

Recording requested by  
and when recorded mail to:

BEAR YUBA LAND TRUST  
P.O. Box 1004  
Grass Valley, CA 95945  
Phone: 530-268-8158

Space above this line for Recorder's use.

**DEED OF OPEN SPACE CONSERVATION EASEMENT  
AND VOLUNTARY AGREEMENT CREATING ENFORCEABLE RESTRICTIONS  
IN PERPETUITY FOR SMILING OWL PRESERVE**

This Deed of Open Space Conservation Easement and Voluntary Agreement Creating Enforceable Restrictions in Perpetuity (the "**Conservation Easement**") is granted on this 13<sup>th</sup> day of DECEMBER, 2017, by Nina Allen Cunningham Trust dated March 6, 2003 and the Nina Allen Cunningham Trust dated July 1, 2013 ("**Landowner**"), to the Bear Yuba Land Trust, a California public benefit corporation ("**BYLT**"), hereinafter collectively referred to as the "**Parties**."

Recitals

A. Landowner is the sole owner in fee simple of certain real property consisting of approximately 45 acres, located in Nevada County, California, as further described in "Exhibit A" attached hereto and incorporated herein by reference (the "**Property**" or "**Easement Area**") and depicted in "Exhibit B" attached hereto and incorporated herein by reference (the "**Property Map**"). Landowner desires to grant a conservation easement over the Easement Area.

B. BYLT is a "qualified conservation organization" as defined by Section 170(h)(3) of the Internal Revenue Code and is eligible to hold this Conservation Easement pursuant to Section 815.3 of the California Civil Code. As certified by resolution of its governing body, BYLT accepts the responsibility of monitoring and enforcing the terms of this Conservation Easement and upholding its conservation purposes.

C. The Property consists of a Sierran mixed conifer forest and riparian areas including North Fork of Deer Creek, a major watercourse for the aquatic, terrestrial and avian animals and the people of Nevada County and of Statewide significance. The Sierran mixed-conifer forest supports plant species which provide diversity in food and cover essential for wildlife. The year around drainage and riparian corridor provide water, thermal cover, migration corridors and diverse nesting and feeding opportunities, the edge of which is highly productive

for wildlife, especially the California spotted owl (*Strix occidentalis*) and Pileated woodpecker (*Hylatomus pileatus*).

D. Landowner desires to make a charitable gift of the Conservation Easement to BYLT to assure that the Property will be retained in perpetuity in its natural scenic and open space condition, to enhance the forest, riparian and wildlife habitat, and water quality and watershed lands of the Property and to prevent any use of the Property that will impair or impact the Conservation Values set forth herein and in the Baseline Documentation (the "**Conservation Values**"). Uses of the Property that are inconsistent with the Conservation Values will be prevented or corrected.

E. The grant of this Conservation Easement will further the policy purposes of the following clearly delineated governmental conservation policies:

Section 815 of the California Civil Code, in which the California Legislature has declared: (1) that "the preservation of land in its natural, scenic, agricultural, historical, forested, or open-space condition is among the most important environmental assets of California"; and (2) that it is "in the public interest of this state to encourage the voluntary conveyance of conservation easements to qualified nonprofit organizations".

F. All holders of liens or other encumbrances upon the Easement Area have agreed to subordinate their interests in the Easement Area to this Conservation Easement and to refrain forever from any action that would be inconsistent with its conservation purposes, except the encumbrances listed in "Exhibit C".

G. The current physical and overall biological conditions of the Easement Area, as well as its current uses and state of improvement, are described in a "**Baseline Documentation Report**" prepared by BYLT with the cooperation of Landowner, consisting of maps, photographs, and other documents, and acknowledged by both to be complete and accurate as of the date of this Conservation Easement. Both Landowner and BYLT have copies of this report. It will be used by BYLT to assist in its monitoring and enforcement of Landowner's compliance with the Easement. This report, however, is not intended to preclude the use of other evidence to establish the baseline condition of the Easement Area if there is a controversy over some aspect of that condition.

H. BYLT recognizes that the Conservation Values associated with the physical environment of the Easement Area exist because of the past stewardship of the landowner(s) and depend on the future good stewardship decisions of the Landowner and its successors. Landowner is entrusted with those future management decisions. BYLT is entrusted with determining that the Conservation Values have been protected.

#### Deed and Agreement

In consideration of the recitals set forth above, and in consideration of their mutual promises and covenants, Landowner hereby grants and conveys to the BYLT, its successors and

assigns, and BYLT hereby accepts, a perpetual "conservation easement" as defined by Section 815.1 of the Conservation Easement Act of 1979 (California Civil Code, Section 815 et seq.), of the nature and character described in this Conservation Easement.

1. **Purposes.** It is the purpose of this Conservation Easement to preserve and protect, and in the event of their impairment, to enhance and restore in perpetuity the Conservation Values of the Property including, without limitation, forest productivity, wildlife and plant habitat and quality and quantity of water resources (the "Conservation Purposes"). It is further the purpose of this Easement to prevent any use of the Property that would significantly degrade, impair or interfere with its Conservation Values or Conservation Purposes. Landowner intends that this Easement will confine the use of the Property to such activities as are consistent with the purpose of this Conservation Easements. These objectives shall be accomplished through use of current scientific understandings of what constitutes best management practices as such practices may develop and evolve.

Under this Conservation Easement, "**impairment**" of Conservation Values means a material adverse change in Conservation Values. The consideration of actual and potential impacts of a particular activity or use on Conservation Values shall take into account the impacts of the activity or use in question as well as the cumulative impacts of other uses and activities on the Property, except Acts of God, actions taken by Landowner under emergency conditions, and non-permitted acts of unrelated third parties, each as specifically described in Section 2, below. In every evaluation of whether impairment of Conservation Values has occurred or is threatened, both the magnitude and the duration of the actual or potential change(s) shall be considered by BYLT.

