

REVISED FINAL EXECUTION DOCUMENT

**SECOND AGREEMENT FOR ADVANCED FUNDING AND
REIMBURSEMENT OF COSTS FOR LEVEE IMPROVEMENTS**

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**SECOND AGREEMENT FOR ADVANCED FUNDING AND
REIMBURSEMENT OF COSTS FOR LEVEE IMPROVEMENTS**

This Second Agreement for Advanced Funding and Reimbursement of Costs for Levee Improvements ("Agreement"), dated for convenience this 29th day of August, 2006 (however, this Agreement is not effective until the Effective Date as defined below in Section 20.C.), is by and among the County of Yuba, a political subdivision of the State of California ("County"), Reclamation District 784, a Reclamation District formed under Water Code sections 50000 *et seq.* ("RD 784"), the Three Rivers Levee Improvement Authority, a joint powers authority created by the County and RD 784 ("TRLIA"), and the Participants (as that term is defined below).

RECITALS:

- A. Participants intend to develop homes on certain land located within the area generally known as the Plumas Lake Specific Plan and the North Arboga Study Area (the "Affected Area") situated in the unincorporated area of Yuba County as shown on **Exhibit A**, which is attached hereto, and by reference made a part hereof.
- B. New construction began in the Affected Area in 2002 based on the Plumas Lake Specific Plan approved in 1991.
- C. Various studies conducted since 2003 have identified freeboard and geotechnical deficiencies on the Bear River, Western Pacific Interceptor Canal, Yuba River and Feather River levees.
- D. On November 4, 2003, the County, RD 784, Yuba County Water Agency ("YCWA"), and certain owners of land within the Affected Area executed a Funding Agreement for Plumas Lake Specific Plan Area Flood Control Levee Improvements ("2003 Funding Agreement") which provided for the payment of certain fees by those owners of land, which fees were to be used to fund studies on the adequacy of the Bear River and Western Pacific Interceptor Canal Levees.
- E. In 2004, TRLIA and certain owners of land established Community Facilities District 2004-1 Three Rivers Levee Improvement Authority (South County Area) (the "CFD 2004-1") to assist in financing the "local share" of funds required for grants administered under Proposition 13 (the Costa-Machado Water Act of 2000, which allocated \$90,000,000 for improved flood protection and environmental enhancement in the Feather River watershed and Colusa Drain ("Prop. 13")) for reimbursement of costs incurred in connection with Phase 2 Work and Phase 3 Work (as such terms are defined below).
- F. The State Reclamation Board has issued Permit No. 17782 authorizing improvements to the existing Project levees along portions of the Western Pacific Interceptor Canal (from station 0+00 to 332+50) and the right bank of the Bear River (from station 130+00 to 169+00), and construction of a new setback levee along portions of the right bank of the Bear River (from station 131+00 to a point approximately one mile north of the confluence of the Bear

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and Feather Rivers), and also has issued Permit No. 17921 authorizing the construction of 2,500 linear feet of seepage berm at two sites along the landside slope of the left (south) bank levee of the Yuba River extending west from the UPRR crossing to a downstream point approximately 150 feet west of Highway 70.

G. On February 22, 2005, the County adopted Ordinance No. 1340 (entitled "Interim Ordinance of the County of Yuba Controlling Issuance of Building Permits in the Plumas Lake Specific Plan Area and North Arboga Study Area and Directing Conditions of All New Tentative Maps in the Plumas Lake Specific Plan and North Arboga Study Area") to satisfy some of the conditions of State Reclamation Board Permit 17782. Minor amendments, to conform Ordinance No. 1340 to the proposal made to and accepted by the Board, were made to Ordinance No. 1340 by the County on March 15, 2005, pursuant to Ordinance No. 1343.

H. In April of 2005, Yuba County, TRLIA, RD 784, and a number of other parties including certain owners of land, or interests therein, within the Affected Area, executed the Implementation Agreement in regard to State Reclamation Board Permit No. 17782 and County of Yuba Ordinance Nos. 1340 and 1343 ("Implementation Agreement"). While the State Reclamation Board was not a party to the Implementation Agreement, it was an express third party beneficiary of certain provisions of the Implementation Agreement.

I. By its terms, the Implementation Agreement obligated the County and the landowner parties to limit the issuance of building permits within the Affected Area during 2005 and 2006 until such time as TRLIA completed Phase 2 Work and Phase 3 Work and presented certain information to the State Reclamation Board regarding Phase 4 Work (as such term is defined below).

J. To implement the Implementation Agreement, the County, TRLIA, RD 784 and certain land owner parties entered into the Agreement for Advanced Funding and Reimbursement of Costs for Levee Improvements, dated April 19, 2005 ("2005 Advanced Funding Agreement"), which linked advances of funds for the Levee Improvement Program (as defined in Section 3, below) to an allocation and issuance of a limited number of building permits.

