

SETTLEMENT AGREEMENT

This Settlement Agreement (“Settlement Agreement”) is entered into by any between the City of Colfax, a general law city and municipal corporation of the State of California (“Colfax”) and Sierra Vista Center, Inc., a California corporation (“Sierra Vista”) on the following terms and conditions. Colfax and Sierra Vista are referred to herein singularly as a “Party” and collectively as the “Parties.” The “Effective Date” of this Settlement Agreement is deemed to be February 12, 2014, after execution and approval of the Settlement Agreement by all Parties.

RECITALS

- A. Colfax is a general law city and municipal corporation organized and existing under the laws of the State of California.
- B. Sierra Vista is a corporation duly organized and existing under the laws of the State of California with its principal place of business at 55 School Street, Colfax, California (the “Premises”).
- C. The Premises is a commercial establishment that includes approximately 26,024 square feet that is used for various community programs, activities and classes for all age groups in the Colfax area. Sierra Vista sponsors activities and rents out the Premises for meeting space, its gymnasium and ball field and is home to regular classes, a monthly flea market, community meetings, special events, festivals, receptions, retirements and myriad community gatherings.
- D. Colfax owns and operates a wastewater system (the “Sewer System”) whereby it collects, treats and disposes of residential, commercial and industrial sewage from customers connected to the Sewer System in exchange for the payment of fees, rates and charges.
- E. Effective January 1, 2003, Colfax adopted its Ordinance 475 (the “Sewer Ordinance”) which was codified in Colfax Municipal Code Chapter 13.08, Sections 13.08.010 through 13.08.490, inclusive. The Sewer Ordinance regulates, among other things, the conditions under which individuals and entities are allowed to connect to and use the Sewer System and the fees, rates and charges they are required to pay for doing so.
- F. Colfax Municipal Code (“CMC”) §13.08.030 defines “EDU” as follows: “An Equivalent Dwelling unit (EDU) is a term used to characterize the average wastewater discharge from a single family dwelling (SFD). For purposes of calculating sewerage system design parameters and comparing wastewater discharge from sewer service users other than SFDs, one EDU equals a domestic wastewater volume of two hundred (200) gallons per day (GPD) and one hundred eighty milligrams per liter (180 mg/l) maximum each, BOD (biological oxygen demand) and SS (suspended solids), per day at average dry weather flow rates. One EDU is further considered to generate domestic wastewater, carrying a minimal to moderate load of nonhazardous contaminants such as common household cleaning and maintenance products.”

The rates Colfax charges for use of the Sewer System (the “Sewer Service Charges”) are determined based on classification of the primary use of premises connected to the Sewer System and any ancillary use and the accompanying number of “Equivalent Dwelling Units” or “EDUs”.

- G. Colfax claimed that Sierra Vista should pay Sewer Service Charges based upon 6.9 EDUs and invoiced SVCC accordingly. SVCC disagreed and sought to be assessed Sewer Service Charges upon a different basis.
- H. The disagreements between Colfax and Sierra Vista regarding the Sewer Service Charges continued. Colfax contends, among other things that (1) the Premises were properly placed in the correct Sewer User Category under the Colfax Municipal Code, (2) and the determination that Sierra Vista should pay Sewer Service Charges based upon 6.9 EDUs is correct. Sierra Vista contends, in general, (1) the Premises were placed in the wrong user category, (2) a sewer service charge for the Premises based on 6.9 EDUs is excessive and not reflective of the burden Sierra Vista places on the Sewer System, (3) Sewer Service Charges to the Premises should be based upon the Premises’ average domestic water consumption during winter months and (4) Sierra Vista cannot afford to pay Sewer Service Charges based on 6.9 EDUs. These disagreements and the Collection Action as hereafter defined and all other disputes between Colfax and Sierra Vista will be collectively referred to as the “Disputes”.
- I. On November 14, 2013, Colfax filed its Complaint For Collection Of Unpaid Sewer Service Charges in that certain action entitled City of Colfax, a municipal corporation, Plaintiff vs. Sierra Vista Center, Inc., a California corporation, Defendant as Placer County Superior Court Case No. SCV0033869 (the “Collection Action”). The Collection Action seeks, among other things, to collect \$39,202.56 in delinquent sewer service charges as of November 15, 2013, additional amounts accruing prior to entry of judgment, penalties and interest as allowed by the Colfax Sewer Service Ordinance, reasonable attorney’s fees and costs plus monthly lift station charges under CMC §13.08.150, I&I Project Sewer Service Charges under CMC §13.08.170 and other applicable charges required under the CMC based on 6.9 EDUs (the “City’s Claim”).
- J. Colfax and Sierra Vista generally serve the same population and are committed to proceeding in a fashion that benefits themselves, each other and the population they serve. The Disputes have detracted from their respective abilities to do so and have caused both Parties to unnecessarily expend their limited resources on the Disputes instead of the community they serve.
- K. Sierra Vista provides several programs and services that are of benefit to Colfax. Those programs and services include but are not limited to: Among other things, Sierra Vista provides a community center that serves the public benefit, independent school study programs, an art center, a community garden, community work programs, a food bank, meeting space, gymnasium, ball field, flea market, community meetings, special events, festivals, receptions, retirements and myriad community gatherings.