2. **Prohibited Acts.** Landowner promises that it will not perform, or knowingly allow others to perform, any act or use on or affecting the Easement Area in conflict with the covenants set out in this Conservation Easement, including but not limited to any act or use that results in impairment of Conservation Values. Landowner authorizes BYLT to enforce these covenants. Nothing in this Conservation Easement shall require Landowner to take any action to restore the condition of the Easement Area caused by (a) any Act of God or other event over which Landowner has no control; (b) any prudent action taken by Landowner under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area or to any person resulting from such causes; or (c) the non-permitted acts of unrelated third parties so long as Landowner has taken reasonable steps to control such acts. Landowner understands and agrees that nothing in this Conservation Easement relieves it of any obligation or restriction in relation to the development or use of the Easement Area imposed by law, including but not limited to local land use restrictions.

3. **Permitted Acts.**

(a) New Construction. Landowner may maintain and repair the improvements that exist on the Property as of the date of this Conservation Easement, which are comprised of gates, fencing, culvert crossings, drainage culverts, shed, a single residence ("Existing House"), garden for personal use and roads. In the event any of these

structures or improvements are subsequently destroyed or are otherwise in need of replacement, Landowner may replace said structures and improvements with those of similar design, size, function, location and materials and in a manner consistent with the Conservation Values of this Conservation Easement and in conformance with current building codes.

(b) Forest Management. Landowner shall have the right to remove Timber from the Property. All removal of Timber shall be in accordance with a Timber Management Plan (the "Timber Management Plan") prepared by a licensed forester and reflect the latest science for sustainable forest health. All Timber Management Plans which may be placed upon the Property shall contemplate, permit and encourage the establishment of an old growth forest on the Property. Any Timber Management Plan must have the prior written consent of BYLT. The Timber Management Plan must contain, among other things, the following Forest Management Restrictions:

(i) Silviculture -- Uneven-aged forest management and single-tree or group selection silviculture shall be used in order to promote growth and natural reproduction and promotion of a multi-aged balanced stand structure. Even-aged silvicultural methods may be used in certain instances in order to improve forest health, but only with prior written approval of the BYLT.

(ii) Harvest Volumes - Landowner shall harvest timber only to the extent that, under the circumstances, it does not impair Conservation Values and the goal of establishing an old growth forest.

(iii). Personal Use - Landowner may cut trees for firewood and other personal use, such as lumber for use on the Property, when such cutting is consistent with the other terms of this Agreement and the Timber Management Plan.

(iv). Harvest Notice - Landowner shall submit a Notice of Timber Operations (or the equivalent notice at the time) to BYLT whenever Landowner proposes timber harvesting. The Timber Harvest Operations require approval from BYLT before the operation should begin. BYLT's approval will not be unreasonably withheld. The submission to BYLT shall include sufficient information and maps for BYLT to determine the scope and location of the proposed harvest, consistent with the terms, conditions and purpose of this Agreement, and the impacts on Conservation Values of the Property as described herein. The submission to BYLT shall also include the areas to be harvested and projected harvest volumes.

(v). Promotion of Climate Stability. Landowner anticipates that forest management actions will promote climate stability, especially the ability of the forest to store atmospheric carbon as a means to mitigate global warming, which is recognized as being of public benefit by the 1993 United Nations Framework

Convention on Climate Change, [subsequent reports by the International Program on Climate Change (IPCC), and the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code).]

(c) Passive Recreational Uses. Landowner reserves the right to use the Property for passive, non-commercial recreational uses by Landowner and Landowner's invitees, provided that all such passive recreational uses shall neither require nor result in any surface alteration, permanent structures or other development of the Property. Recreational hunting and fishing are prohibited. Hunting or fishing for the purpose of depredation of an invasive species is permitted, with prior written approval of Bear Yuba Land Trust.

(d) Signs. Landowner may post signs or other appropriate markers on the Property which state that trespassing and/or hunting and/or fishing are prohibited on the Property and/or where reasonably necessary to protect the Conservation Values of the Property. No billboards shall be erected on the Easement Area. Signs are allowed for the purposes of denoting the names and addresses of residents on the Easement Area, denoting allowable business uses, describing other permitted activities on the Easement Area, identifying the Conservation Easement and its participants, and posting the property to control unauthorized entry or use; provided, no sign resulting in the impairment of Conservation Values shall be allowed. BYLT may install and maintain, at BYLT's sole cost and expense, signage on the Easement Area in order to indicate the participation of BYLT in the acquisition and maintenance of the Conservation Easement; provided, that the size, location, number, text and design of the signage shall be subject to the approval of Landowner, which approval shall not be unreasonably withheld, conditioned or delayed.

(e) Water Rights. Landowner reserves the rights to hold and use all existing water rights on the Property for the benefit of the Property, to apply for additional riparian or appropriative rights as necessary for continued forest productivity and ecological uses and to obtain water supplies from any source permitted by law. This shall include the right to maintain, repair and replace minor diversion facilities subject to all applicable laws and government regulations. Utilization of water from surface resources including creeks and tributaries for agriculture including cannabis is prohibited.

(f) Building Envelope. Landowner has identified an area on the property identified in Exhibit B as a Residential Building Envelope that is not subject to the prohibited uses of the Conservation Easement. Landowner need not notify BYLT of activity to be performed in the Residential Building Envelope, identified in Exhibit B.

4. **Subdivision.** The subdivision of the Easement Area, whether by physical, legal or any other process, is prohibited.

5. **Development Rights.** Landowner hereby grants to BYLT all development rights, except as specifically reserved to Landowner herein, that are now or hereafter allocated to, implied, reserved or inherent in the Easement Area, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded and described, or to any other property adjacent or otherwise. The Easement Area may not be used for the purpose of calculating permissible development or lot yield of any other property.

6. **Mining of Subsurface and Surface Minerals.** The provisions of this Section 7 shall be interpreted in a manner consistent with Section 170(h) of the Internal Revenue Code, the Treasury regulations adopted pursuant thereto, and any other successor provisions addressing the same subject.

(a) Surface Mining of Subsurface Minerals. The extraction or removal of any subsurface oil, gas, rock, sand, gravel or other minerals by any surface mining method is prohibited.

(b) Other Mining Methods. The extraction or removal of any subsurface oil, gas, or other minerals by methods other than surface mining is prohibited.

