

IMPLEMENTING AGREEMENT
for the
COYOTE SPRINGS INVESTMENT LLC
MULTIPLE SPECIES
HABITAT CONSERVATION PLAN

OCTOBER 15, 2008

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1.0 PARTIES

The parties to this Implementing Agreement ("IA") are Coyote Springs Investment LLC, a Nevada limited liability company ("CSI"), the United States Fish and Wildlife Service (FWS), and the Bureau of Land Management ("BLM"). In this agreement, FWS is referred to as the "Service".

2.0 RECITALS, PURPOSES AND GOALS

2.1 Recitals. The parties have entered into this agreement in consideration of the following facts:

(a) The CSI Development has been determined to provide, or potentially provide, habitat for, or to potentially cause off-site impacts to, the following species for which coverage has been requested: Desert tortoise (*Gopherus agassizii*); Banded Gila monster (*Heloderma suspectum cinctum*); Western burrowing owl (*Athene cunicularia hypugaea*); Moapa dace (*Moapa coriacea*); and Virgin River Chub (Muddy River population) (*Gila seminuda*);

(b) The CSI Development has also been determined to provide, or potentially provide, habitat for, or to potentially cause off-site impacts to, the following uncovered evaluation species: Southwestern willow flycatcher (*Empidonax traillii extimus*); and Yuma clapper rail (*Rallus longirostris yumanensis*); Moapa White River springfish (*Crenichthys baileyi moapae*); Moapa speckled dace (*Thinichthys osculus moapae*); Relict leopard frog (*Rana onca*); Three-corner milkvetch (*Astragalus geyeri* var. *triquetrus*); and Sticky buckwheat (*Erigonum viscidulum*);

(c) CSI and BLM have worked cooperatively with the Service to reach agreement on how best to reconfigure the land holdings to minimize adverse impacts on desert tortoises and other species of wildlife and plants from CSI's activities; and

(d) Permittee has developed a series of measures, described in the multiple species habitat conservation plan (HCP), to minimize and mitigate to the maximum extent practicable the effects of take of covered species incidental to Permittee's covered activities.

2.2 Purposes. The purposes of this IA are:

(a) To ensure implementation of each of the terms of the HCP;

(b) To describe remedies and recourse should any party fail to perform its obligations as set forth in this agreement; and,

(c) To provide assurances to Permittee that as long as the terms of the HCP, the permit, and this agreement are performed, no additional mitigation will be required of Permittee, with respect to covered species, except as provided for in this agreement or required by law.

2.3 Goals. This IA is entered into in furtherance of the following HCP goals related to the Covered Species:

- To avoid, minimize, and mitigate adverse effects of Covered Actions and Covered Activities;
- To reduce tortoise mortality from vehicles by constructing fences in appropriate locations;
- To reduce take by removing tortoises from areas before construction activities are initiated;
- To seek to control domestic pets through required fencing, leash laws, frequent animal control patrols, public education, etc.;
- To control access to lands adjacent to the development area by constructing fences (with controlled openings) between development and reserved lands; through education programs; by rehabilitating roads and trails, as well as developing trails to direct where access and impacts will occur; and with law enforcement;
- To implement an active weed and litter control program;
- To facilitate desert tortoise movement patterns by assuring that historical landscape linkages remain available;
- To contribute directly to a regional captive-breeding and tortoise-recruitment program and a local translocation, holding and rearing facility;
- To contribute to habitat enhancement and restoration programs;
- To contribute to habitat protection programs (as appropriate and authorized, provide financial assistance to BLM, Clark County and Lincoln County enforcement programs);
- To provide the opportunity for research seeking to increase the survival and recovery of the desert tortoise:
 - an understanding of the potential role of head-starting efforts as a means of population enhancement;
 - the knowledge of genetic differentiation and recovery schemes;
 - the knowledge of the impacts of roads on excess mortality;
 - the knowledge of the implication of fires and subsequent restoration efforts in sustaining and enhancing habitat conditions;
 - the knowledge of the efficacy of using control measures on upland weeds;
 - the knowledge of the importance of habitat diversity for populations;
 - the knowledge of movements (dispersal) of juvenile tortoises;
 - the knowledge of means to assess population density and trends of tortoises;

- To contribute to the recovery of Listed Species;
- To reduce the likelihood of future Federal listing of Unlisted Species; and
- To guide the implementation of the CSI HCP.

3.0 DEFINITIONS

The following terms as used in this agreement will have the meanings set forth below:

3.1 Terms defined in Endangered Species Act. Terms used in this agreement and specifically defined in the Endangered Species Act (ESA) or in regulations adopted by the Service under the ESA have the same meaning as in the ESA and those implementing regulations, unless this agreement expressly provides otherwise.

3.2 "Area of Critical Environmental Concern" or "ACEC" means a BLM designation for an area within public lands where special management attention is required to protect and prevent irreparable damage to important historic, cultural, or scenic values; fish and wildlife resources, or other natural systems or processes; or to protect life from natural hazards.

3.3 "Adaptive Management Program" or "AMP" means the program of Adaptive Management that will be undertaken by the parties as described in Chapter 9 of the HCP.

3.4 "Affiliates" means any entity that is under common ownership or control with the Permittee.

3.5 "Changed circumstances" means changes in circumstances affecting a covered species or the geographic area covered by the HCP that can reasonably be anticipated by the parties to the HCP and that can reasonably be planned for in the HCP (e.g. the listing of a new species, or a fire or other natural catastrophic event in areas prone to such event.) Changed circumstances and the planned responses to those circumstances are described in Section 8.3.1 of the HCP. Changed circumstances are not unforeseen circumstances.