K. The Parties now acknowledge that the funds previously raised under the 2003 Funding Agreement, CFD 2004-1 and the 2005 Advanced Funding Agreement will not be sufficient to fund the required Phase 2 Work, Phase 3 Work, and the Phase 4 Work, along with certain contingency amounts.

L. TRLIA has presented testimony to the State Reclamation Board that the limitation on the ability of the County to issue building permits in 2006 and in future years will preclude the issuance of bonds, thereby severely limiting its ability to implement a financing plan for Phase 4 Work, resulting in a delay of the flood control improvements required to provide 200 year protection to the lands within the Affected Area, including substantial portions of RD 784.

M. At its April 21, 2006 meeting, the State Reclamation Board adopted Resolution No. 2006-14, under which the State Reclamation Board expressed its intent to allow the building permit limitation for 2006 to be lifted upon satisfaction of certain conditions, thus allowing for

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the acceleration of certain Phase 4 Work and the completion of the Levee Improvement Program to achieve 200 year protection for the Affected Area and lands within RD 784 by 2008.

N. At its May 19, 2006 meeting, the State Reclamation Board approved the Second Implementation Agreement In Regard to State Reclamation Board Permit No. 17782, by and between County, TRLIA and RD 784, dated May 23, 2006 ("Second Implementation Agreement"). While the State Reclamation Board is not a party to the Second Implementation Agreement, it is an express third party beneficiary to the provisions of the Second Implementation Agreement. The Second Implementation Agreement was approved by County on May 23, 2006, by TRLIA on May 16, 2006 and by RD 784 on May 16, 2006.

O. TRLIA and Participants intend to establish Community Facilities District 2006-1 Three Rivers Levee Improvement Authority (South County Area) (the "CFD 2006-1") to issue bonds to finance the required Phase 2 Work, Phase 3 Work, and Phase 4 Work.

P. In order to assure the necessary and timely funding by the Participants of up to a maximum of \$135 million for all remaining construction required for Phase 2 Work, Phase 3 Work, and Phase 4 Work, the Participants agree that as a condition of lifting the building permit restriction as set forth in the Second Implementation Agreement, there is a need to develop a financing program to complete the Levee Improvement Program, establish a community facilities district, commit to providing, at no cost to all new residents in the Affected Area, flood insurance, as outlined below, and other obligations.

Q. On August 1, 2006, the County adopted Ordinance No. 06-439 (entitled "An Ordinance of the Board of Supervisors of the County of Yuba Implementing State Reclamation Board Resolution No. 06-14 and Establishing a Funding Mechanism for Flood Protection Improvements") (the "Implementing Ordinance") to satisfy the requirements of the Second Implementation Agreement.

R. On August 15, 2006, the County, TRLIA, and RD 784 agreed to proposed changes to this Agreement in light of new cost estimates and a softening real estate market.

S. On August 29, 2006, the County agreed to provide certain funding to TRLIA to facilitate the cash flow of the Levee Improvement Project. On the same day YCWA agreed to provide a loan of \$2,000,000 to the Levee Improvement Program for purposes of satisfying the first Capital Call in compliance with the Second Implementation Agreement.

T. The Parties now desire to formalize in this Agreement certain conditions proposed to and accepted by the State Reclamation Board allowing for the lifting of the building permit limitation for 2006 as set forth in the Second Implementation Agreement and to implement the funding program for the Levee Improvement Program.

NOW, THEREFORE, in consideration of the mutual promises herein made, the Parties agree as follows:

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AGREEMENT

1. RECITALS. The recitals are incorporated herein as if set forth in full.
2. DEFINITIONS. As used in this agreement, the following terms shall have the following meanings:
 - A. "**Bond**" shall mean a debt instrument issued by TRLIA to support the Levee Improvement Program.
 - B. "**Builder Bonds**" shall mean Capital Appreciation Bonds to be repaid by CFD special taxes, once building permits are issued, that may be purchased by Participants within each Tax Zone as a means of paying their Levee Obligations, or issued by the overlay CFD discussed in Section 7.A.(1)c., below to the extent such funds are available.
 - C. "**Capital Appreciation Bonds**" shall be bonds that accrue interest and under which all interest and principal is scheduled to be paid in one payment at maturity, and for which no reserve fund or capitalized interest shall be required.
 - D. "**Capital Call(s)**" shall mean the five scheduled requests for funding required to be satisfied by each Participant or other outside funding and any additional requests approved in accordance with the provisions of this Agreement.
 - E. "**Capital Call Amount(s)**" shall mean the periodic amounts to be paid by Participants or outside funding pursuant to this Agreement as approved by the Participant Escrow Committee.
 - F. "**Catch-up Capital Call**" shall mean the portion of the Levee Obligation and the portion of the Pro-Rata Deferred Participant Obligation immediately payable by a Deferred Participant or Future Participant upon joining (or rejoining in the case of a Participant that has defaulted on a prior Capital Call) as a Participant. The Levee Obligation component of the Catch-up Capital Call payment shall be equal to the total acreage included within the boundaries of an approved tentative map for land within the Affected Area which is owned or controlled by the person or entity making the payment, multiplied by the then current amount of the TRLIA Levee Impact Fee multiplied by the percentage of the TRLIA Levee Impact Fee included in Capital Calls made prior to the date of computation. See Exhibit H, attached hereto and incorporated herein by reference, for an example of how the Catch-Up Capital Call amount will be determined. If a new Participant enters the Financing Program after the Capital Call Period, the Catch-up Capital Call for that Participant shall equal its entire Levee Obligation and Pro-Rata Deferred Participant Obligation.
 - G. "**Capital Call Period**" shall mean the period of time during which all scheduled Capital Calls are to be paid by Participants, not to exceed a total of \$135 million in Capital Call Amounts.
 - H. "**Completion**" shall mean the earlier of: (i) the date on which a notice of completion is recorded by the general contractors performing the Phase 4 Work, or (ii) the date on which a determination of substantial completion is made by the Reclamation Board General