7. **Paving and Road Construction.** No construction of new roads nor paving of any existing road within the Easement Area is allowed without permission from BYLT, which permission must be supported by Landowner's demonstration to the reasonable satisfaction of BYLT that the proposed construction or paving will not impair Conservation Values. For purposes of this paragraph, "pave", "paved", or "paving" shall include covering of the soil surface with concrete, asphalt, or other impermeable material; provided, that in order to make roads passable the Landowner may apply to existing or future roads on the Property a reasonable amount of gravel.

8. **Industrial and Commercial Uses; Motorized Vehicles.**

(a) Industrial Uses. All industrial uses of the Easement Area not expressly authorized herein are prohibited.

(b) Commercial Uses. All non-timber commercial uses including commercial agriculture are prohibited on the Easement Area.

(c) Utility Facilities. Where utility facilities (including infrastructure) such as power lines and pipelines are, in the sole discretion of BYLT, likely to be constructed through the Easement Area, or where existing utility facilities are being relocated, the Landowner and BYLT may negotiate both compensation for and location of such facilities in order to avoid or reduce the impacts of such facilities on the Conservation Values. Any compensation shall be shared as provided in Paragraph 24 below and the BYLT's portion shall be used exclusively to further conservation either within or without the Easement Area. Renewable power generation facilities, such as solar, wind and hydroelectric, may be constructed within the Easement Area only with

the prior written consent of the BYLT. The consent shall be granted only upon demonstration that such facilities will be properly permitted, located so as to not be visible from the vantage of public roads, and located so as to not impair the Conservation Values.

9. **Trash.** The dumping or accumulation of any kind of trash, refuse or derelict equipment on the Easement Area is prohibited

10. **Rights Retained by Landowner.** The Landowner retains the right to perform any act not specifically prohibited or limited by this Conservation Easement. Landowner's present uses and compatible historic uses of the Easement Area as described in the Baseline Conditions Report, are deemed to be permitted activities consistent with the Conservation Purposes. Landowner retains all ownership rights consistent with such purposes, including, but not limited to, the right to sell or otherwise transfer the Easement Area to anyone Landowner chooses.

11. **Responsibilities of Landowner and BYLT Not Affected.** Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the BYLT, or in any way to affect any existing obligation of the Landowner as owner of the Easement Area. Among other things, this shall apply to:

(a) Taxes. Landowner shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Easement Area or the property underlying the Easement Area by competent authority. If the BYLT is ever required to pay any taxes or assessments on the Easement Area or underlying property, Landowner will promptly reimburse BYLT for the same.

(b) Upkeep and Maintenance. Landowner shall continue to be solely responsible for the upkeep and maintenance of the Easement Area. BYLT shall have no obligation for the upkeep or maintenance of the Easement Area.

(c) Liability and Indemnification.

(i) Landowner shall and hereby agrees to hold harmless, indemnify, protect, and defend BYLT, its officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns and each of them (collectively "**BYLT Indemnified Parties**") from and against all liabilities, penalties, costs, losses, orders, liens, damages, expenses, causes of action, claims, demands, or judgments, including without limitation reasonable attorneys' and experts' fees, arising from or in any way connected with: (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Easement Area, regardless of cause, except to the extent caused by the negligence or willful misconduct of any of the BYLT Indemnified Parties; (b) a violation of, or other failure to comply with, any state, federal or local law, regulation or requirement, by Landowner, or any party other than one of the BYLT Indemnified Parties acting upon permission from Landowner, in any way affecting,

involving or relating to the Easement Area; (c) the breach by Landowner of any of its obligations set forth in this Conservation Easement.

(ii) BYLT shall hold harmless, indemnify, and defend Landowner and its officers, directors, employees, contractors, legal representatives, agents, heirs, personal representatives, successors and assigns, and each of them (collectively "**Landowner Indemnified Parties**") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' and experts' fees, arising from or in any way connected with any injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area to the extent caused by the negligence or willful misconduct of any of the BYLT Indemnified Parties.

(d) Insurance.

(i) Landowner shall maintain an occurrence-basis commercial general liability policy insuring against bodily injury and property damage on the Easement Area in the amount of not less than Two Million Dollars (\$2,000,000). BYLT shall be named an additional insured on the policy. The liability insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to BYLT. Landowner waives all rights of subrogation against BYLT and its agents, representatives, officers, directors and employees for recovery of damages to the extent these damages are covered by insurance maintained pursuant to this Conservation Easement. Landowner shall furnish BYLT with certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth above. Such certificates shall provide for thirty (30) days written notice to BYLT prior to the cancellation or material change of any insurance referred to herein. Any failure of BYLT to demand such certificate or other evidence of full compliance with these insurance requirements or failure of BYLT to identify a deficiency from evidence that is provided shall not be construed as a waiver of Landowner's obligation to maintain such insurance. The foregoing insurance requirements do not replace, waive, alter or limit the hold harmless or indemnification provisions of this Conservation Easement.

(ii) BYLT shall maintain a comprehensive general liability policy insuring against bodily injury and property damage on the Easement Area in the amount of not less than two million dollars (\$2,000,000). The liability insurance shall apply as secondary insurance with respect to any other insurance or self-insurance programs afforded to Landowner. BYLT waives all rights of subrogation against Landowner and its agents, representatives, officers, directors and employees for recovery of damages to the extent these damages are covered by insurance maintained pursuant to this Conservation Easement. The foregoing insurance requirements do not replace, waive, alter or limit the hold harmless or indemnification provisions of this Conservation Easement. Notwithstanding the foregoing insurance requirements, BYLT may self insure with the approval of Landowner, which approval shall not be unreasonably withheld.

12. **Monitoring, Management and Issue Resolution.**



temporarily or permanently. BYLT may also seek an injunction requiring the Landowner to restore, or pay for the restoration of, the Easement Area to its condition prior to the violation.