3.6 "Covered Activities" means certain activities carried out by Permittee on Covered Lands (as defined below) that may result in incidental take of Covered Species (as defined below). Covered Activities means the activities described in Chapter 4 of the HCP, including, without limitation, the following activities related to urban development and agricultural activities, provided that these activities are otherwise lawful: (1) community development and construction activities, including residential development, public buildings, hotels and resorts, commercial and light industry, road construction and maintenance, bridge construction and maintenance, horticultural and heli-ports; (2) construction and maintenance of recreational facilities and open space, including golf courses, parks, sports fields, wash corridors/preserves, pedestrian and equestrian trails; (3) construction and maintenance of utility infrastructure (including, without limitation, generation, transmission and distribution facilities and systems) including power (electric, natural gas, propane), solar energy, wastewater collection, treatment and disposal facilities and system

3.7 “Covered Lands” means the lands upon which the permit authorizes incidental take of covered species and the lands to which the HCP's conservation and mitigation measures apply. These lands are described in Chapter 2 and shown on Figure 1-4 of the HCP.

3.8 “Covered species” means the following species for which CSI requests coverage under the HCP for issuance of an incidental take permit under ESA § 10(a)(1)(B): Desert tortoise (*Gopherus agassizii*); Banded Gila monster (*Heloderma suspectum cinctum*); Western burrowing owl (*Athene cunicularia hypugaea*); Moapa dace (*Moapa coriacea*); and Virgin River Chub (Muddy River population) (*Gila seminuda*).

3.9 “Coyote Springs Investment Conservation Lands” and “CSICL” means the 13,767± acres identified as the Coyote Springs Investment Conservation Lands on Figure 1-4 of the HCP (as defined below), which consists of the leased land in Clark County and proposed reconfigured leased land in Lincoln County.

3.10 “Days” means calendar days unless otherwise specified. If the date of performance is on a Saturday, Sunday, or observed state or federal holiday, the date of performance shall be construed to be the next business day subsequent to the calculated date of performance.

3.11 “General Improvement District” means any general improvement district that is or will be organized pursuant to Nevada Revised Statutes ch. 318, as now or hereafter amended, that includes the Covered Lands, either in whole or in part, within in service territory and has authority to act pursuant to Nevada Revised Statutes §318.1177.

3.12 “HCP” means the Coyote Springs Investment Multiple species Habitat Conservation Plan prepared by Permittee for the CSI Development.

3.13 “Lease” means that certain Land Lease Agreement Pursuant to the Nevada-Florida Land Exchange Authorization Act of 1988 (P.L. 100-275) (the “NV_FL Act”) by and between Aerojet-General Corporation, an Ohio corporation, as Lessee, and the United States of America, acting through the Secretary of Interior, as Lessor, dated July 14, 1988, which leasehold interest is now held by the Permittee.

3.14 “Listed species” means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is listed as endangered or threatened under the ESA.

3.15 “Permit” means the incidental take permit issued by the Service to Permittee pursuant to Section 10(a)(1)(B) of the ESA for take incidental to covered activities on or within the CSI Development, as it may be amended from time to time.

3.16 “Permittee” means Coyote Springs Investment LLC, a Nevada limited liability company.

3.17 “Planning Area” means the Covered Area and an area outside of the Covered Area, including, but not limited to, the Muddy Springs area of the Muddy River and various tributaries of the Muddy River that may be affected indirectly by Covered Activities.

3.18 "Secretary" means the Secretary of the Department of the Interior.

3.19 "Take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect any listed or unlisted covered species. Harm means an act that actually kills or injures a member of a covered species, including an act that causes significant habitat modification or degradation where it actually kills or injures a member of a covered species by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

3.20 "Unforeseen circumstances" means changes in circumstances affecting a species or geographic area covered by a conservation plan that could not reasonably have been anticipated by plan developers and the Service at the time of the conservation plan's negotiation and development, and that result in a substantial and adverse change in the status of the covered species.

3.21 "Unlisted species" means a species (including a subspecies, or a distinct population segment of a vertebrate species) that is not listed as endangered or threatened under the ESA.

4.0 OBLIGATIONS OF THE PARTIES

4.1 Obligations of Permittee. Upon execution of this IA by all parties, Permittee will perform all obligations assigned to it under this IA, the Permit, and the HCP.

Permittee shall, upon issuance of the Permit, immediately and continuously manage the designated CSICL as a habitat preserve in accordance with the provisions of the Permit, HCP, and this IA without regard to whether the proposed Lincoln County fee/leased land reconfiguration has been completed.

Permittee may undertake activities on the current (pre-reconfiguration) leased lands that are authorized under the Lease upon compliance with the provisions set forth in the Act and the Lease.

CSI intends to sell or transfer a substantial portion of the CSI Development to third parties for residential, commercial, industrial, recreational, utility and governmental facilities development. Take coverage under the Permittee's Permit will not extend to any such third party. CSI shall complete all desert tortoise, gila monster and burrowing owl land development area surveys and clearance activities described in Section 6.2.1.2.1 of the HCP and any other avoidance or mitigation measure set forth in Section 6.2 of the HCP proscribed by the Service on each parcel of land prior to the transfer of each such parcel to a third party to ensure that no further take will likely occur as a result of activities taking place on those specific parcels once they have been transferred. Temporary tortoise fencing will be installed and maintained at the exterior boundary of cleared land until such time as permanent tortoise fencing is installed at the exterior boundary of the development. The transfer of each parcel for which this work has been completed shall not be subject to the permit transfer provisions set forth in Section 11.2 below. All avoidance, minimization and mitigation activity will be conducted on land other than the parcels sold or transferred for development purposes.

except for the survey and ground clearance work described in Section 6.2 of the HCP or proscribed by the Service pursuant to Section 4.2.2 below.