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Manager that the Phase 4 Work provides the intended flood protection, even if non-flood protection aspects of Phase 4 Work remain to be completed later.

I. **"Curative Action"** shall mean the actions that the County is authorized to implement in the Affected Area, including ability to stop the recordation of final subdivision maps and the issuance of building permits in the event of a Potential Default, as provided in Section 19 of this Agreement.

J. **"Deferred Participant"** shall mean those persons or entities who own real property within the Affected Area and who have an approved parcel, final or tentative subdivision map covering such real property as of the Effective Date (as defined in Section 20.C., below) of this Agreement and who voluntarily choose not to be a Participant.

K. **"Deferred Participant Obligation"** shall mean the Levee Obligation required of a specific Deferred Participant.

L. **"Escrow Holder"** shall mean the entity selected by the Participant Escrow Committee to hold the Levee Improvement Fund created pursuant to Section 13.A. of this Agreement.

M. **"Feather River Setback Levee"** shall mean the optional setback levee that might be constructed by TRLIA as part of the Phase 4 Work, if non-Participant funding is secured, and which would be a newly constructed levee on the left (east) bank of the Feather River approximately 5.7 miles long between Star Bend and Shanghai Bend designed to replace approximately 6.1 miles of the existing Feather River levee.

N. **"Final Fair Share Funding Study"** shall be a study conducted by TRLIA as provided in Section 16.A. to determine the cost of the Levee Improvement Program attributable to the beneficiaries of flood control.

O. **"Final Par Amount"** shall mean an amount determined pursuant to Section 16.B. of this Agreement, upon completion of the Final Fair Share Funding Study, which represents the fees to be imposed upon certain land to pay for the Levee Improvement Program.

P. **"Financing Program"** means the program by which property owners or holders of an equity interest in property in the Affected Area shall become parties, to advance the funds necessary for the Levee Improvement Program, as memorialized in this Agreement.

Q. **"Future Participant"** shall mean those persons or entities who own real property within the Affected Area and which real property is not included within the boundaries of an approved final, parcel or tentative subdivision map as of the end of the Open Enrollment Period, as defined in Section 20.Q.

R. **"Impact Fee Bonds"** are bonds that can be purchased by Participants to cover their Pro-Rata Deferred Participant Obligation, secured by the revenue from the TRLIA Levee Impact Fee.

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S. **"Interim Levee O&M Support"** shall mean financial and consulting support provided by TRLIA to RD 784 to assist with the operation and maintenance of the RD 784 levees and to comply with other restrictions associated with the Levee Improvement Program, not to exceed \$750,000 for the period from the Effective Date of this Agreement until January 30, 2008, unless and until a greater amount is approved by the Participant Escrow Committee in consultation with TRLIA.

T. **"Levee Improvement Fund"** shall have the meaning set forth in Section 13 of this Agreement.

U. **"Levee Improvement Program"** shall have the meaning set forth in Section 3.A. of this Agreement.

V. **"Levee Obligation"** shall mean the following:

(1) **For an Original Participant:** The remaining fair share cost of the Levee Improvement Program as identified in column 4 of Exhibit E, the TRLIA Financing Proforma. The Levee Obligation for each Participant was calculated by first dividing the total Levee financial obligation of \$181,454,548 by the 2482 project acres available for Levee funding, and then multiplying that amount by the number of available project acres for each Participant (column 1). The results of this calculation are listed in column 3 of Exhibit E. Subtracting the Advance Funding paid by each Participant (column 9) from the calculations listed in column 3 generates the remaining Levee Obligation, as listed in column 4. Once a tentative map is included as a Participant in the Financing Program, the parcels included are no longer subject to the standard terms of the TRLIA Levee Impact Fee.