(f) Alternative and Cumulative Remedies. BYLT's remedies described in this Section 12 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provisions of California Civil Code Section 815, et seq., are incorporated herein by this reference and this Conservation Easement is made subject to all of the rights and remedies set forth therein. The prevailing party shall be entitled to recover its costs incurred in any such enforcement effort, including reasonable attorneys', consultants' and experts' fees and costs, and the cost for the loss of the conservation values. BYLT retains the discretion to determine the appropriate method to enforce the provisions of this Easement including performing restoration for the loss of conservation values, and shall not be required to exhaust the provisions of one subsection hereof in order to be entitled to the benefits of another.

13. **Forbearance No Waiver.** Forbearance by BYLT to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Landowner shall not be construed to be a waiver by BYLT of such term or of any subsequent breach of the same or any other term of this Conservation Easement. No delay or omission in the exercise of any right or remedy upon any breach by Landowner shall impair such right or remedy or be construed as a waiver.

14. **BYLT Transfer of Easement.**

(a) The Parties contemplate that BYLT will continue to hold this Conservation Easement for so long as BYLT remains in existence. Notwithstanding such contemplation, however, BYLT may assign its interest under this Conservation Easement; provided, BYLT shall first provide Landowner with written notice of such intention or requirement and shall allow Landowner a period of one hundred eighty (180) days within which to designate an assignee that is: (i) qualified to hold a conservation easement under Section 815.3 of the California Civil Code; (ii) a "qualified organization" as defined in Section 170(h)(3) of the U.S. Internal Revenue Code, 26 U.S.C. §170(h)(3); (iii) not an "Affiliate" (as defined below) of Landowner or any lessee of any portion of the Easement Area; and (iv) willing and financially able to assume all of the responsibilities imposed on BYLT under this Conservation Easement including without limitation monitoring and enforcement. As used in this Subsection 14(a), "Affiliate" means an entity which directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person or entity. In the events that at the end of the one hundred eighty (180) day period either an assignment has not been made or Landowner has not petitioned a court of competent jurisdiction to transfer this Conservation Easement to an entity that meets the foregoing four designation criteria, BYLT may proceed to transfer this Conservation Easement to any non-governmental entity that meets all of the foregoing designation criteria or to petition a court of competent jurisdiction to do so. The Parties intend that, in the selection of a transferee, preference be given to a qualified organization with requisite experience in preserving and protecting the other Conservation Values. BYLT shall not transfer this Conservation Easement to any governmental entity or public agency without the consent of Landowner, which consent shall be in Landowner's sole discretion. Placer

Land Trust is deemed to be an appropriate Transferee of BYLT's interest hereunder pursuant to this Section 14.

(b) If BYLT ever ceases to exist or no longer qualifies under Section 170(h) of the U.S. Internal Revenue Code, or applicable state law, or no longer meets all of the four designation criteria stated in Subsection 14(a), then Landowner shall petition a court of competent jurisdiction to transfer this Conservation Easement to an organization that meets all of those criteria. In the event that the court is unable to identify a non-governmental organization that meets those criteria, the court may transfer this Conservation Easement to a governmental entity that meets the criteria.

#### 15. **Landowner Transfer of the Easement Area.**

(a) Notification. Any time the Easement Area itself or any interest in it is transferred by the Landowner to any third party, the Landowner shall notify the BYLT in writing prior to the transfer of the Easement Area, and the deed of conveyance shall expressly refer to this Conservation Easement. Failure to notify BYLT or include the required reference to this Conservation Easement in the deed shall not affect the continuing validity and enforceability of this Conservation Easement.

(b) Transfer Fee. A transfer of the ownership of the Easement Area may result in an additional burden on the monitoring and enforcement responsibilities of BYLT; therefore, each such transfer (except for (i) transfers solely to change the method of holding title by the same party or parties, and (ii) inter-generational transfers between members of the same family) shall require the payment of a transfer fee to the BYLT's monitoring fund in the amount of 0.4 percent (four tenths of one percent) of the fair market value of the Land Value, as hereinafter defined. "Land Value" shall be the value of the land (without improvements) established by agreement of the Parties, or, if there is not agreement, by the County Assessor upon reassessment of the land (not improvements) following the transfer. BYLT may reduce or waive this fee at its sole discretion.

(c) No Merger. The Parties intend that a transfer to BYLT of the fee interest in the Easement Area, or any portion thereof, shall not be deemed to result in a merger of the Conservation Easement into the fee title. In the event of such transfer, BYLT shall continue to manage the Easement Area in accordance with the Conservation Purposes and, in the event of a subsequent transfer by BYLT of its fee interest in the Easement Area, BYLT shall reserve therefrom the Conservation Easement.

16. **Amendment of Easement.** This Conservation Easement may be amended only with the written consent of BYLT and Landowner. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with Section 170(h) of the U.S. Internal Revenue Code, California Civil Code Section 815, et seq., or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with California law governing conservation easements. All amendments shall refer to this

Conservation Easement and shall be recorded in the official records of the county(ies) identified in Recital A of this Conservation Easement.

17. **No Public Dedication or Public Access.** Nothing contained in this Conservation Easement shall be deemed to be a gift or dedication of any portion of the Easement Area for use by the general public. This instrument does not convey a general right of access to the public.

18. **Landowner's Title Warranty; No Prior Conservation Easements.** Landowner represents and warrants that Landowner has good fee simple title to the Easement Area, free from any and all liens or encumbrances except the permitted encumbrances shown in Exhibit C, and hereby promises to defend the same against all claims that may be made against it. Landowner represents and warrants that the Easement Area is not subject to any other conservation easement. Landowner may not grant any subsequent conservation easements on the Easement Area.

19. **Environmental Provisions.**

(a) BYLT Not An Owner, Operator, Or Responsible Party.

(i) Notwithstanding any other provision herein to the contrary, the parties do not intend this Conservation Easement to be construed such that it creates in or gives the BYLT:

(A) the obligations or liability of an "owner" or "operator" as those words are defined and used in environmental laws, as defined below, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC § 9601 et seq. and hereinafter "CERCLA");

(B) the obligations or liability of a person described in 42 U.S.C. § 9607(a)(3) or (4);

(C) the obligations of a responsible person under any applicable Environmental Laws, as defined below;

(D) the right to investigate and remediate any Hazardous Substance (as defined below) associated with the Property; or

(E) any control over Landowner's ability or responsibility to investigate, remove, remediate, or otherwise clean up any Hazardous Substance (as defined below) associated with the Property.