CSI intends to have one or more of its Affiliates develop a portion of the CSI Development for its own purposes.

CSI, as Declarant, under the Master Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Coyote Springs Master Planned Community recorded in Clark County and Lincoln County, Nevada, as now or hereafter amended ("Master Declaration"), has encumbered all the land within the CSI Development Area with the HCP and this Agreement. CSI has organized the Coyote Springs Charter Community Association, Inc., a Nevada non-profit corporation ("Master Association"), pursuant to the provisions of the Master Declaration. Among other things, Article V of the Master Declaration grants the Master Association the power, to the maximum extent permitted by law, to enforce compliance with the HCP, and any terms and conditions contained in the Permit. Permittee shall maintain these provisions of the Master Declaration and shall exercise its enforcement rights under the Master Declaration and NRS § 116.3102 as warranted at all times during the term of this IA and Permit.

CSI will enter into an agreement with the Master Association that will obligate the Master Association to collect the mitigation fee (as described in Section 7.1 below) on behalf of the Permittee and to deposit all such funds collected into the \$10 Trust Account (Fee Agreement). Further, the Master Association shall be responsible for issuing receipts to those persons paying mitigation fees. The receipt will, among other things, describe the land for which the fees were paid and the total amount of fees paid.

CSI will, and will cause its Affiliates, to include provisions in each contract for the sale or other transfer of a parcel or parcels to a third party, obligating each such third party to pay mitigation fees and to comply with the terms and conditions of each and federal, state and local permit that affects or regulates activity within the CSI Development, which provision shall survive the closing of the parcel transfer until such time as the last lot within the parcel is sold to a third party home buyer, or the planned development of each such parcel is fully completed, as applicable.

Maintenance, restoration, or rehabilitation work undertaken on lands managed by BLM, whether or not such lands are subject to the Lease, shall be funded by Permittee.

To the extent BLM staff participate in any mitigation, monitoring and adaptive management activities, the Permittee shall enter into a cost recovery agreement with BLM providing the BLM reimbursement for the expenses incurred as a result of such participation. The Permittee acknowledges that BLM will not encumber base funding to ensure the implementation or success of the HCP.

4.2 Obligations of the Service. Upon execution of this Agreement by all parties, and satisfaction of all other applicable legal requirements, the Service will issue Permittee a permit under Section 10(a)(1)(B) of the ESA, authorizing incidental take by Permittee of each listed covered species resulting from covered activities on covered lands. The Service will perform all obligations assigned to it under this Agreement or the HCP.

4.2.1 Permit coverage. The Permit will identify all covered species. The Permit will take effect for listed covered species at the time the Permit is issued. Subject to compliance with all other terms of this Agreement, the Permit will take effect for an unlisted covered species upon the listing of such species.

4.2.2. Proscribed Avoidance and Minimization. The Service will set forth in writing, within 90-days after the effective date of this IA, the avoidance and minimization measures described in Section 6.2 of the HCP in addition to those set forth in Section 6.2.1.2.1, if any, that would ensure if undertaken, no further take would likely occur on parcels within the CSI Development that Permittee prepares for transfer to entities not a party to the HCP, IA and Permit.

4.2.3 "No Surprises" assurances. Provided that Permittee has complied with its obligations under the HCP, this Agreement, and the Permit, the Service can require Permittee to provide mitigation beyond that provided for in the HCP only under unforeseen circumstances, and only in accordance with the "No Surprises" regulations at 50 C.F.R. §§ 17.22(b)(5), 17.32(b)(5).

4.3 Interim obligations upon a finding of unforeseen circumstances. If the Service makes a finding of unforeseen circumstances, during the period necessary to determine the nature and location of additional or modified mitigation, Permittee will avoid contributing to appreciably reducing the likelihood of the survival and recovery of the affected species.

4.4 Obligations of the BLM.

The BLM, Service and CSI shall enter into a Management Agreement for the CSICL (the reconfigured leased lands) that describes activities that may occur within the CSICL and the roles and responsibilities of the parties. The Management Agreement shall be developed in accordance with the NV-FL Act, the Lease and the HCP. The Service will be designated as the lead agency under the management agreement for activities occurring on or within the CSICL. BLM's management responsibility for lands subject to the Lease are governed by the provisions of the NV-FL Act and the Lease.

The following shall apply to all mitigation work or other work under the HCP proposed to occur on public lands administered by BLM. As used below, the term "public lands" does not include any lands subject to the Lease.

Participation of BLM or use of public lands for any mitigation work, or any other action under the HCP is at BLM's discretion; however, BLM agrees to work with the Permittee to review proposed actions seeking use of lands administered by BLM in a timely manner.

BLM has not authorized any specific proposed mitigation actions on public land administered by BLM through the HCP and associated Environmental Impact Statement. All future actions on public land administered by BLM would be subject to applicable laws, regulations, and BLM policy.

In general, BLM will be the lead agency for all regulatory compliance (i.e. NEPA, National Historic Preservation Act, Endangered Species Act, etc.) for any proposed actions on public lands administered by BLM; however, any document preparation or other action to comply with laws, regulations, and BLM policy will be paid for by the Permittee. Under some circumstances, other agencies (such as USFWS) may act as a lead and BLM will be a partner or cooperator.