(2) **For a Deferred or Future Participant:** The amount of the then current TRLIA Levee Impact Fee in effect when the Deferred Participant or Future Participant becomes a Participant, or that portion due within a Catch-up Capital Call and subsequent Capital Calls. The remaining Levee Obligations listed in column 4 of Exhibit E for Deferred Participants only apply during the Open Enrollment Period discussed in Section 20.Q.2, after which the Levee Obligations will be subject to any increased costs for the Levees and changes to the TRLIA Levee Impact Fee. As is the case for the Original Participants, once all or a portion of a tentative map owned by a Deferred or Future Participant is included as a Participant in the Financing Program, the parcels included are no longer subject to the standard terms of the TRLIA Levee Impact Fee.

W. **"Non-Participant"** shall mean either a Deferred Participant or a Future Participant.

X. **"Original Participant"** shall mean those persons or entities who own real property within the Affected Area, and whose names and real properties within the Affected Area are set forth on **Exhibit B**, attached hereto and made a part hereof, who have executed this Agreement on or before the Effective Date of this Agreement and who timely deposit the Capital Call Amounts as required by this Agreement or who are not required to make any further Capital Call payments because the required Capital Call Amounts have been prepaid, as shown on **Exhibit E**. In addition, an Original Participant may also be a holder of a non-fee title interest in

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property as of the Effective Date of this Agreement who voluntarily agrees to take on the obligations of a Participant during the Open Enrollment Period identified in Section 13 below. Any such Original Participant shall have any Capital Call Amounts paid credited towards the obligation of an Original Participant, or an affiliate, in the event that they do not become holders of a fee title interest; for example, the KB first take-down as identified in Exhibit E.

Y. **"Participant"** (and collectively, **"Participants"**) shall mean (i) each Original Participant; and (ii) each subsequent purchaser of all or a portion of a Participant's property, who shall then become a Participant hereunder by execution of an assignment and assumption agreement, in form and content acceptable to TRLIA and the Participant Escrow Committee; and (iii) each other party (or successor) that owns real property within the Affected Area and who was either a Deferred Participant or a Future Participant as of the Effective Date of this Agreement, and who subsequently elects to execute this Agreement and to assume the obligations of a Participant and remains current on those obligations. Each owner of real property which is included within the boundaries of an approved parcel, final or tentative subdivision map shall constitute a separate Participant for the purpose of participation in this Agreement. Accordingly, if a Participant owns multiple properties subject to different maps, such Participant shall be treated separately with respect to each of its mapped properties and such Participant may make separate elections with respect to the participation of such properties under this Agreement.

Z. **"Participant Escrow Committee"** shall be a committee of Participant representatives constituted pursuant to Section 14 of this Agreement.

AA. **"Parties"** shall refer to all signatories to this Agreement.