(b) Environmental Liabilities and Indemnification. Landowner and Landowner's successors in interest shall indemnify, protect and defend with counsel acceptable to BYLT, and hold harmless the BYLT Indemnified Parties (as defined in Subsection 11(c)(1) above) from and against any claims (including, without limitation, third party claims for personal

injury or death, damage to property, or diminution in the value of property), actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlements of claims), remedial action, compliance requirements, enforcement and clean-up actions of any kind, interest or losses, attorneys' fees (including any fees and expenses incurred in enforcing this indemnity), consultant fees, and expert fees that arise directly or indirectly from or in connection with: (i) the claimed presence or Release (as defined below) of any Hazardous Substance whether into the air, soil, surface water or groundwater of or at the Property; (ii) any violation or alleged violation of Environmental Law (as defined below) affecting the Property, whether occurring prior to or during Landowner's ownership of the Property and whether caused or permitted by Landowner or any person other than Landowner; or (iii) any claim or defense by Landowner or any third party that any BYLT Indemnified Party is liable as an "owner" or "operator" of the Property under any Environmental Law. The foregoing indemnity obligations shall not apply with respect to any Hazardous Substance released or deposited as a result of action by the BYLT Indemnified Parties on or about the Easement Area. The indemnity obligations of any successor in interest of Landowner pursuant to this Subsection 19 (c) shall be limited to the portion of the Easement Area to which the successor takes title. Notwithstanding any statutory limitation otherwise applicable, the indemnity obligations of Landowner to the BYLT Indemnified Parties pursuant to this Subsection 19(c) shall continue after transfer to a successor in interest unless a written request for consent to assignment of such indemnity obligations to a successor in interest is approved by BYLT. In considering any such request, BYLT may take into account the financial capabilities of the successor in interest, without regard to any third party financial assurances. BYLT's consent to such assignment may be denied only if there is a commercially reasonable basis for such denial.

(c) Definitions.

(i) The term "Environmental Law" shall include, but shall not be limited to, each statute named or referred to below, and all rules and regulations thereunder, and any other local, state and/or federal laws, ordinances, rules, regulations, orders and decrees, whether currently in existence or hereafter enacted, which govern (i) the existence, cleanup and/or remedy of contamination or pollution on property; (ii) the protection of the environment from soil, air or water contamination or pollution, or from spilled, deposited or otherwise emplaced contamination or pollution; (iii) the emission or discharge of Hazardous Substances into the environment; (iv) the control of Hazardous Substances; or (v) the use, generation, transport, treatment, removal or recovery of Hazardous Substances.

(ii) The term "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Substance into the environment (including, without limitation, the continuing migration of Hazardous Substances into, onto or through the soil, surface water, or groundwater, and the abandonment or discarding of barrels, containers, and other receptacles containing any Hazardous Substance), whether or not caused by, contributed to, permitted by, acquiesced to or known to Landowner.

(iii) The term "Hazardous Substance" shall mean (i) any oil, flammable substance, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which pose a hazard to the Property or to persons on or about the Property, or cause the Property to be in violation of any Environmental Law; (ii) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, or radon gas; (iii) any chemical, material or substance defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous waste," "restricted hazardous waste," or "toxic substances" or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including: CERCLA, 42 USC Section 9601, et seq.; the Resource Conservation and Recovery Act ("RCRA"), 42 USC Section 6901, et seq.; the Hazardous Materials Transportation Act, 49 USC Section 1801, et seq.; the Federal Water Pollution Control Act, 33 USC Section 1251, et seq.; the California Hazardous Waste Control Law ("HWCL"), Cal. Health & Safety Section 25100, et seq., Hazardous Substance Account Act ("HSAA"), Cal. Health & Safety Code section 25300, et seq., the Porter-Cologne Water Quality Control Act (the "Porter-Cologne Act"), Cal. Water Code Section 13000, et seq., the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); Title 22 of the California Code of Regulations, Division 4, Chapter 30; (iv) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety of the occupants of the Property or the owners and/or occupants of property adjacent to or surrounding the Property, or any other person coming upon the Property or adjacent property; and (v) any other chemical, materials or substance which may or could pose a hazard to the environment.

20. **Interpretation.** This instrument shall be interpreted under the laws of the State of California, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its Conservation Purposes. If any provision of this Conservation Easement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected.

21. **Captions.** The captions in this Conservation Easement have been inserted solely for convenience of reference and shall have no effect upon construction or interpretation.

22. **Perpetual Duration.** The easement created by this instrument shall be a servitude running with the land in perpetuity.

23. **Notices.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by any other common method whereby receipt is confirmed, and addressed as follows or such other address as either party from time to time shall designate by written notice to the other.

To LANDOWNER:

Nina Allen Cunningham Trust  
11566 Valencia Rd  
Nevada City CA 95959

To BYLT:

P.O. Box 1004  
12183 Auburn Rd  
Grass Valley, CA 95945  
Phone: 530-272-5994

24. **Condemnation.** This Conservation Easement constitutes a real property interest immediately vested in Grantee. If the Property is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law for the value of the Conservation Easement taken, and Grantors shall be entitled to compensation in accordance with applicable law for the value of the underlying fee title taken. The total proceeds of such taking shall then be divided in accordance with the proportionate value of Grantee's and Grantors' interests at the time of the grant of the Original Conservation Easement, except that the value of any improvements made by Grantors after the effective date of the Original Conservation Easement is reserved to Grantors. Grantee shall use all proceeds received as an award in a condemnation proceeding for a taking of the Conservation Easement in a manner consistent with the Conservation Purposes.

25. **Extinguishment.** If circumstances arise in the future that render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether with respect to all or part of the Property, by judicial proceeding in a court of competent jurisdiction. The proceeds from a subsequent sale, exchange, or involuntary conversion of the Property (or portion thereof) shall be divided between Grantee and Grantors in accordance with the proportionate value of Grantee's and Grantors' interests at the time of the grant of the Original Conservation Easement, except that the value of any improvements made by Grantors after the effective date of the Original Conservation Easement is reserved to Grantors. Grantee shall use all proceeds it receives in a manner consistent with the Conservation Purposes.