After appropriate regulatory compliance review, BLM may authorize mitigation work on public land, and the Permittee will accomplish the mitigation work. Any maintenance, restoration, rehabilitation, or funding of accomplished mitigation projects carried out on public lands is the responsibility of the Permittee in perpetuity.

Based on BLM's watershed assessments or other relevant information, BLM may set restoration priorities. Restoration will conform to the Ely RMP management decisions. The Permittee will coordinate with BLM on priorities for mitigation projects. BLM may identify projects that could be used for HCP mitigation and propose such projects to the Executive Committee for consideration. The Permittee may select the projects they want to accomplish or propose others. The Permittee (or designated third party) shall enter into a cooperative agreement with BLM to accomplish restoration, rehabilitation, and/or mitigation work on public land according to such terms and conditions as BLM may specify.

All mitigation monitoring costs will be the responsibility of the Permittee. BLM staff may participate in mitigation monitoring in a technical advisory capacity as part of the Technical Advisory Committee and will be compensated for its participation.

BLM may authorize translocation and habitat restoration research studies to occur on public land. Translocations will conform with BLM Manual Section 1745 "Introduction, Transplant, Augmentation and Reestablishment of Fish, Wildlife and Plants." Prior to, and following translocation, Permittee, USFWS, or their assignees, will conduct an assessment of desert tortoise habitat, densities, carrying capacity, and mortality in suitable areas proposed for translocation.

The Permittee shall bear all cost associated with issuing authorizations, coordinating actions, development of mitigation proposals, and project meeting attendance time and travel costs incurred by BLM for all activities pertaining to the HCP. Other than attendance at Executive Committee meetings, BLM will not encumber base funding to ensure success of the HCP and is under no obligation to expend any appropriated funds for any activity required under, or related to the HCP. Expenses to BLM will be offset by a cost recovery structure.

All data collected pertaining to the HCP on BLM administered lands will be made available to BLM. Original work of authorship in any medium, including data in

any form, prepared and originated by BLM, USFWS or Permittee as a result of work conducted pursuant to the HCP on or pertaining to BLM administered lands, shall be shared jointly by the BLM, USFWS or Permittee with each having full and unlimited rights of use. If any objective of the HCP requires previously developed information, including data, under the control or copyright of BLM, USFWS or Permittee, such Party with control or copyright shall permit the other Parties limited use of such information and data as necessary to the extent otherwise allowed by law.

Subject to the provisions of Section 4.1 above, BLM shall cooperate with the Permittee and the Service in authorizing uses on lands administered by BLM for purposes of conducting scientific research projects, monitoring, mitigation and restoration activities on such lands deemed necessary or appropriate as a result of implementing the AMP.

5.0 INCORPORATION OF HCP

The HCP and each of its provisions are intended to be, and by this reference are, hereby incorporated herein. In the event of any direct contradiction between the terms of this Agreement and the HCP, the terms of this Agreement will control. In all other cases, the terms of this Agreement and the terms of the HCP will be interpreted to be supplementary to each other.

6.0 TERM

6.1 Initial Term. This agreement and the HCP will become effective on the date that the Service issues the Permit. This Agreement, the HCP, and the Permit will remain in effect for a period of forty (40) years from issuance of the original Permit, except as provided below.

6.2 Permit suspension or revocation. The Service may suspend or revoke the Permit for cause in accordance with the laws and regulations in force at the time of such suspension or revocation [See 5 U.S.C. § 558; 50 C.F.R. §§ 13.27 - 13.29; 50 C.F.R. §§ 17.22(b)(8), 17.32(b)(8)]. Such suspension or revocation may apply to the entire Permit, or only to specified Covered Species, Covered Lands, or Covered Activities. In the event of suspension or revocation, Permittee's obligations under this Agreement and the HCP will continue until the Service determines that all take of Covered Species that occurred under the Permit has been fully mitigated in accordance with the HCP.

6.3 Treatment of unlisted species. For purposes of paragraph 6.2 and 6.3, unlisted Covered Species will be treated as though they were Listed Species in determining the amount of take and the mitigation required.

6.4 Extension of the permit. Upon agreement of the parties and compliance with all applicable laws, the Permit may be extended beyond its initial term under regulations of the Service in force on the date of such extension. If Permittee desires to extend the Permit, it will so notify the Service at least 180 days before the then-current term is scheduled to expire. Extension of the Permit constitutes extension of the HCP

and this Agreement for the same amount of time, subject to any modifications that the Service may require at the time of extension.

7.0 FUNDING

Permittee warrants that it has, and will expend, such funds as may be necessary to fulfill its obligations under the HCP. Permittee will promptly notify the Service of any material change in Permittee's financial ability to fulfill its obligations. In addition to providing any such notice, Permittee will provide the Service with a copy of its annual report each year of the Permit or with such other reasonably available financial information that the parties agree will provide adequate evidence of Permittee's ability to fulfill its obligations.

7.1 Funding Sources. CSI will impose a mitigation fee of Eight Hundred Dollars (\$800) per acre, pro-rated to the one-quarter ($\frac{1}{4}$) acre, on all covered activities that will occur on private land within the Development Area (as defined in the HCP).

7.2 Fund Collection and Management. CSI will establish a \$10 Trust Account for the \$800 per acre mitigation fee upon issuance of the Permit. The \$10 Trust Account will be established as a separate interest bearing account held and administered by a third party trustee. Pursuant to an agreement with CSI (as described in Section 4.1 above), the Master Association will deposit all mitigation fees, or other funds, collected on behalf of CSI into the \$10 Trust Account.