- L. Colfax has the authority to provide all such programs and services but its limited resources and revenues prevent it from doing so. All such programs and services are of considerable benefit to the Colfax community. Sierra Vista's commitment to continue them on the terms and conditions of this Agreement are in the public interest and are of considerable value to Colfax and its citizens.
- M. Colfax and its residents need a suitable location to serve as an emergency warming center, cooling center and evacuation center when circumstances arise that necessitate those services. Although Colfax does not own, lease or have access to such facilities, the Premises is an ideal facility to serve all such functions because of its size, location, facilities, amenities and familiarity to Colfax residents. Utilizing the Premises as described in this Agreement will serve a valuable public purpose with considerable public benefit in the most economical and efficient way possible.
- N. The Parties, now desire to resolve and bring to a conclusion all said matters as between themselves and resolve the Disputes without any admission of liability or fault on any Party hereto, and to avoid the further costs and expenses incident to the prosecution, defense and appeal of the above-referenced matters, subject to and on the terms and conditions set forth below.

AGREEMENT

Colfax and Sierra Vista agree as follows:

1. **Incorporation Of Recitals.** The foregoing Recitals are true and correct statements of fact and are hereby incorporated into this Agreement by this reference.
2. **Terms and Conditions of Settlement.**
 - (a) Affirmation Of Sewer Service Charges.
 - i. Sierra Vista acknowledges that Colfax User Group Code 210 "Halls, Lodges and Auditoriums" as its primary use and Colfax User Group Code 217 "Office Buildings" as its ancillary use are the proper user categories under the Sewer Ordinance.
 - ii. Sierra Vista acknowledges that it is obligated to pay Sewer Service Charges for the Premises under the Sewer Use Ordinance based on 6.9 EDUs together with lift station charges, I&I Project Sewer Charges and all other charges required by the Sewer Ordinance, as amended from time-to-time and that, as long as Sierra Vista does not permit to occur an uncured default as set forth in paragraph 5, its Sewer Service Charges will be subject to the payment offsets for the provision of the valuable public services described below.

(b) Payment Offset Of 2 EDUs In Exchange For Services.

- i. Sierra Vista shall continue to operate as a community center and make the Premises available to programs and services that have demonstrable benefit to the public in general and to the citizens of Colfax. Those programs and services may include, but shall not be limited to, independent study school programs, an art center, a community garden, community work programs like the WEX program, and a food bank.
- ii. The program and services shall be determined by and made available at rates, and on dates and times, determined by Sierra Vista.
- iii. As long as Sierra Vista continues to operate the Premises as a community center and makes the Premises available for programs and services in accordance with this paragraph, its monthly payment for Sewer Service Charges shall be reduced by an amount equal to 2 EDUs. If Sierra Vista fails to make the Premises available for programs and services in accordance with this paragraph, this 2 EDU offset will end and an amount equal to 2 EDUs will be added to its payment for Sewer Service Charges.

(c) Emergency Center Payment Offset Of 1 Additional EDU.