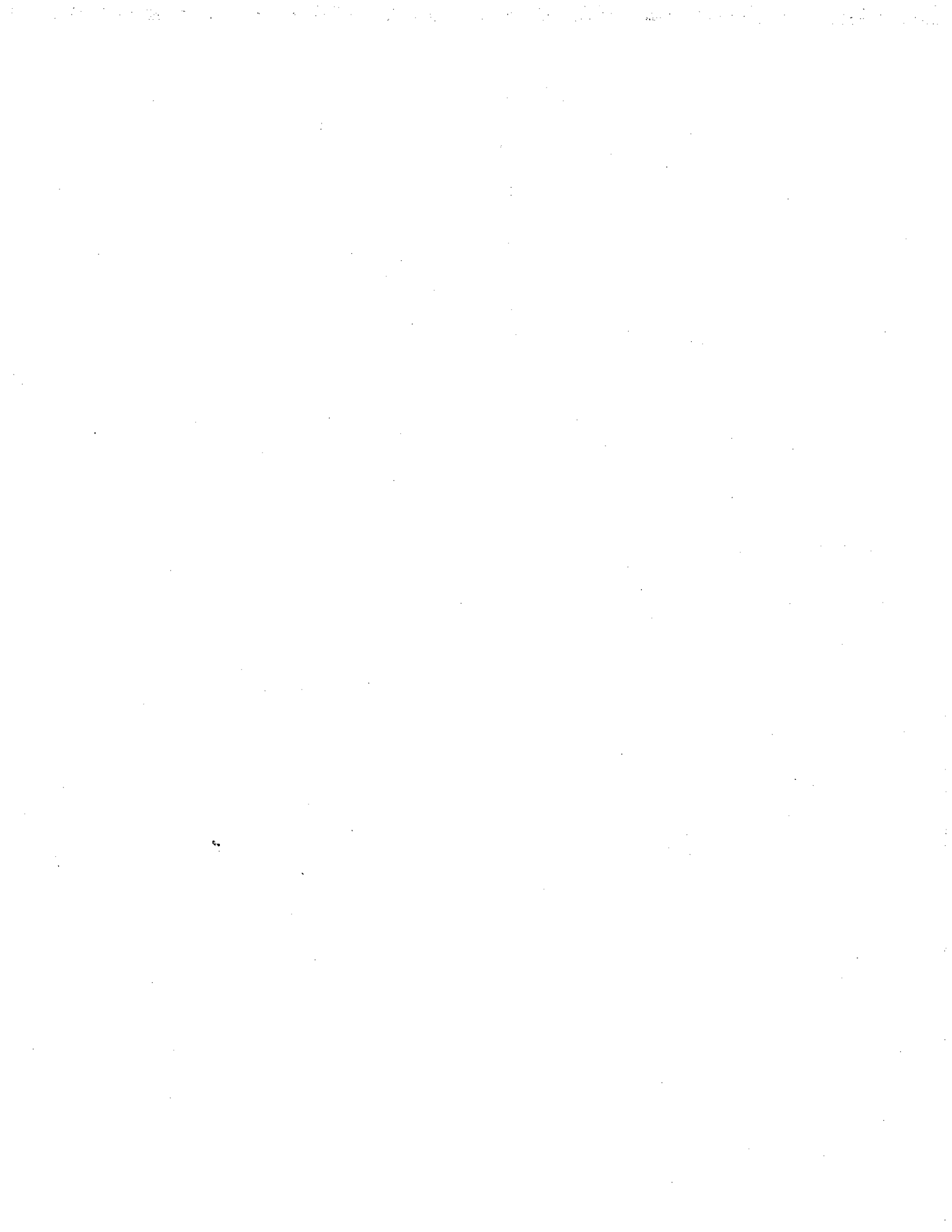
BB. **"Party"** shall refer to any one signatory to this Agreement.

CC. **"Phase 1 Work"** shall mean the improvements to the Yuba River Levee conducted under State Reclamation Board Permit No. 17828 that were completed October 31, 2004 and certain geotechnical investigations and related studies performed in anticipation of Phase 2 Work and Phase 3 Work and previously funded;

DD. **"Phase 2 Work"** shall mean improvements to the existing levees along portions of the Western Pacific Interceptor Canal from station 0+00 to 332+50 and the right bank of the Bear River from station 130+00 to 169+00, and the construction of a landside seepage berm along the left (south) levee of the Yuba River from Highway 70 to the UPRR and previously funded.

EE. **"Phase 3 Work"** shall mean construction of the setback levee on Bear River from approximately one mile north of Bear and Feather Rivers confluence to a point approximately two miles along the Bear River, including degradation of the remaining unimproved Bear River Levee.

FF. **"Phase 4 Work"** shall mean work on the Feather and Yuba River Levees including Phase 4 Yuba Work and Phase 4 Feather Work for which \$20,000,000 was identified and provided to TRLIA through the 2005 Advanced Funding Agreement.



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GG. "**Phase 4 Yuba Acceleration Work**" shall mean improvements to the existing left (south) Yuba River levee from the UPRR to Simpson Lane.

HH. "**Phase 4 Yuba Work**" shall mean improvements to the existing left (south) Yuba River levee upstream of the UPRR, including without limitation the Phase 4 Yuba Acceleration Work.

II. "**Phase 4 Feather Work**" shall mean strengthening in place improvements to the existing left (east) Feather River levee from the Bear River Setback levee to the Yuba River and may include a possible Feather River Setback Levee from Star Bend to Shanghai Bend, only if the cost difference between the Feather River strengthening in place work described above and the Feather River Setback Levee is funded with non-Participant resources, in accordance with Section 12, below. Participant funding provided pursuant to this Agreement may not be utilized for design, engineering, construction or any other costs of the Feather River Levee Setback pending future agreement of the Parties, except that costs for environmental review that considers the Feather River Levee Setback as an alternative may be utilized.

JJ. "**Potential Default**" shall mean either a failure to implement the financing program identified in this Agreement, or an inability by TRLIA, the County, and the Participants to provide funding for the Levee Improvement Program consistent with the Initial Capital Call Schedule contained in **Exhibit D**, attached hereto and made a part hereof, or a cost increase to the Levee Improvement Program beyond the means of TRLIA and the Participants to fund, any of which may result in an inability to timely complete the Levee Improvement Program within the time schedule outlined in **Exhibit C-1**, attached hereto and made a part hereof.