The appropriate mitigation fees will be paid to the Master Association prior to any surface disturbance activity requiring a grading permit. Concurrently with the receipt of the mitigation fee, the Master Association shall issue a receipt to the person paying the fee which receipt will identify the lands for which the fee is being paid, and the amount of the fee paid. Lincoln County will not issue a grading permit to any person without having received a copy of the receipt issued by the Master Association for the lands proposed to be covered by the requested grading permit. Lincoln County adopted Ordinance 2008-02, a copy of which is attached hereto as Exhibit A, to codify this requirement.

All costs to administer and implement the HCP will be paid from the \$10 Trust Account. Funds will be expended in the manner approved by the EC (as defined in the HCP) in accordance with an approved work plan and budget. Funds remaining in the account upon expiration of the term, or any extended term, of the Permit will be retained in an interest bearing account and expended in cooperation with the Service solely and exclusively for conservation measures consistent with recommendations of the AMP (as defined in the HCP).

8.0 MONITORING AND REPORTING

8.1 Planned periodic reports. Permittee will submit periodic reports describing its activities and results of the monitoring program at the times set forth in Section 8.2 of the HCP.

8.2 Other reports. Permittee will provide, within 30 days of being requested by the Service, any additional information in its possession or control related to implementation of the HCP that is requested by the Service for the purpose of assessing whether the terms and conditions of the Permit and the HCP, including the HCP's adaptive management plan, are being fully implemented.

8.3 Certification of reports. All reports will include the following certification from a responsible company official who supervised or directed preparation of the report:

I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

8.4 Monitoring by Service. The Service may conduct inspections and monitoring in connection with the Permit in accordance with their regulations. (See 50 C.F.R. § 13.47).

9.0 CHANGED CIRCUMSTANCES

9.1 Permittee-initiated response to changed circumstances. Permittee will give notice to the Service within seven days after learning that any of the changed circumstances listed in Table 8-1 of the HCP has occurred. As soon as practicable thereafter, but no later than 60 days after learning of the changed circumstances, Permittee will modify its activities in the manner described in Section 8.3.1 or Table 8-1 of the HCP, to the extent necessary to mitigate the effects of the changed circumstances on covered species, and will report to the Service on its actions. Permittee will make such modifications without awaiting notice from the Service.

9.2 Service-initiated response to changed circumstances. If the Service determines that changed circumstances have occurred and that Permittee has not responded in accordance with Section 8.3.1 or Table 8-1 of the HCP, the Service will so notify Permittee and will direct Permittee to make the required changes. Within 30 days after receiving such notice, Permittee will make the required changes and report to the Service on its actions. Such changes are provided for in the HCP, and hence do not constitute unforeseen circumstances or require amendment of the permit or HCP.

9.3 Listing of species that are not covered species. In the event that a non-covered species that may be affected by covered activities becomes listed under the ESA, Permittee will implement the "no-take/no-jeopardy" measures identified by the Service until the permit is amended to include such species, or until the Service notifies Permittee that such measures are no longer needed to avoid jeopardy to, take of, or adverse modification of the critical habitat of, the non-covered species.

10.0 ADAPTIVE MANAGEMENT

10.1 Permittee-initiated adaptive management. Permittee will implement the adaptive management provisions in Chapter 9 of the HCP, when changes in management practices are necessary to achieve the HCP's biological objectives, or to respond to monitoring results or new scientific information. Permittee will make such changes without awaiting notice from the Service, and will report to the Service on any actions taken pursuant to this section.

10.2 Service-initiated adaptive management. If the Service determines that one or more of the adaptive management provisions in the HCP have been triggered and that Permittee has not changed its management practices in accordance with Chapter 9 of the HCP, the Service will so notify Permittee and will direct Permittee to make the required changes. Within 30 days after receiving such notice, Permittee will make the required changes and report to the Service on its actions. Such changes are provided for in the HCP, and hence do not constitute unforeseen circumstances or require amendment of the permit or HCP, except as provided in this section.

10.3 Reductions in mitigation. Permittee will not implement adaptive management changes that may result in less mitigation than provided for covered species under the original terms of the HCP, unless the Service first provides written approval. Permittee may propose any such adaptive management changes by notice to the Service, specifying the adaptive management modifications proposed, the basis for them, including supporting data, and the anticipated effects on covered species, and other environmental impacts. Within 120 days of receiving such a notice, the Service will either approve the proposed adaptive management changes, approve them as modified by the Service, or notify Permittee that the proposed changes constitute permit amendments that must be reviewed under Section 12.2 of this Agreement.

10.4 No increase in take. This section does not authorize any modifications that would result in an increase in the amount and nature of take, or increase the impacts of take, of covered species beyond that analyzed under the original HCP and any amendments thereto. Any such modification must be reviewed as a permit amendment under Section 12.2 of this agreement.

11.0 LAND TRANSACTIONS

11.1 Acquisition of land by Permittee. Nothing in this Agreement, the HCP, or the Permit limits Permittee's right to acquire additional lands.

11.2 Transfer of land by Permittee. All Development Lands held by Permittee that is not transferred to a third party in accordance with the provisions of Section 4.1 above will either be developed in accordance with the HCP, IA and Permit by the Permittee, or otherwise transferred subject to the permit transfer requirements in effect at the time of such transfer (*See* 50 C.F.R. §13.25).