- i. Sierra Vista shall continue to make the Premises available to qualified government agencies or community groups that provide emergency services, including but not limited to the Red Cross and the Placer County Office of Emergency Services, for use as an emergency evacuation center, a warming center and a cooling center. For purposes of this paragraph, “qualified” shall mean and refer to (1) government agencies and/or community groups that have sufficient financial credit, insurance coverage, command authority and experience to operate an emergency evacuation center, a warming center or a cooling center, as determined by Sierra Vista, or (2) government agencies and/or community groups that the Colfax and Sierra Vista both approve for such purposes.
- ii. As long as Sierra Vista continues to make the Premises available as required by this paragraph, its monthly payment for Sewer Service Charges shall be reduced by an amount equal to an additional 1 EDU. If Sierra Vista fails to make the Premises available as required by this paragraph, this 1 EDU offset will end and amount equal to 1 EDU will be added to its payment for Sewer Service Charges.

- (d) City Facilities Rental/Grant/Credit Account Held By Sierra Vista
- i. Colfax and Sierra Vista shall establish a Premises use account equal to 1.5 EDUs per month for each calendar year (the “Premises Use Account”). The amount added to this account at the beginning of each calendar year shall be the amount Colfax then charges for 1.5 EDUs per month times twelve months. The Premises Use Account shall be a “rolling” 1.5 EDUs per month per year such that any unused portion in one year rolls over to the next and is added to the 1.5 EDUs for that year; provided that the maximum accrual shall be an amount equivalent to the amount Colfax then charges for 1.5 EDUs per month multiplied by twenty four months (“Maximum Accrual”). In the event the sum of the prior years unused Premises Use Account and the amount to be added for the current year exceeds the Maximum Accrual, the prior years unused Premises Use Account balance shall be reduced to an amount necessary to cause the sum of the prior year unused Premises Use Account balance and the amount to be added for the current year to equal the Maximum Accrual.
 - ii. Colfax shall have the right to use the Premises for programs and services in accordance with the policies, rules, procedures, availability of the Premises and rates established by Sierra Vista as applicable to nonprofit users. The costs of such use shall be a charge against and deducted from the Premises Use Account.
 - iii. In addition, Colfax and Sierra Vista will establish a program, including policies, rules, qualifications, rates and available dates and times, allowing use of the Premises by other nonprofit entities, community organizations and individuals as long as those entities provide demonstrable benefit to the citizens of Colfax and could not afford to rent or lease the Premises (“Public Benefit User”). Each Public Benefit User shall be approved by Colfax and Sierra Vista.
 - iv. Each time Colfax or a Public Benefit User uses the Premises under this Agreement, the Premises Use Account will be reduced by the value of that use calculated at Sierra Vista’s usual and customary rates in effect for nonprofit users as of the date of such use.
 - v. In the event Colfax or a Public Benefit User incurs charges in excess of the balance in the Premises Use Account, the excess charges can be paid for by Colfax at Sierra Vista’s usual and customary rates in effect for nonprofit users, or credited against the amount due from Sierra Vista to Colfax under paragraph 2(f), below, relating to the payment of arrearages.

- (e) Sierra Vista's Sewer Service Charge Payment
 - i. As long as Sierra Vista provides the programs and services required under paragraph 2(b), above, the emergency centers required by paragraph 2(c). above, and the Premises use account required by paragraph 2(d), above, its monthly Sewer Service Charges will be based upon 2.4 EDUs, as that charge may be amended from time to time, plus monthly lift station charges under CMC §13.08.150, I&I Project Sewer Service Charges under CMC §13.08.170 and other applicable charges required under the CMC. All provisions of CMC Chapter 13.08 shall remain applicable to Sierra Vista.

- (f) Payment Of Arrearages.
 - i. Colfax shall recalculate Sierra Vista's Sewer Service Charge Arrearages, penalties and interest based on 2.9 EDUs instead of 6.9 EDUs. Sierra Vista shall pay all such arrearages, penalties and interest as recalculated in equal installments on or before the first day of each month beginning with the first day of the month after this Agreement is approved by Colfax and continuing on the first day of each month thereafter over a period of 360 consecutive months until paid in full. Interest shall accrue the unpaid balance at the same rate that the Local Agency Investment Fund pays or would pay on Colfax funds invested therein, as such rate is periodically amended provided, however, that in no case other than as a result of an uncured event of default shall such interest rate exceed two percent (2%) per annum.
 - ii. All payments of current Sewer Service Charges and payments on arrearages must be made separately so they can be separately credited and accounted for.

- (g) Compliance With Bianchini Trust.
 - i. Sierra Vista shall comply with all provisions of the Bianchini Trust as amended from time-to-time. Copies of the Bianchini Trust and its related settlement agreement are attached as Exhibit A hereto.