26. **Laws Currently in Effect.** All references in this Conservation Easement to statutes, regulations and other laws shall be deemed to refer to those statutes, regulations and laws currently in effect, or as amended (or any successor provision then applicable).

27. **Recordation.** BYLT shall promptly record this instrument in the official records of Nevada County and promptly notify the Landowner through the mailing of a conformed copy of the recorded Conservation Easement.

28. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement Area and supersedes all prior discussions, negotiations, understandings or agreements relating to the Easement Area, all of which are herein merged.

29. **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it.

30. **Attorneys' Fees.** Should proceedings be brought to enforce or interpret any of the terms of this instrument, the prevailing party in any such proceedings shall be entitled to recover from the non-prevailing party its costs, including reasonable attorneys' fees.

31. **Permission; Landowner to Bear Costs and Expenses of Review.** Whenever BYLT's permission, consent or approval is required pursuant to this Conservation Easement, such permission, consent or approval shall be obtained in advance and in writing from BYLT. Except as otherwise provided in this Conservation Easement, whether permission, consent or approval should be granted or denied shall be determined based upon the purposes of this Conservation Easement, and shall not be unreasonably withheld. Landowner shall be solely responsible for bearing all reasonable costs and expenses, including reasonable attorneys' and consultants' fees and costs, of: (i) BYLT's review of any request by Landowner for BYLT's permission, consent or approval of any development or other use of the Easement Area for which BYLT's discretionary permission, consent or approval is required under this Conservation Easement; and (ii) BYLT's participation, at Landowner's request, in any regulatory proceeding for consideration of proposed development or other use of the Easement Area allowed under this Conservation Easement.

32. **Compliance with Applicable Laws.** Landowner remains solely responsible for obtaining any applicable governmental permits or other approvals for any activity or use allowed under this Conservation Easement. No right or privilege granted in this Conservation Easement, nor any right retained by Landowner, shall be interpreted as exempting Landowner from complying with all statutes, laws, ordinances, rules, regulations, codes, orders, or other restrictions applicable to the Property.

33. **Exhibits.** The exhibits attached hereto are incorporated herein by this reference:

Exhibit A:	Property Description
Exhibit B:	Property Map
Exhibit C:	Permitted Encumbrances

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

## Exhibit A

### Property Description

The land described herein is situated in the State of California, County of Nevada, unincorporated area, described as follows:

#### PARCEL ONE (East Lot)

All those portions of the South 1/2 of Section 29, Township 17 North, Range 10 East, M.D.M, Nevada County, California, described as follows:

A portion of the property described in Document No. 2009-0031915, Nevada County Records, said properties being shown on the map recorded in Book 6 of Parcel Maps, Page 187, Nevada County Records, hereafter referred to herein as P.M. Book 6, Page 187, and on the map recorded in Book 2 of Parcel Maps, Page 240, Nevada County Records, hereafter referred to herein as P.M. Book 2, Page 240, said portion being delineated on the map recorded in Book 14 of Surveys, Page 114, Nevada County Records and also being more particularly described as follows:

Commencing at the southeast corner of said P.M. Book 6, Page 187; THENCE South 84 degrees 01 minutes 51 seconds West for a distance of 1115.69 feet along the south line of said P.M. Book 6, Pg. 187; THENCE NORTH for a distance of 610.03 feet; THENCE along a non-tangent curve to the right having a radial bearing of South 22 degrees 26 minutes 34 seconds West and a radius of 75.00 feet and an arc length of 15.75 feet, through a central angle of 12 degrees 02 minutes 03 seconds; THENCE South 55 degrees 31 minutes 23 seconds East for a distance of 141.86 feet; THENCE along a curve to the left having a radius of 50.00 feet and an arc length of 84.71 feet, through a central angle of 97 degrees 04 minutes 13 seconds; THENCE North 27 degrees 24 minutes 24 seconds East for a distance of 257.82 feet; THENCE along a curve to the left having a radius of 250.00 feet and an arc length of 34.81 feet, through a central angle of 7 degrees 58 minutes 42 seconds; THENCE North 19 degrees 25 minutes 41 seconds East for a distance of 46.07 feet; THENCE South 46 degrees 08 minutes 39 seconds East for a distance of 1051.69 feet, to the point of commencement.

#### PARCEL TWO: (West Lot)

All that portion of the South 1/2 of Section 29, Township 17 North, Range 10 East, M.D.M. Nevada County, California, described as follows:

A portion of the property being shown on the map recorded in Book 2 of Parcel Maps, Page 240, Nevada County Records, together with portions of the property shown on Book 6 of Parcel Maps, Page 187, Nevada County Records, said portions being delineated on the map recorded in Book 14 of Surveys, Page 114, Nevada County Records, hereafter referred to herein as R.S. Book 14, Page 114; and being more particularly described as follows:

Commencing at the northwest corner of said map R.S. Book 14, Page 114, THENCE North 84 degrees 23 minutes 30 seconds East for a distance of 669.68 feet; THENCE South 00 degrees 44 minutes 33 seconds West for a distance of 39.59 feet; THENCE South 33 degrees 31 minutes 23 seconds East for a distance of



104.34 feet; THENCE South 61 degrees 42 minutes 30 seconds East for a distance of 79.17 feet; THENCE South 74 degrees 18 minutes 38 seconds East for a distance of 315.02 feet; THENCE along a non-tangent curve to the right having a radial bearing of South 13 degrees 56 minutes East and a radius of 60.00 feet and an arc length of 39.39 feet, through a central angle of 37 degrees 36 minutes 59 seconds; THENCE South 66 degrees 19 minutes 01 seconds East for a distance of 59.96 feet; THENCE along a curve to the left having a radius of 75.00 feet and an arc length of 22.36 feet, through a central angle of 17 Degrees 05 minutes 03 seconds;

THENCE South 83 degrees 24 minutes 04 seconds East for a distance of 37.41 feet; THENCE along a curve to the right having a radius of 75.00 feet and an arc length of 20.74 feet, through a central angle of 15 degrees 50 minutes 38 seconds; THENCE SOUTH for a distance of 610.03 feet; THENCE South 84 degrees 01 minutes 51 seconds West for a distance of 914.20 feet; THENCE North 38 degrees 52 minutes 18 seconds West for a distance of 147.25 feet; THENCE North 58 degrees 17 minutes 52 seconds West for a distance of 109.70 feet; THENCE North 15 degrees 07 minutes 58 seconds West for a distance of 186.64 feet; THENCE North 33 degrees 14 minutes 47 seconds West for a distance of 370.82 feet; THENCE North 08 degrees 36 minutes 36 seconds West for a distance of 107.05 feet; THENCE North 22 degrees 37 minutes 08 seconds East for a distance of 86.39 feet; THENCE North 36 degrees 12 minutes 33 seconds East for a distance of 103.41 feet to the point of commencement.