11.3 Assignment of Lease to a General Improvement District. Prior to the termination of this Agreement, the Permittee may assign the Lease for the post-configured leased lands (Coyote Springs Investment Conservation Lands), either in whole or in part, to a general improvement district ("GID") whose service territory includes the CSI Development, either in whole or in part; provided, that: (i) the GID

has been authorized by ordinance to act pursuant to NRS 318.1177; (ii) the GID has established the Lease area as a preservation area; (iii) the GID has taken all actions necessary to allow for the control, management and operation of the area, including financing of the control, management and operation of the area; (iv) the GID has assumed the Lease together with all management and maintenance obligations associated with the Coyote Springs Investment Conservation Lands(as described in the HCP) in writing; and (v) the Secretary has consented to the assignment in writing pursuant to the NV-FL Act. In addition, and as a part of the same transaction CSI and the Master Association may transfer the Permit (including the trust account) to the same GID upon satisfaction of the permit transfer provisions then in effect (*See* 50 C.F.R. §13.25).

12.0 MODIFICATIONS AND AMENDMENTS

12.1 Minor modifications.

(a) Any party may propose minor modifications to the HCP or this Agreement by providing written notice to all other parties. Such notice shall include a statement of the reason for the proposed modification and an analysis of its environmental effects, including its effects on operations under the HCP and on Covered Species. The parties will use best efforts to respond to proposed modifications within 60 days of receipt of such notice. Proposed modifications will become effective upon all other parties' written approval. If, for any reason, a receiving party objects to a proposed modification, it must be processed as an amendment of the permit in accordance with subsection 12.2 of this section. The Service will not propose or approve minor modifications to the HCP or this Agreement if the Service determines that such modifications would result in operations under the HCP that are significantly different from those analyzed in connection with the original HCP, adverse effects on the environment that are new or significantly different from those analyzed in connection with the original HCP, or additional take not analyzed in connection with the original HCP.

(b) Minor modifications to the HCP, the Permit and this Agreement processed pursuant to this subsection may include but are not limited to the following:

- (1) corrections of typographic, grammatical, and similar editing errors that do not change the intended meaning;
- (2) correction of any maps or exhibits to correct errors in mapping or to reflect previously approved changes in the permit or HCP;
- (3) minor changes to survey, monitoring or reporting protocols;
- (4) updating construction windows for the Covered Species. In the event the standard construction window established for a species covered by the HCP is revised by the Service, then such revised construction windows within the HCP shall automatically be modified;

- (5) modifying mitigation area enhancement and management techniques;
- (6) approval of a management plan for the Coyote Springs Investment Conservation Lands by and between CSI and BLM in consultation with the Service; and
- (7) any other modifications to the HCP that are consistent with the educational and biological goals and objectives of the HCP that the Service has analyzed and approved, including modifications resulting from the implementation of the AMP (as defined in the HCP).

(c) Any other modifications to the HCP or this Agreement will be processed as amendments of the permit in accordance with subsection 12.2 of this section.

12.2 Amendment of the Permit. The Permit may be amended in accordance with all applicable legal requirements, including but not limited to the ESA, the National Environmental Policy Act, and the Service's permit regulations. The party proposing the amendment shall provide a statement of the reasons for the amendment and an analysis of its environmental effects, including its effects on operations under the HCP and on Covered Species.

12.3 The Permittee and the Service acknowledge and agree that in the event the reconfiguration of the fee/leased land in Lincoln County remains outstanding at such time as 4,000 acres of developable fee lands has been converted from species habitat, the Service shall reanalyze the HCP in accordance with §10(a)(2) of the ESA to determine necessary amendments to the Permit, if any, as a result of the still outstanding reconfiguration.

13.0 REMEDIES, ENFORCEMENT, AND DISPUTE RESOLUTION

13.1 In general. Except as set forth below, each party shall have all remedies otherwise available to enforce the terms of this Agreement, the Permit, and the HCP.

13.2 No monetary damages. No party shall be liable in damages to any other party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement or any other cause of action arising from this Agreement.

13.3 Injunctive and temporary relief. The parties acknowledge that the Covered Species are unique and that their loss as species would result in irreparable damage to the environment, and that therefore injunctive and temporary relief may be appropriate to ensure compliance with the terms of this Agreement.

13.4 Enforcement authority of the United States. Nothing contained in this Agreement is intended to limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA or other applicable law.

13.5 Dispute resolution. The parties recognize that disputes concerning implementation of, compliance with, or termination of this Agreement, the HCP, and the Permit may arise from time to time. The parties agree to work together in good faith to resolve such disputes, using the informal dispute resolution procedures set forth in this section, or such other procedures upon which the parties may later agree. However, if at any time any party determines that circumstances so warrant, it may seek any available remedy without waiting to complete informal dispute resolution.

13.5.1 Informal dispute resolution process. Unless the parties agree upon another dispute resolution process, or unless an aggrieved party has initiated administrative proceedings or suit in federal court as provided in this section, the parties may use the following process to attempt to resolve disputes:

(a) The aggrieved party will notify the other parties of the provision that may have been violated, the basis for contending that a violation has occurred, and the remedies it proposes to correct the alleged violation.

(b) The party alleged to be in violation will have 30 days, or such other time as may be agreed, to respond. During this time it may seek clarification of the information provided in the initial notice. The aggrieved party will use its best efforts to provide any information then available to it that may be responsive to such inquiries.

(c) Within 30 days after such response was provided or was due, representatives of the parties having authority to resolve the dispute will meet and negotiate in good faith toward a solution satisfactory to all parties, or will establish a specific process and timetable to seek such a solution.

(d) If any issues cannot be resolved through such negotiations, the parties will consider non-binding mediation and other alternative dispute resolution processes and, if a dispute resolution process is agreed upon, will make good faith efforts to resolve all remaining issues through that process.