- (h) Sierra Vista Agreement Reporting Requirements.
 - i. Within 60 days following the close of each of its fiscal years, Sierra Vista shall make an annual written report to the Colfax City Council. The report must include the then current composition of

the Sierra Vista Board of Directors and a full accounting of the Premises Use Account referred to in 2(d) above.

- (i) Discretion of Approving Entity.
 - i.. Determinations of Colfax and/or Sierra Vista relating to the programs and services under paragraph 2(b), the emergency centers under paragraph 2(c) and the use of the Premises charged against the Premises Use Account under paragraph 2(d) shall be made in the discretion of the entity required or authorized to make the applicable determination, provided such discretion is exercised with reasonable diligence and in good faith.

3. Mutual General Releases and Discharge.

Except as expressly provided herein, and in consideration for the payments, performance and other rights and obligations provided for in this Settlement Agreement, the Parties hereby fully and completely release, discharge and acquit each other, and their respective representatives including, without limitation, their assigns, agents, employees, directors, officers, attorneys, councilmembers, predecessors, successors, parent and affiliated companies subsidiaries, partners, and assigns and all of the persons, firms, entities or corporations with whom any of the former have been, or now or may hereinafter be affiliated, of and from all claims, demands and causes of action set forth in, or which could have been alleged or asserted by any Party hereto against the other.

4. Civil Code Section 1542 Waiver.

The Parties hereby expressly waive any and all rights based upon the provisions of Section 1542 of the Civil Code of the State of California, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Initials: City  Sierra Vista: 

5. Notice of Default and Opportunity to Cure; Stipulation for Entry of Judgment.

- (a) Failure or unreasonable delay by any Party to perform any obligation under this Settlement Agreement for a period of sixty (60) days after written notice

thereof from the other Party shall constitute an event of default under this Settlement Agreement.

(b) All notices that the Parties may or must provide under or concerning this Agreement shall be in writing and may be delivered in person or may be sent by registered or certified mail, return receipt requested with postage prepaid, or delivered by overnight delivery, with charges prepaid, including by Federal Express, United Parcel Service or other similar service, or by United States Mail, postage prepaid for first class delivery. Said notice shall specify the nature of the alleged default and the manner in which said default may be satisfactorily cured. Notice shall be given at the addresses set forth below:

If to Colfax:

City Manager
City of Colfax
P.O. Box 702
Colfax, CA 95713

With copies to:

If to Sierra Vista:

Board of Directors
Sierra Vista Center, Inc.
P.O. Box 57
Colfax, CA 95713

With copies to:

Notices given via personal delivery shall be deemed received when delivered. Notices sent by registered or certified mail shall be deemed received three business days after the same is mailed. Notices sent via overnight delivery shall be deemed received one business day after delivery to the overnight service. Notices given via United States Mail, postage prepaid for first class delivery shall be deemed received three business days after the same is mailed. Notice sent by any other method shall be effective only upon actual receipt.

(c) If Sierra Vista fails to cure an event of default within sixty (60) days after the provision of written notice as hereinabove provided, then the payment offsets provided in paragraphs 2(b), 2(c) and 2(d) above and the recalculation of arrearages, penalties and interest under paragraph 2(f) above shall be null, void and as if they never existed. If an uncured event of default occurs within five years of the Effective Date, Sierra Vista shall pay Colfax Sewer Service Charges, plus penalties and interest, plus

monthly lift station charges under CMC §13.08.150, I&I Project Sewer Service Charges under CMC §13.08.170 and other applicable charges required under the CMC based on 6.9 EDUs retroactive to the date each such charge was first incurred. If an uncured event of default occurs more than five years but less than ten years of the Effective Date, Sierra Vista shall pay Colfax Sewer Service Charges, plus penalties and interest, plus monthly lift station charges under CMC §13.08.150, I&I Project Sewer Service Charges under CMC §13.08.170 and other applicable charges required under the CMC based on 6.9 EDUs retroactive to the Effective Date plus all such charges then unpaid under the terms of this Agreement. If an uncured event of default occurs more than ten years of the Effective Date, Sierra Vista shall pay Colfax Sewer Service Charges, plus penalties and interest, plus monthly lift station charges under CMC §13.08.150, I&I Project Sewer Service Charges under CMC §13.08.170 and other applicable charges required under the CMC based on 6.9 EDUs that accrue after the event of default plus all such charges then unpaid under the terms of this Agreement. Upon the occurrence of an uncured event of default, judgment may be entered in accordance with Code of Civil Procedure section 664.6 in the Collection Action or in an independent legal action to enforce this Agreement for the amount specified in this paragraph, reduced by any payments received from Sierra Vista.