PARCEL THREE:  
(APN 14-670-26)

That certain Parcel of land as shown on the Parcel Map for Henry J. Ebert being a portion of the South half of Section 29, Township 17 North, Range 10 East, M.D.B.&M. filed in the office of the Nevada County Recorder on March 23, 1972, in Book 2 of Parcel Maps, at Page 240, being more particularly described as follows:

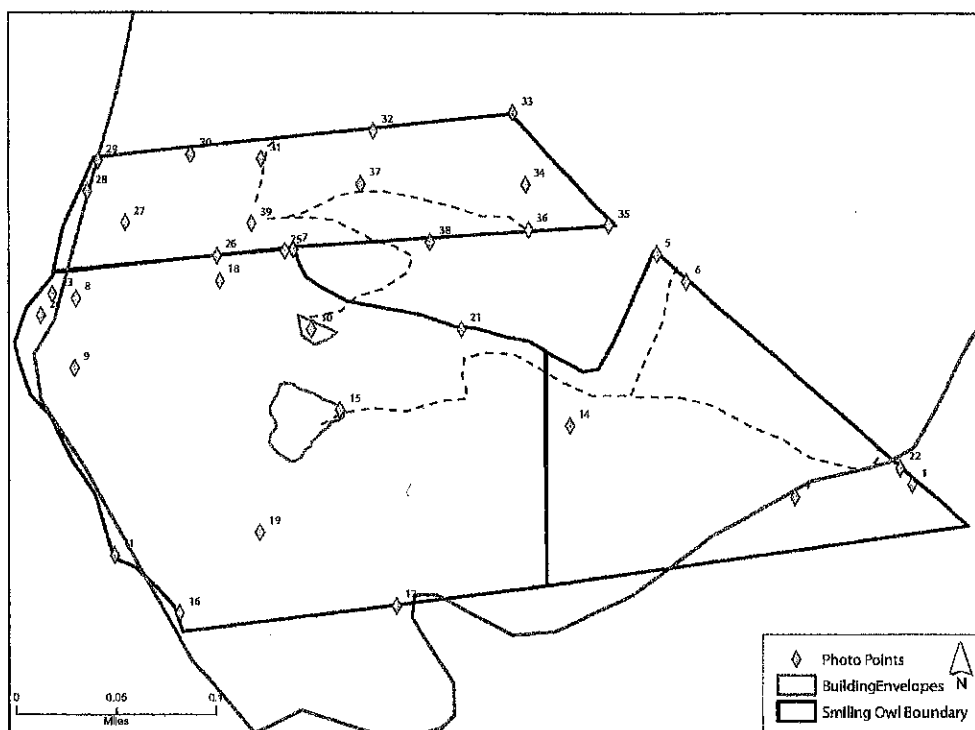
BEGINNING AT a point from which the Southeast said Section 29 bears the following three courses and distances, South 46° 08' 39" West 405.33 feet, South 84° 16' 25" West 3225.65 and South 00° 41' 08" West 663.03 feet; thence from said point of beginning South 84° 23' 30" West 1484.58 feet to a point in the centerline of a creek; thence along said creek centerline the following two courses and distances; North 01° 28' 45" West 169.20 feet and North 24° 19' 13" East 198.78 feet to a point in the South line of the W. E. Waxner et al property described in Book 387, Page 409, Official Records; thence leaving said creek centerline and along said South line North 84° 30' 59" East 1083.60 feet to the Southeast corner of said Waxner parcel; thence leaving said South line South 46° 08' 39" East 445.62 feet to the point of beginning.

APN: 14-670-26-000, 14-670-31-000, 14-670-38-000

**Exhibit B**  
**Property Map**

Residential Building Envelope –

Smiling Owl Preserve Photo Point Map



ITEM 6  
PROFESSIONAL QUALIFICATIONS OF  
DAVID F. JARRETTE, MBA REAL ESTATE

PROFESSIONAL EXPERIENCE

David F. Jarrette has been a commercial real estate appraiser in the Greater Sacramento Area since 1976, and a real estate consultant since 1983. He has extensive appraisal experience with the following property types: development land and planned communities; residential development; commercial, office, industrial and mixed use land; agricultural land; office buildings; R & D/ High Tech buildings; shopping centers; and industrial buildings. He also has experience with Community Facilities District (CFD) appraisals, assessment appeals, market studies, highest and best use studies, and litigation appraisals. **In recent years, Mr. Jarrette has primarily specialized in major land valuation and expert witness/litigation assignments, as well as conservation easement appraisals.**

