Conditions and Restrictions of Landmark at the Ridge recorded on October 23, 2003, as Document No. 2003-305800, as amended by the Second Amendment to Declaration of Covenants, Conditions and Restrictions of Landmark at the Ridge recorded on November 7, 2006, as Document No. 2006-168384 (collectively, "**Landmark Declaration**"), all in the Official Records of the County of San Mateo, State of California, and as amended by the Lot Line Adjustments recorded on May 9, 2002, as Document Nos. 2002-091255, 2002-091256, 2002-091257, 2002-091258, 2002-091259 and 2002-091260 of said Official Records.

C. All of the capitalized terms in this Second Amendment shall have the same meanings given them in the HCP Declaration unless this Second Amendment provides otherwise.

D. The undersigned now desire to amend the HCP Declaration by this Second Amendment. By acceptance of title to any of Lots 1 through 6, as shown on the subdivision map of Northeast Ridge, Landmark at the Ridge, Unit II - 6 Lots 'A' Street, filed for record on _____, 2011, in Book _____ of Maps, at Pages _____ in the Official Records of the County of San Mateo, State of California, or of Lots 1 through 65, as shown on the subdivision map of Northeast Ridge, Landmark at the Ridge, Unit II - Neighborhood 2, filed for record on _____, 2011, in Book _____ of Maps, at Pages _____, of said Official Records, the lot owner agrees to be bound by the changes set forth in this Second Amendment.

THEREFORE, Declarant hereby declares the following:

1. Subparagraph 1 of Section III of the HCP Declaration is deleted and the following new section is substituted in lieu thereof:

1. Covenants for Payment of Assessments. The following assessments shall be paid to the Trust with respect to the Benefitted Lands:

(a) The Landmark at the Ridge Owners Association, a non-profit mutual benefit corporation incorporated under the laws of the State of California, ("**Association**") shall collect from the owner of each subdivided Dwelling Unit within the Benefitted Lands with respect to each such Dwelling Unit the following amounts:

(i) 1983 Base Assessment: An annual assessment of Forty-Three Dollars and Twenty-Five Cents (\$43.25), as adjusted pursuant to Paragraph 2 (this amount, as adjusted, is referred to as the "**Base Assessment.**") The Base Assessment for the year 2005 was increased by Forty Dollars and Two Cents (\$40.02), pursuant to Paragraph 2, to a Base Assessment in 2005 of Eighty Three Dollars and Twenty-Seven Cents (**\$83.27**).

(ii) Additional Fixed Assessment: An annual assessment of a fixed amount of Seven Hundred Sixteen Dollars and Seventy-Three Cents (\$800 - \$83.27 = \$716.73). This amount is referred to as the "**Additional Fixed Assessment**" and shall not change or otherwise be adjusted pursuant to Paragraph 2.

The Base Assessment plus the Additional Fixed Assessment constitute the "**Unit Assessment.**" The Unit Assessment for the year 2008 is Eight Hundred Eight Dollars and Nine Cents (Base Assessment for 2008 of \$91.36 + the Additional Fixed Assessment of \$716.73 = \$808.09).

The Unit Assessment may be divided into monthly payments at the sole discretion of the Association. The Association shall then pay to the Trust the aggregate total of all Unit Assessments once a year, on or before November 10 of each year. For the purposes of this covenant, the term Dwelling Unit shall mean any house, condominium unit or other residential unit, whether occupied by one or more related or unrelated persons or groups of persons, and shall include in addition to the respective residence all appurtenant common areas (whether owned by a Homeowners Association or in undivided interest by the owners of Dwelling Units), open space, landscaping and other lands and all parking, recreational and service facilities, structures and buildings of every kind and nature.

(b) The private owner of each unit or subdivided lot within the Benefitted Lands (other than a unit or subdivided lot (i) constituting a Dwelling Unit, (ii) owned by a Homeowners

D. The undersigned now desire to amend the HCP Declaration by this Second Amendment. By acceptance of title to any of Lots 1 through 6, as shown on the subdivision map of Northeast Ridge, Landmark at the Ridge, Unit II - 6 Lots 'A' Street, filed for record on _____, 2011, in Book _____ of Maps, at Pages _____ in the Official Records of the County of San Mateo, State of California, or of Lots 1 through 65, as shown on the subdivision map of Northeast Ridge, Landmark at the Ridge, Unit II - Neighborhood 2, filed for record on _____, 2011, in Book _____ of Maps, at Pages _____, of said Official Records, the lot owner agrees to be bound by the changes set forth in this Second Amendment.

THEREFORE, Declarant hereby declares the following:

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(i) 1983 Base Assessment: An annual assessment of Forty-Three Dollars and Twenty-Five Cents (\$43.25), as adjusted pursuant to Paragraph 2 (this amount, as adjusted, is referred to as the "**Base Assessment.**") The Base Assessment for the year 2005 was increased by Forty Dollars and Two Cents (\$40.02), pursuant to Paragraph 2, to a Base Assessment in 2005 of Eighty Three Dollars and Twenty-Seven Cents (**\$83.27**).

(ii) Additional Fixed Assessment: An annual assessment of a fixed amount of Seven Hundred Sixteen Dollars and Seventy-Three Cents (\$800 - \$83.27 = \$716.73). This amount is referred to as the "**Additional Fixed Assessment**" and shall not change or otherwise be adjusted pursuant to Paragraph 2.

The Base Assessment plus the Additional Fixed Assessment constitute the "**Unit Assessment.**" The Unit Assessment for the year 2008 is Eight Hundred Eight Dollars and Nine Cents (Base Assessment for 2008 of \$91.36 + the Additional Fixed Assessment of \$716.73 = \$808.09).