14.0 MISCELLANEOUS PROVISIONS

14.1 No partnership. Neither this Agreement nor the HCP shall make or be deemed to make any party to this Agreement the agent for or the partner of any other party.

14.2 Notices. Any notice permitted or required by this agreement shall be in writing, delivered personally to the persons listed below, or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or at such other address as any party may from time to time specify to the other parties in writing. Notices may be delivered by facsimile or other electronic means, provided that they are also delivered personally or by certified mail. Notices shall be transmitted so that they are received within the specified deadlines.

Regional Director
United States Fish and Wildlife Service
California and Nevada Region Office
2800 Cottage Way, Room W-2606
Sacramento, California 95825
Telephone: 916-414-6464
Telefax: 916-414-6486

Nevada State Director
Bureau of Land Management
1340 Financial Blvd.
Reno, Nevada 89502-7147
Telephone: 775-861-6400
Telefax: 775-861-6601

VP of Entitlement Services
Coyote Springs Investment LLC
6600 N. Wingfield Parkway
Sparks, Nevada 89436
Telephone: 775-626-6000
Telefax: 775-626-8925

President
Coyote Springs Charter Community Association, Inc.
3100 State Route 168, P.O. Box 37010
Coyote Springs, Nevada 89037
Telephone: 702-422-1400
Telefax: 702-422-1419

14.3 Entire agreement. This IA, together with the HCP and the Permit, constitutes the entire agreement among the parties. It supersedes any and all other agreements, either oral or in writing, among the parties with respect to the subject matter hereof, including, without limitation, that certain Memorandum of Agreement by and between the Service, BLM and CSI dated as of March 31, 2001, and that certain letter of understanding dated May 20, 2005, and contains all of the covenants and agreements among them with respect to said matters, and each party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other party or anyone acting on behalf of any other party that is not embodied herein.

14.4 Elected officials not to benefit. No member of or delegate to Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

14.5 Availability of funds. Implementation of this IA and the HCP by the Service and BLM is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this IA will be construed by the parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The parties acknowledge that the Service or BLM will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

14.6 Triplicate originals. This IA may be executed in any number of triplicate originals. A complete original of this IA shall be maintained in the official records of each of the parties hereto.

14.7 No third-party beneficiaries. Without limiting the applicability of rights granted to the public pursuant to the ESA or other federal law, this IA shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, nor shall it authorize anyone not a party to this IA to maintain a suit for personal injuries or damages pursuant to the provisions of this IA. The duties, obligations, and responsibilities of the parties to this IA with respect to third parties shall remain as imposed under existing law.

14.8 Relationship to the ESA and other authorities. The terms of this IA shall be governed by and construed in accordance with the ESA and applicable federal law. In particular, nothing in this IA is intended to limit the authority of the Service to seek penalties or otherwise fulfill their responsibilities under the ESA. Moreover, nothing in this IA is intended to limit or diminish the legal obligations and responsibilities of the Service or the BLM as an agency of the federal government. Nothing in this IA will limit the right or obligation of any federal agency to engage in consultation required under Section 7 of the ESA or other federal law; however, it is intended that the rights and obligations of Permittee under the HCP, the Permit and this IA will be considered in any consultation affecting Permittee's use of the Covered Lands.

14.9 References to regulations. Any reference in this IA, the HCP, or the Permit to any regulation or rule of the Service shall be deemed to be a reference to such regulation or rule in existence at the time an action is taken.

14.10 Applicable laws. All activities undertaken pursuant to this IA, the HCP, or the Permit must be in compliance with all applicable state and federal laws and regulations.

14.11 Successors and assigns. This IA and each of its covenants and conditions shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns. Assignment or other transfer of the permit shall be governed by the Service's regulations in force at the time.

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date that the Service issues the permit.

By: 
Ken McDermond, Deputy Regional Director
United States Fish and Wildlife Service
California and Nevada Region
Sacramento, California

Date: 10-24-8

By: 
Ron Wenker, State Director
Bureau of Land Management
Nevada State Office
Reno, Nevada

Date: 10/21/08

By: 
Harvey Whittlemore, Manager
Coyote Springs Investment LLC
Las Vegas, Nevada

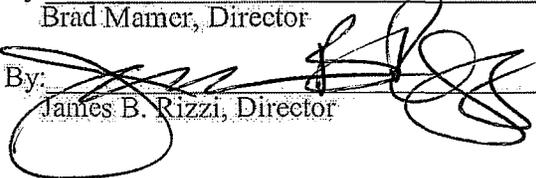
Date: 10/10/08

The Coyote Springs Charter Community Association, Inc. hereby joins in executing this IA in recognition of its obligations to CSI set forth in Sections 4.1 and 7.2 of this IA.

Coyote Springs Charter Community Association, Inc.,
a Nevada non-profit corporation

By: 
Brad Mamer, Director

Date: 10/9/08

By: 
James B. Rizzi, Director

Date: 10/8/08

Exhibit A

Lincoln County Ordinance 2008-02

Summary: An ordinance amending Title 15 of the Lincoln County Code to ensure compliance with requirements of the Endangered Species Act for surface disturbing activities occurring on lands within the Coyote Springs Planning Area.