(d) The waiver by any Party hereto of any event of default under this Settlement Agreement shall not operate as a waiver of any subsequent breach of the same or any other provision of this Settlement Agreement.

6. General Release; No Admission of Liability.

The Parties hereby acknowledge and agree that the mutual releases set forth above are general releases with respect to all claims released and discharged therein, and further expressly waive and assume the risk of any and all claims for damages which exist as of this date but of which they do not know or suspect to exist, whether through ignorance, oversight, error, negligence or otherwise, and which, if known, would materially affect their decision to enter into this Settlement Agreement. The Parties have accepted performance of the obligations, payment of the sums and consideration specified herein as a complete compromise of matters involving disputed issues of law and fact, and assume the risk that the facts or law may be otherwise than they believe. It is further understood and agreed that this settlement is a compromise of doubtful and disputed claims, and that the settlement is not to be construed as an admission of fault by any party, by whom liability is expressly denied.

7. Covenant Not To Sue Based On Released Claims; Additional Actions.

The Parties hereto further warrant and represent that no action arising out of, based on, or in any manner connected with the disputed claims, existing and potential, released herein, has been or will be filed by any of them or on behalf of one or more of them. Should any Party to this release, or anyone acting on their behalf or under their direction, file any lawsuit in connection with the subject matter covered by this Settlement Agreement, then the defendant in such a suit shall have the right to plead this Settlement Agreement as a defense to such an action;

and in such a case, the losing party shall be responsible to pay for the prevailing party's losses and damages, including attorneys' fees and costs, including expert fees.

8. Dismissal of Collection Action and Continuing Jurisdiction.

Colfax shall apply for Court approval to dismiss without prejudice the Collection Action subject to the Court retaining jurisdiction over the Parties to enforce this Agreement under Code of Civil Procedure Section 664.6. Upon such dismissal, each party shall have responsibility for its own attorney's fees and statutory costs. Notwithstanding such dismissal, the Parties hereby agree that the Placer County Superior Court may retain jurisdiction to enforce the terms of this Settlement Agreement pursuant to California Code of Civil Procedure Section 664.6.

9. Warranty of Capacity to Execute Settlement Agreement.

The undersigned Parties represent and warrant that no other person or entity has or has had any interest in the claims, demands, obligations or causes of action referred to in this Settlement Agreement or released hereby, or in any way arising out of the foregoing disputes and that they have the sole right and exclusive authority to execute this Settlement Agreement, and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

10. Successors in Interest.

This Settlement Agreement shall be binding upon and inure to the benefit of the heirs, representatives, successors and assigns of the Parties identified herein.

11. Reliance on Advice of Counsel; Representation of Comprehension of Document.

In entering into this Settlement Agreement, the Parties represent that they have relied upon the legal advice of their attorneys, who are the attorneys of their own choice, and that the terms of the Settlement Agreement have been completely read and explained to them by their attorneys, and that those terms are fully understood and voluntarily accepted by them.

12. Governing Law.

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of California.

13. Cooperation in the Event of Legal Challenge

(a) In the event of any administrative, legal or equitable action instituted by a third party challenging the validity of any provision of this Settlement Agreement or the procedures leading to its adoption, Colfax and Sierra Vista shall have the right to select independent counsel (and pay for such counsel at its own expense), and to control its participation and conduct in the litigation in all respects permitted by law. The Parties

hereby agree to affirmatively cooperate in defending said action and to execute a joint defense and confidentiality agreement in order to share and protect information, under the joint defense privilege recognized under applicable law.

(b) In the event of a court order issued as a result of a successful legal challenge, Colfax shall, to the extent permitted by law or court order, in good faith seek to comply with the court order in such a manner as will maintain the integrity of this Settlement Agreement.