KK. "**Pro-Rata Deferred Participant Obligation**" shall mean the pro-rata share (of Remaining Project Acres, as displayed in Column 2 of **Exhibit E** for all Participants, including Deferred Participants that become Participants) of the total Levee Obligations of all remaining Deferred Participants that must be covered by each Participant, multiplied by the then current total Deferred Participation Obligation, multiplied by the portion of funded Capital Calls made to date. (If any Original Participant does not make required Capital Calls then this pro-rata share may increase. Likewise, as Deferred Participants or Future Participants become Participants this amount may decrease.) When paid as part of a Catch-up Capital Call by a Deferred Participant or Future Participant, the Pro-Rata Deferred Participant Obligation shall be paid through the purchase of Impact Fee Bonds from the then current Participants on a pro-rata basis. See **Exhibit H**, attached hereto and incorporated herein by reference, for an example of how the Pro-Rata Deferred Participant Obligation will be determined.

LL. "**TRLIA Levee Impact Fee**" or "**Levee Impact Fee**" shall mean the impact fee for funding of the Levee Improvement Program adopted by the County on May 16, 2006, including any and all applicable compounded interest and premiums outlined therein, as the same may be amended consistent with Section 9.F., below. The requirement to pay the TRLIA Levee Impact Fee is satisfied through execution of and compliance with this Agreement.

MM. "**UPRR**" shall mean the Union Pacific Railroad property at the point located on Yuba River Project Levee Mile 0.92.

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3. LEEVE IMPROVEMENT PROGRAM.

A. The County, TRLIA, and RD 784 agree to use best efforts to implement a program for the improvement of the levees protecting the Affected Area, including portions of RD 784, including without limitation Phase 2 Work potential cost overruns, Phase 3 Work potential cost overruns, Phase 4 Work, Interim Levee O&M Support, and all associated technical, political, and legal work and development and implementation of funding options, including the O&M Plan, all as necessary or appropriate for continued development within the Affected Area, plus any amounts that may be awarded by a court of competent jurisdiction for work funded pursuant to this Agreement, and costs of the Final Fair Share Funding Study, as discussed in Section 16.A. (all, collectively the "Levee Improvement Program").

B. In implementing the Levee Improvement Program, the County, TRLIA, and RD 784 shall use their best efforts to complete the Levee Improvement Program in the shortest time reasonably possible and at the lowest cost possible, in light of the desired schedule and in accordance with public contracting requirements of state and local law; provided, that such efforts shall be consistent with reasonable flood engineering standards and lead to levee certification; and provided further, that the County, TRLIA, and RD 784 shall have no obligation to execute any construction or other contract in furtherance of the Levee Improvement Program until such time as the County, TRLIA, or RD 784 holds the funds to cover obligations under such contracts or the necessary funds are held in the Levee Improvement Fund (as defined in Section 13, below), and the contract has been approved pursuant to Section 13.D., below.

4. COST ESTIMATES FOR LEEVE IMPROVEMENT PROGRAM.

A. The Parties agree that **Exhibit C-2**, which is attached hereto and by this reference made a part hereof, identifies the estimated total cost for the Levee Improvement Program and is based on the best available information at the time of execution of this Agreement.

B. The actual costs are not known at this time due to the uncertainties associated with the various components of the Levee Improvement Program, including but not limited to the following: (1) right-of-way and land acquisition; (2) environmental mitigation and permitting; (3) planning, engineering and design; (4) construction; (5) construction management; (6) changes to the Levee Improvement Program; (7) regulatory changes; (8) unforeseeable delays and costs; and (9) Interim O&M Levee Support.

C. This Agreement provides a maximum of \$135 million in total Capital Call Amounts (as defined in Section 6.A.(1)a., below) towards the Levee Improvement Program, subject to reduction as set forth in Section 6.A.(5) below. The \$135 million amount is comprised of \$90 million for construction and all soft costs (design, engineering, legal, bond issuance, environmental permitting, accounting, etc.) and \$45 million for contingency. These estimates were developed by Kleinfelder Inc. and MBK Engineers and are based on the *Problem Identification Report, TRLIA Phase 4, Feather River and Yuba River Left Bank Levees, Reclamation District 784, Yuba County, California*, prepared by Kleinfelder Inc., dated February 20, 2006 as amended by the *GEI Summary of Alternatives, Phase 4 Feather River Levee Costs (Alternative 1 – Levee Strengthening)*, dated July 25, 2006. These estimates were used by

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TRLIA to formulate a cash flow analysis for the Levee Improvement Program, which cash flow analysis is more particularly described in Exhibit C-2.

5. PRIOR LANDOWNER FUNDING FOR LEVEE IMPROVEMENT PROGRAM.

A. Except as otherwise provided in this Section 5, upon the execution of this Agreement by all of the parties to the 2005 Advanced Funding Agreement, the 2005 Advanced Funding Agreement, including all of the actual and potential credits and reimbursements described in the 2005 Advanced Funding Agreement, shall be superseded by this Agreement and shall hereafter be of no further force or effect as to the Parties to this Agreement.