BILL NO. 2008-__

ORDINANCE NO. 2008-02

AN ORDINANCE AMENDING TITLE 15 OF THE LINCOLN COUNTY CODE TO ENSURE COMPLIANCE WITH THE ENDANGERED SPECIES ACT FOR SURFACE DISTURBING ACTIVITIES OCCURRING ON LANDS WITHIN THE COYOTE SPRINGS PLANNING AREA AND MITIGATION FEE PAYMENT REQUIREMENTS IMPOSED UNDER THE COYOTE SPRINGS INVESTMENT LLC AND COYOTE SPRINGS CHARTER COMMUNITY ASSOCIATION, INC. SECTION 10 PERMIT AND MULTIPLE SPECIES HABITAT CONSERVATION PLAN, AND OTHER MATTERS PROPERLY RELATED THERETO

WHEREAS, the lands within the Coyote Springs Planning Area are or will be subject to the terms and conditions of a Section 10 Permit issued by the United States Fish & Wildlife Service ("Service") and a related Multiple Species Habitat Conservation Plan (collectively, the "Section 10 Permit") approved by the Service;

WHEREAS, the Section 10 Permit requires payment of a mitigation fee in the amount of \$800 per acre (prorated to the ¼ acre), which mitigation fee will be paid to the Coyote Springs Charter Community Association, Inc. ("Master Association");

WHEREAS, the fee must be paid prior to the start of any land disturbance activity requiring a permit from Lincoln County and the Master Association will not always know when an applicant for a land disturbance permit files an application with Lincoln County;

WHEREAS, Lincoln County recognizes the benefits of development within the Coyote Springs Planning Area occurring in compliance with applicable federal, state and local laws, regulations, ordinances and permits;

WHEREAS, the Commissioners have determined that it in the public interest to cooperate with and assist Coyote Springs Investment LLC and the Master Association to ensure timely payment of the mitigation fee and orderly development within the Coyote Springs Planning Area;

**THE BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF LINCOLN DO ORDAIN:**

1. A new Section 15-1-08 titled "Compliance with Section 10 Permit" in the Index of Title 15 immediately following Section 15-1-07, and the current Sections 15-1-08 through 15-1-20 are respectively renumbered 15-1-09 through 15-1-21 in the Index.

2. A new Section 15-1-08 is added to Title 15 immediately after Section 15-1-07 which reads as follows:

15-1-08 Compliance with Sec. 10 Permit and Coyote Springs Multiple Species Habitat Conservation Plan:

An applicant for a land disturbance permit (grading, trenching, etc.) must submit, together with the application, a copy of the receipt issued by the Coyote Springs Charter Community Association, Inc. (Master Association) evidencing payment in full of the mitigation fee required to be paid under the Coyote Springs Investment LLC's Section 10 Permit and associated Multiple Species Habitat Conservation Plan for all the land to be covered by the land disturbance permit. No land disturbance permit will be issued unless and until the County has received evidence that the appropriate mitigation fee has been paid to the Master Association.

3. Sections 15-1-08 through 15-1-20 of Title 15 are hereby respectively renumbered Section 15-1-09 through 15-1-21.

4. This ordinance shall take effect and be in force from and after its passage and the publication thereof by title only, in a newspaper published in and having general circulation in Lincoln County, Nevada, at least once a week for a period of two (2) weeks.

PROPOSED on May 19, 2008.

PROPOSED by COMMISSIONER ^{Poulsen} HORNBECK

PASSED: June 2, 2008

Vote: Ayes: Commissioner *Ronda Hornbeck*
 Commissioner *Paul M. Hansen*
 Commissioner *George Z. Lowe*
 Commissioner *William S. Lloyd*
 Commissioner _____

Nays: Commissioner _____
 Commissioner _____

Abstain: Commissioner _____
 Commissioner _____

Absent: Commissioner *Wade Poulsen*
 Commissioner _____

Attest:

[Signature]
County Clerk

Ronda Hornbeck
Ronda Hornbeck, Chairman of the Board

This ordinance shall be in force and effect from and after the First day of the month of July of the year 2008.

LEGAL NOTICE

LEGAL NOTICE

LINCOLN COUNTY ORDINANCE #2008-02
AN ORDINANCE AMENDING TITLE 15 OF THE LINCOLN COUNTY CODE TO ENSURE COMPLIANCE WITH THE ENDANGERED SPECIES ACT FOR SURFACE DISTURBING ACTIVITIES OCCURRING ON LANDS WITHIN THE COYOTE SPRINGS PLANNING AREA AND MITIGATION FEE PAYMENT REQUIREMENTS IMPOSED UNDER THE COYOTE SPRINGS INVESTMENT LLC AND COYOTE SPRINGS CHARTER COMMUNITY ASSOCIATION, INC. SECTION 10 PERMIT AND MULTIPLE SPECIES HABITAT CONSERVATION PLAN, AND OTHER MATTERS PROPERLY RELATED THERETO

NOTICE IS HEREBY GIVEN that typewritten copies of the above numbered and entitled ordinance were available for inspection by all interested parties at the Office of the Lincoln County Clerk, Lincoln County Courthouse, Pioche, Nevada; and that said ordinance was proposed by Commissioner Hornbeck on May 22, 2008, and following a public hearing, was passed and adopted at a regular meeting on June 2, 2008, by the following vote of the Board of County Commissioners:

THOSE VOTING AYE: Commissioners Hornbeck, Rowe,
Mathews, & Lloyd

THOSE VOTING NAY: None

THOSE ABSENT AND NOT VOTING: Commissioner Poulsen

THOSE ABSTAINING FROM VOTE: None

This Ordinance shall be in force and effect from and after July 1, 2008.

IN WITNESS WHEREOF, the Board of County Commissioners of Lincoln County, Nevada, has caused this ordinance to be published by title only.

DATED this 6th day of June, 2008.

Attest: Lisa C. Lloyd, County Clerk

Publish: The Lincoln County RECORD, June 12, 19, 2008.