14. Additional Documents.

The undersigned Parties hereby agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

15. Effectiveness and Term.

This Settlement Agreement shall become effective upon its approval by the Colfax City Council, which approval must be preceded by the approval of Sierra Vista's Board of Directors. The Settlement Agreement shall be valid for fifteen (15) years after the Effective Date ("Term"). Thereafter, the Settlement Agreement shall automatically renew for five year terms (each, an "Extended Term"), unless a party seeking not to renew the Settlement Agreement gives notice to the other party not later than one (1) year prior to expiration of the Term or Extended Term of its election to terminate the Settlement Agreement as of the expiration of the Term or the Extended Term, as may be applicable, in accordance with the procedures set forth in paragraph 5(b).

DOCUMENT CONTINUED ON NEXT PAGE

16. Execution in Counterparts.

This Settlement Agreement may be executed in counterparts and a facsimile or pdf signature shall be deemed sufficient.

THE UNDERSIGNED INDIVIDUALS ACKNOWLEDGE THAT THEY HAVE READ THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS AND THAT THEY FULLY KNOW, UNDERSTAND AND APPRECIATE ITS CONTENT AND THAT THEY EXECUTE THE SAME AND ACCEPT THE SETTLEMENT PROVIDED FOR HEREIN VOLUNTARILY OF THEIR OWN FREE WILL.

IN WITNESS THEREOF, the undersigned have executed this SETTLEMENT AGREEMENT as of the dates hereafter appearing.

CITY OF COLFAX

By: 
Mayor

Attest:


City Clerk

SIERRA VISTA CENTER, INC.,
a California corporation

By: 
Chairperson of the Board

By: 
Secretary

EXHIBIT A TO SETTLEMENT AGREEMENT

BETWEEN

CITY OF COLFAX

AND

SIERRA VISTA CENTER, INC.

EFFECTIVE FEBRUARY 12, 2014

THIS EXHIBIT INCLUDES:

CARL BIANCHINI COMMUNITY TRUST
EXECUTED MARCH 6, 2001

AND

AMENDMENT TO CARL BIANCHINI COMMUNITY TRUST
EXECUTED JANUARY 28, 2008

CARL BIANCHINI COMMUNITY TRUST

THE SIERRA VISTA CENTER, (SVC), a California non-profit corporation, hereinafter referred to as the trustee", hereby creates the CARL BIANCHINI COMMUNITY TRUST (CBCT)

The trustee of the CARL BIANCHINI COMMUNITY TRUST shall be the SVC. The assets of the trust shall be all monies, property (real and personal), bequeathed to the City of Colfax by Carl Bianchini and designated for administration pursuant to this trust document. The Beneficiaries of this trust shall be a class of persons consisting of residents of the City of Colfax.

The trust assets shall be held, administered, and distributed by the trustee solely as provided in this declaration of trust.

ARTICLE I

RIGHTS RESERVED TO TRUSTOR

Section 1.01. Irrevocable: This trust shall be irrevocable. The trust may be amended only as provided in Section 4.06.

ARTICLE II

ADMINISTRATION OF TRUST

Section 2.01. Introduction: The Trustee shall hold, administer and distribute earnings of the trust pursuant to this Article.

Section 2.02. Advisory Board: To ensure continuity of the trust and remove politics, to the extent possible, from decision making, the Trustee shall administer the trust as follows:

- (a) An advisory board known as the "Bianchini Board" shall be established. Fred and Virginia Claus may serve as life-time voting members. This board will be

comprised of seven (7) additional members. One member of the Colfax High School Student Body shall be selected annually by the Colfax High School faculty. Two members shall be appointed from the Colfax City Council by the Colfax City Council. The remaining four (4) members shall be selected by majority vote of the SVC Board of Directors. A minimum of two of the four appointed by SVC must reside in the city of Colfax. The term of office will be three (3) years except for the student member and City Council members.

The initial terms shall be as follows:

- High school student for one year;
- Two members for one year (one will be a City Council member);
- Two members for two years (one will be a City Council member); and
- Two members for three years.

Members selected must be California residents, have an interest in the affairs of the community, serve without remuneration, and be possessed of good character and integrity. SVC Board of Directors members may not act as Bianchini Board members during their term of office or within six months of leaving office. Bianchini Board members shall not serve more than three (3) consecutive terms.