B. Based on the Fair Share Funding Study, dated July 24, 2006, completed by Economic and Planning Systems, Inc., the Parties agree that Towne Development of Plumas Lake, LLC is owed money based on overpayments pursuant to the 2005 Advanced Funding Agreement. The Parties further agree that notwithstanding the provisions of the 2005 Advanced Funding Agreement, the overpayment by Towne Development of Plumas Lake, LLC shall be addressed as set forth in Exhibit M, as may be amended by Participants without approval of the County, TRLIA or RD 784, including payment out of the Landowner Escrow Account established pursuant to the 2005 Advanced Funding Agreement or the Levee Improvement Fund, as determined by the Participant Escrow Committee, within thirty (30) days after the deposit in full by Participants of the first Capital Call into the Levee Improvement Fund.

C. All "Reimbursements Amounts" as defined in and owed pursuant to the 2005 Advanced Funding Agreement, except as paid under Section 5.B., above, shall be deemed paid, with required interest, to the party to whom such amounts are owed by reducing, pro tanto, the amounts owed by such Party under this Agreement.

D. In the event that a party to the 2005 Advanced Funding Agreement does not enter into this Agreement, then all Parties shall seek a release from such party upon the payment of any amounts due and owing pursuant to the 2005 Advanced Funding Agreement, if any.

E. Following execution of this Agreement, TRLIA agrees to take such actions as are necessary to release the lien of CFD 2004-1 from those portions or parcels of the Affected Area owned in fee by (or controlled by) those Participants who are signatories to this Agreement.

F. All building permits paid for under the 2005 Advanced Funding Agreement shall, upon proper application, be immediately issued by the County without effect on the number of building permits issued under Section 6.B.(1) of this Agreement.

6. OBLIGATIONS OF PARTICIPANTS.

A. **Capital Call.**

(1) *Capital Call Amount.*

a. Each Participant shall advance to the Levee Improvement Fund (as defined below) the sum as determined by the Participant Escrow Committee for each Capital Call (the "Capital Call Amounts"). The preliminary schedule of Capital Calls and the aggregate

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of all estimated Capital Call Amounts are set forth in **Exhibit D**, attached hereto and made a part hereof.

b. The initial pro forma schedule of Participant Capital Call Amounts is displayed in **Exhibit E**, attached hereto and made a part hereof. **Exhibit E** is based on the list of Original Participants. **Exhibit E** shall be updated by the Participant Escrow Committee, as additional Participants execute this Agreement and prior to each Capital Call.

c. Each Capital Call, except the first, shall consist of a Levee Obligation payment and a Pro-Rata Deferred Participant Obligation payment. The Levee Obligation may be paid through the payment of cash or through the purchase of a Builder Bond, as discussed below in Section 7.B. The Pro-Rata Deferred Participant Obligation shall be paid through the purchase of Impact Fee Bonds, as discussed below in Section 7.C.

d. Capital Call Amounts may be adjusted pursuant to Section 6.A.(5), below.

e. The first Capital Call shall consist entirely of Levee Obligation payments (or when Bonds are involved, only Builder Bonds), while the second Capital Call shall consist of a larger portion of Deferred Participant Obligation (or when Bonds are involved, Impact Fee Bonds) to bring the proportions of each in line to reflect the ratio of the total remaining Levee Obligations to the total remaining Deferred Participant Obligations. The overall ratio of Levee Obligation and Pro-Rata Deferred Participant Obligation within the third and each subsequent Capital Call (or when Bonds are involved, the overall ratio of Builder Bonds to Impact Fee Bonds purchased for each Capital Call) shall be based on the ratio of the total remaining Levee Obligations for Participants to the total remaining Deferred Participant Obligations on the date of the Capital Call.

f. The Parties acknowledge that to the extent that Phase 2 Work and Phase 3 Work costs increase, less than \$135 million will be available under this Agreement for Phase 4 Work.

(2) *Process for Capital Call.*

a. The Parties shall work in good faith to process the first two Capital Calls scheduled for 2006 in a timely manner. Other than the 2006 Capital Calls, the following steps shall be followed prior to a disbursement of a Capital Call from the Levee Improvement Fund (as defined in Section 13 below) to TRLIA to either cover costs of the program or to be placed into an escrow for a bond closing:

(i) 120 days prior: TRLIA shall notify the Participant Escrow Committee of the necessary Capital Call and provide information on funds received from sources identified under Section 6.A.(5), below. Participant Escrow Committee shall commence the preparation of an updated Proforma showing Levee Obligations and Pro-Rata Deferred Participant Obligations;

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(ii) 100 days prior: Participant Escrow Committee shall complete the preparation of an updated proforma ("Proforma") showing Levee Obligations and Pro-Rata Deferred Participant Obligations;