The Unit Assessment may be divided into monthly payments at the sole discretion of the Association. The Association shall then pay to the Trust the aggregate total of all Unit Assessments once a year, on or before November 10 of each year. For the purposes of this covenant, the term Dwelling Unit shall mean any house, condominium unit or other residential unit, whether occupied by one or more related or unrelated persons or groups of persons, and shall include in addition to the respective residence all appurtenant common areas (whether owned by a Homeowners Association or in undivided interest by the owners of Dwelling Units), open space, landscaping and other lands and all parking, recreational and service facilities, structures and buildings of every kind and nature.

(b) The private owner of each unit or subdivided lot within the Benefitted Lands (other than a unit or subdivided lot (i) constituting a Dwelling Unit, (ii) owned by a Homeowners

Association, or (iii) owned by a governmental or public entity, including without limitation, the City of Brisbane or the Brisbane School District) shall pay to the Trust, in advance, on or before November 10 of each year, an annual assessment determined as follows:

(i) In the event that the primary use of the lot or unit is a building, then the annual assessment to be paid shall be the aggregate sum of Ten Dollars (\$10.00) multiplied by the total floor area of the buildings on the lot or unit divided by one thousand (1000), as adjusted pursuant to Paragraph 2. No further assessment shall be made with respect to open space, landscaping and other lands and parking, recreational and service facilities and structures appurtenant to such buildings.

(ii) In the event that the primary use of the lot or unit is not a building (e.g., a radio antenna), then the annual assessment shall be an equitable sum reasonably determined by the Trust to be equivalent to the assessment required with respect to building uses as provided above and taking into account the impact of such uses on the Species of Concern and the Conserved Habitat, as adjusted pursuant to Paragraph 2.

(iii) Concurrently with or prior to the recordation of these covenants with respect to the Benefitted Lands, the Trust shall reasonably determine the character of uses under this Subparagraph (b) and the amount of the assessment payable, and shall deliver written notice to the respective landowner of its determination and shall record a copy of said notice in the official records of San Mateo County.

(iv) Notwithstanding anything to the contrary in this Paragraph 1.(b), it is understood by the parties hereto that, under the current development plan for the Benefitted Lands, such Benefitted Lands are subject only to assessment under Subparagraph (a), above, related to Dwelling Units. Assessments under this Subparagraph (b) will only occur in the event that such development plan is amended to include uses required to be assessed under this Subparagraph (b).

(c) In the event of: (i) any change of use; or (ii) expansion of any non-Dwelling Unit use under Subparagraph (b), the owner of the respective lot or unit shall promptly notify the Trust in writing of such change or expansion and the assessments with respect to such lot or unit shall be amended to comply with Subparagraphs (a) and (b), above, effective upon such change or expansion.

(d) As used herein, the term "floor area" shall mean the sum of the gross horizontal areas of the several floors of a building measured from the exterior face of exterior walls, or from the centerline of a wall separating two buildings, but not including interior parking spaces, loading spaces for motor vehicles, or any space where the floor-to ceiling height is less than six feet.

2. Subparagraph 2 of Section III of the HCP Declaration is deleted and the following new section is substituted in lieu thereof:

2. Adjustments in Annual Charge and Assessment. The amount of the annual assessment shall be adjusted annually by the Trust as follows:

(a) The amounts stated in subparagraph 1(a)(i) and 1(b)(i), above, are based on the value of the United States Dollar on January 1, 1983. The charges or assessment shall be adjusted annually by the Trust based upon the percentage increase in the Employment Cost Index – West Region published by the United States Department of Labor, Bureau of Labor Statistics. If the Index or the Bureau is discontinued without a successor being established, the Trust shall reasonably designate

a substitute index which shall be reasonably used in like manner to determine the change in the value of the Dollar from time to time.

(b) The Trust shall notify the Association of the amount of the assessment due under subparagraph 1(a), above, for the next succeeding year at least 30 days prior to the date the assessment is due. The Trust shall notify the Owner of each Dwelling Unit or non-Dwelling Unit subject to the assessment due under subparagraph 1(b), above, of the amount of the assessment due for the next succeeding year at least 30 days prior to the date the assessment is due.

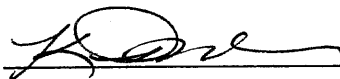
3. Except as expressly stated herein, all of the provisions of the HCP Declaration are restated and affirmed and shall remain in full force and effect.

4. This Second Amendment shall be effective upon the date of its recordation in the Official Records of the County of San Mateo, State of California.


Executed this _____ day of _____.

BROOKFIELD NORTHEAST RIDGE II LLC,
a Delaware limited liability company

COUNTY OF SAN MATEO

By: 
Name: KEVIN POHLSON
Title: VP

By: _____
Name: _____
Title: _____

By: 
Name: David Luebke
Title: Vice President
Chief Financial Officer

STATE OF CALIFORNIA

By: _____
Name: _____
Title: _____

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA } ss.

On July 27, 2011, before me, MARILYN C. STONE, Notary Public,
personally appeared KEVIN POHLSON,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed
to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity
upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.



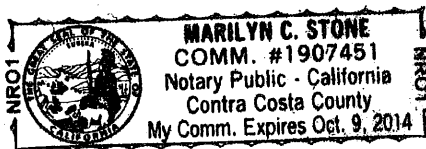
Marilyn C. Stone
Signature

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA } ss.

On July 27, 2011, before me, MARILYN C. STONE, Notary Public,
personally appeared DAVE LUEBKEMAN,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed
to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their
authorized capacity(ies), and that by his/her/their signature(s) on the instrument, the person(s) or the entity
upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.



Marilyn C. Stone
Signature