- ◆ **Representative Land Valuation Assignments** include agricultural transition land, development land/planned communities, rural residential /passive recreation land, conservation easements, mitigation land, eminent domain, and various types of commercial and residential land.
- ◆ **Expert Witness/Litigation Assignments.** Mr. Jarrette has appraised numerous properties for litigation purposes over the past twenty years or so in Placer, Sacramento, Sutter and Yolo Counties. He has testified as an expert witness in the Superior Courts of Sacramento, Sutter and Yolo Counties. Recent law firm clients include: Desmond, Nolan, Livaich & Cunningham; Downey Brand; Freeman, D'Aiuto, Pierce, Gurev, Keeling & Wolf (Stockton); Kronick, Moskovitz, Tiedemann & Girard; McDonough Holland & Allen, PC; Morgan Lewis & Bockius LLP (San Francisco); Murphy Austin Adams Schoenfeld LLP; Raymond L. Sandelman (Chico); Scharff, Brady & Vinding; and Trainor Fairbrook.
- ◆ **Representative recent clients** include law firms (see above), lenders, land trusts, developers, government agencies and land owners.
- ◆ **Company History.** Mr. Jarrette was a partner in two of the most reputable appraisal firms in the Sacramento area: Giannelli, Jarrette & Filipiak and Stover Company. Prior to working for these two firms, he began working for Security Pacific National Bank in Sacramento in 1976, where he quickly became a senior commercial real estate appraiser servicing the Northern California area, as well as Reno, Nevada. In 1983 he left the bank and joined Stover Company where he worked until 1994. He became one of four partners there in 1985. In 1994, Mr. Jarrette formed Roseville based Giannelli, Jarrette & Filipiak, LLC with two of his three partners from Stover Company. With the subsequent retirements of Jerry Filipiak and Bert Giannelli in recent years, Mr. Jarrette formed **Jarrette Company, LLC** in January 2008, based in Grass Valley (Nevada County), California.

FORMAL EDUCATION

Mr. Jarrette has the following university/college degrees:

- ◆ Masters of Business Administration (MBA) in Real Estate from Golden Gate University (1982)
- ◆ B.S. in Business Administration from California State University, Long Beach (1970)
- ◆ Associate of Arts (AA, with focus on Real Estate) from Butte College (1977)
- ◆ Associated of Arts (AA) from El Camino College, Torrance, CA (1968)

Mr. Jarrette attained an "A"(-) grade point average for the following eight **graduate level real estate courses**, totaling 24 units, from Golden Gate University: Financial Analysis of Real Estate, Valuation of Real Estate, Topics in Real Estate Law, Taxation of Real Estate, Property Management, Architecture & Design Factors in Real Estate, Developing Commercial Properties, and Real Estate Concepts & Analysis. Additionally, he successfully completed the following six **undergraduate real estate courses**, totaling 22 units: Advanced Appraisal, Legal Aspects of Real Estate, Real Estate Economics, Escrow Procedures I, Real Estate Principles and Real Estate Appraisal.

**APPRAISAL INSTITUTE FORMAL APPRAISAL EDUCATION AND CONTINUING EDUCATION.**

Mr. Jarrette has successfully completed over 650 hours of appraisal courses and seminars from the Appraisal Institute (AI) since 1977, which was previously known as the American Institute of Real Estate Appraisers (AIREA). He continues to emphasize continuing education in order to stay abreast of the times of real estate valuation issues and current appraisal practices. The following are the representative courses and seminars Mr. Jarrette has completed that specifically relate to his primary appraisal practice: major land valuation and conservation easement appraisals, as well as expert witness/litigation assignments.

- ◆ **Land Valuation and Conservation Easement Appraisals Continuing Education.** Mr. Jarrette has completed nearly 200 hours of courses and seminars related to the valuation of land, consisting of the following: Valuation of Conservation Easements; Highest and Best Use Analysis; Land Valuation Assignments; Land Valuation Adjustment Procedures; Subdivision Valuation; California Conservation Easements; Entitlements, Land Subdivision and Valuation Seminar; Valuation of Detrimental Conditions; Assessment Bond/Mello Roos Seminar II; Subdivision Analysis Seminar; Uniform Appraisal Standards For Federal Land Acquisitions (Yellow Book); and Large-Scale Development Issues, Solutions and Risks.
- ◆ **Expert Witness/Litigation Appraisal Continuing Education.** Mr. Jarrette has completed approximately 120 hours of courses and seminars in this field, consisting of the following: The Appraiser as an Expert Witness: Preparation and Testimony; Attacking & Defending an Appraisal in Litigation; Appraisal Litigation Practice and Courtroom Management; Condemnation Appraising: Basic Principles and Applications (Course 710); Condemnation Appraising: Advanced Topics and Applications (Course 720); the Law and Value: Communications Corridors, Tower Sites and Property Rights; Litigation Skills for the Appraiser: An Overview; Introduction to Eminent Domain Appraising in California; Appraisal Practices for Litigation Seminar; and California's Condemnation Process; Tahoe Litigation Conference; and Complex Litigation Appraisal Case Studies.

**ADDITIONAL PROFESSIONAL EXPERIENCE**

- ◆ **Military Service.** Mr. Jarrette retired from the United States Marine Corps Reserve in October 1998, at the rank of Lieutenant Colonel, after 28 years of service. As an infantry officer, he served for three years on active duty as a Platoon Commander, Company Commander, Training officer and Assistant Operations officer. While serving in the Reserve, he had the following assignments with the 23<sup>rd</sup> Marine Infantry Regiment based in the San Francisco Bay Area: Operations officer, Intelligence officer, Plans officer, and Training officer. Additionally, he was the Officer in Charge of the Reserve Component of the Tactical Training Exercise Control Group (TTECG) at the Marine Corps Air-Ground Combat Center, Twentynine Palms, California. He helped the TTECG train and evaluate active and reserve Marine Air Ground Task Forces (MAGTF'S) in Combined Arms Exercises (CAX'S), the primary training tool in the United States Marine Corps for preparing units for combat. His last assignment at this command prior to retiring was as the Marine Expeditionary Force Representative.

**PROFESSIONAL AFFILIATIONS AND CERTIFICATION/LICENSE**

Mr. Jarrette is affiliated with two professional organizations, and has the following certification/license:

- ◆ **Practicing Affiliate of the Appraisal Institute;** affiliated with the Sacramento Sierra Chapter; Education Chairman 2000, 2001 and 2004; and Secretary-Treasurer in 2002.
- ◆ **Member Lambda Alpha International (LAI),** an Honorary Land Economics Society, Sacramento Valley Chapter; President in 2006 and 2007; Vice President in 2004 and 2005; and Program Chairman in 2002 and 2003.
- ◆ **Certified General Real Estate Appraiser,** State of California, No. AG 013031, Expiration Date: April 9, 2019