(b) The Bianchini ("Board") shall make periodic recommendations for expenditure of the

earnings generated¹ from the principal of the CBCT Trust to the SVC Board of Directors, at a regularly scheduled meeting. Said recommendations shall be approved by a majority vote of the SVC Board of Directors. The SVC Board of Directors may not disburse funds without the Bianchini Board's recommendation. However, the SVC, by majority vote, may propose projects for consideration of the Board.

- (c) The Bianchini Board shall meet at least once every month. Said meeting shall be noticed and open to the public in compliance with The Ralph M. Brown Act, California Government Code, Section 54950 et seq.² The Bianchini Board shall be governed by relevant California state Ethics and Conflict of Interest guidelines.
- (d) If a member of the Bianchini Board is absent from three (3) successive meetings without cause, the office shall be deemed vacant and the term of such member terminated. The appropriate appointing body³ shall appoint another member to the remaining unexpired term of said member.

Section 2.03. Use of Trust Assets: The earnings generated shall, in the reasonable discretion of the trustee, be used for any of the following purposes:

- (a) The purchase, acquisition, development, improvement, maintenance, or preservation of a community center for the benefit of the residents of Colfax; or
- (b) The purchase, acquisition, development, improvement, maintenance, or preservation

¹ "Earnings Generated" is defined as ninety-five percent (95%) of the annual interest on principal.

² *The Ralph M. Brown Act* incorporated herein by reference as fully stated.

³ "Appointing Body" is defined as that entity, initially appointing the member.

of a community facility or service, including, but not limited to, a park site, playground site, museum, senior citizens center, or youth center in the City of Colfax;

or

- (c) Any lawful purpose of benefit to the residents of Colfax " with emphasis on the youth and elderly.

ARTICLE III

OFFICE OF TRUSTEE

Section 3.01. Nomination of Trustee for SVC Trust: The SVC Board shall act as trustee of the trust created herein as provided in Article II.

Section 3.02. Waiver of Bond: The Trustee shall not be required to post bond or security.

Section 3.03. Exculpatory Clause: The trustee shall not be liable to any person interested in this trust for any act or default unless it results from the trustee's bad faith, willful misconduct or gross negligence.

Section 3.04. Retain or Abandon Property: The trustee shall have the power to continue to hold any property, or abandon any property the trustee receives or acquires.

Section 3.05. Unproductive Property: The trustee shall have the power to retain, purchase or otherwise acquire unproductive property.

Section 3.06. Sell Exchange, Repair: The trustee shall have the power to manage, control, grant options on, sell (for cash or on deferred payments, with or without security), convey, exchange, partition, divide, improve and repair trust property.

Section 3.07. Lease: The trustee shall have the power to lease trust property for terms within or beyond the terms of the trust and for any purpose, including exploration for and removal

of gas, oil, and other minerals, and to enter into community oil leases, pooling and utilization agreements.

Section 3.08. Investment-General Power: The trustee shall have the power to invest and reinvest the trust estate in every kind of property, real, personal or mixed, and investments within SVC's Investment Policy Statement as approved by the City Council of the City of Colfax.

Section 3.09. Payment of Trust Expenses: The trustee shall have the authority to pay all costs, charges and expenses of the trust estate and to employ and compensate from the trust estate such agents, assistants and attorneys as in the trustee's judgment shall be necessary to protect and manage the trust property. However, such expenses shall not exceed the earnings generated as that term is defined herein.

Section 3.10. Insurance: The trustee shall have the power to carry, at the expense of the trust, insurance of such kinds and in such amounts as the trustee deems advisable to protect the trust estate against any damage or loss and to protect the trustee against liability with respect to third parties.

Section 3.11. Authority to Borrow and Encumber: The trustee shall have the power to borrow money for any trust purpose, upon such terms and conditions as the trustee may deem proper, to obligate the trust estate for repayment and to encumber the trust estate or any of its property by mortgage, deed of trust, pledge or otherwise, using such procedure to consummate the transaction as the trustee may deem advisable. In addition to the power to encumber property for a loan being made to the trust, the trustee is specifically authorized and empowered to obligate, hypothecate, and encumber the estate by mortgage, deed of trust, pledge or otherwise, of whatever form the trustee deems appropriate. Such power may not be exercised without a 2/3 vote of the full Board

of directors of SVC and 2/3 of the full Bianchini Board.

Section 3.12. Private Accounting: The trustee shall periodically, but not less frequently than once each year, render an account of its administration of the trust under this declaration of trust. Said accounting shall be presented at a regularly scheduled meeting of the City Council of the City of Colfax.