(iii) 90 days prior: Participant Escrow Committee shall send notice to all Participants with Capital Call Amounts required, along with a copy of the updated Proforma. If no dispute with updated Proforma obligations is filed by Participant with the Chair of the Participant Escrow Committee within 10 days of mailing, then the Proforma will be deemed approved;

(iv) 45 days prior: Participants shall deposit Capital Call Amount into the Levee Improvement Fund;

(v) 1 day prior: Disbursement of a portion of the Capital Call Amount by Participant Escrow Committee to the bond sale escrow for a bond closing. If no bond closing then Participant Escrow Committee shall deliver notice to TRLIA that it holds funds in the Levee Improvement Fund to then be disbursed as provided for in Section 15.

b. Participants, by and through action of the Participant Escrow Committee, may solely waive the TRLIA notice requirements set forth in Section 6.A.(2)a. in the event that a disbursement is accelerated or if the timing of a Capital Call does not reasonably allow for such advanced notice. However, all Parties shall endeavor to meet the notice requirements outlined above. Notwithstanding the foregoing, the Parties hereby waive the notice requirements set forth above for the first two Capital Calls scheduled for 2006, and shall cooperate to ensure that the 2006 Capital Calls are paid in a timely manner.

c. The Parties agree that the second Capital Call is required for the design of the Phase 4 Feather Work, which is not necessary until the decision is made on the Feather River Setback Levee. Therefore, the Parties agree that the second Capital Call will not be due until November 22, 2006.

(3) *Acceleration of Capital Call Amount.*

a. Notwithstanding Section 6.A.(1), above, Participants may be required to provide all or a portion of the subsequent Capital Call Amount at a date prior to the next scheduled Capital Call. Such acceleration of the obligation to pay the Capital Call Amount (or some portion thereof) shall only occur in the event that the balance in the Levee Improvement Fund is not sufficient to fund the Levee Improvement Program, including the use of loan funds available to TRLIA from the County, as described in Recital S. Such acceleration shall be made only to the extent reasonably necessary to fund the Levee Improvement Program and only after approval by the Participant Escrow Committee, which approval shall be in its sole discretion.

b. If the need arises for accelerated funding, TRLIA shall give the Participants not less than 120 days notice prior to the date the Participant will be called upon to pay the Capital Call Amount and shall follow the other steps outlined above in Section 6.A.(2)a, except as provided in Section 6.A.(2)b.

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(4) *Failure to Pay Capital Call Amounts.*

a. In the event of a Potential Default, all Participants shall be subject to the Curative Actions imposed, as set forth in Section 19.B., regardless of any individual Participant's satisfaction of a given Capital Call.

b. There shall be no lifting of the Curative Action until the given Capital Call is made for the aggregate amount required by the Participants. In the event that a Potential Default and imposition of Curative Action results in increased costs to TRLIA not otherwise covered by the prior Capital Call, the Participants agree to accelerate a further Capital Call to cover such increased costs, if necessary, to the extent other resources are not available.

c. Original Participants and Participants who fail to timely deposit the required Capital Call Amount shall immediately be transferred to Deferred Participant status and lose all of the benefits outlined in this Agreement for Original Participants and Participants; e.g., the impact fee lock, and will be subject to the twelve month delay on issuance of building permits, as outlined below.

(5) *Change in Capital Call Amount.*

a. The Capital Call Amounts listed in **Exhibit E** are based on an assumption that, other than the loan from YCWA, no additional funding will be available from any other non-Participant sources to fund such Capital Call Amounts until after the Levee Improvement Program has been completed. No Original Participant will be required to pay more than the amounts listed for such Original Participant in **Exhibit E**.

b. Notwithstanding the above, with the approval of the Participant Escrow Committee, the Capital Call Amounts for an individual Participant may increase in the event that other Participants default on their obligations to make Capital Calls; provided the total aggregate Capital Call Amount required by all the Participants will not exceed the amount set forth in Exhibit E.

c. Except as provided in Section 6.A.(5).e. below in regard to the YCWA loan, the total amount of a Participant's Levee Obligation and its share of the Deferred Participants Obligation shall be decreased for a given Capital Call by the Participant Escrow Committee, in consultation with the TRLIA Executive Director, from the amounts shown in **Exhibit E** when any of the following occur:

(i) Deferred Participants or Future Participants become Participants by payment of their Catch-up Capital Calls.

(ii) Additional funding is made available to TRLIA for any aspect of the Levee Improvement Program, other than funds solicited and accepted for the Feather River Setback Levee, from federal, state, or other sources, as discussed below in Section 11.B., or fee revenue is collected through the TRLIA Levee Impact Fee from landowners subject to this fee, including the Levee Obligation paid by a Deferred Participant who, at final map recordation, has not yet become a Participant. The Participants acknowledge that TRLIA has and is engaging in a coordinated effort to obtain funds from AB 140, AB 142, and other sources,