Section 3.13. Commence or Defend Litigation: The trustee may commence or defend such litigation with respect to the trust or any property of the trust estate as the trustee may deem advisable at the expense of the trust.

Section 3.14. Compromise Claims: The trustee may compromise or otherwise adjust any claims or litigation against or in favor of the trust.

Section 3.15. Principal and Income - Act Governs: The trustee shall determine all matters with respect to what is principal and income of the trust estate and the apportionment and allocation of the estate and the apportionment and allocation of the receipts and expenses between these accounts by the provisions of the California Revised Uniform Principal and Income Act, codified at Probate Code Section 16300 et seq., from time to time existing. When this trust document or such Act does not provide, the trustee, in the trustee's reasonable discretion, shall determine the characterization.

Section 3.16. Retain Principal: The trustee shall retain the principal of this trust and allocate only the earnings generated of this trust in carrying out the trust purposes.

Section 3.17. Transfer Real Property: The transfer of any real property of this trust shall require the approval of a 2/3's vote of the Bianchini Board and 2/3's vote of the SVC Board.

Section 3.18. Public Meeting: SVC Board of Directors shall comply with all requirements

of the Ralph M. Brown Acts codified at Government Code Section 54900 et seq., at any meeting in which this Trust is to be discussed. Failure to comply with this provision renders any and all acts of SVC Board of Directors related to this Trust null and void.

ARTICLE IV

GENERAL PROVISIONS

Section 4.01. Applicable Law: The trust created by this declaration has been accepted by the trustee in the State of California, will be administered by the trustee in California, and the validity, construction and all rights under this declaration shall be governed by the laws of the State of California.

Section 4.02. Number and Gender: As used herein, the masculine, feminine and neuter gender, and the plural and singular number shall each be deemed to include the other when the context so indicates.

Section 4.03. Partial Invalidity: If any provision of this declaration of trust is void, invalid or unenforceable, the remaining provisions shall nevertheless be valid and carried into effect. If any trust herein established exceeds the longest permissible period, it shall persist for the longest period permissible then terminate.

Section 4.04. Headings: The headings in this declaration are inserted for convenience of reference and are not to be considered in the construction of the provisions hereof.

Section 4.05. Trustee: Wherever in this document "trustee" is used, it means the Sierra Vista Center Board of Directors acting pursuant to this declaration and includes the Bianchini Board when acting pursuant to the powers delegated herein.

Section 4.06. Amendment: Any amendment of this declaration requires a 2/3rds vote of

the full SVC Board of Directors and a 2/3rd vote of the full Bianchini board. An Amendment which allows SVC to invade principal shall be subject to public hearing on at least 72 hours notice to the public.

Section 4.07. Compensation: No principal or interest, or earnings generated may be used to compensate members of The Board of Directors of SVC or any other board or agent unless specifically authorized herein. Compensation is defined as including the reimbursement of expenses associated with the duties of such Board members.

Section 4.08. Termination: Should this Trust terminate for any reason the corpus of the Trust and all funds and property contained therein shall revert to the City of Colfax.

Section 4.09. Conflicts of Interest: All Bianchini and SVC Board members are subject to the guidelines regarding conflict of interest as set forth in the Political Reform Act. A violation of such Act shall be grounds for removal of such member or members. In the case that either the SVC or the Board fails to remove such member, the City Council shall have the right to remove the member after a properly noticed public hearing.

Section 4.10. Indemnity: SVC shall indemnify and hold harmless the City of Colfax, the City Council members, City Agents, employees, consultants, and attorneys from any and all liabilities arising from the transfer of any monies and property from the City to SVC and/or the administration of this Trust.

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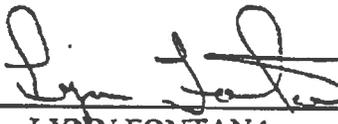
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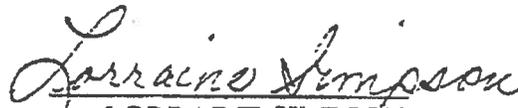
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Section 4.11. Violations: Any material violation of this agreement, as otherwise determined by binding arbitration, if mutually agreed upon by the parties, or by a court of competent jurisdiction in the State of California, may result in a reversion of all trust assets to the City of Colfax.

EXECUTED on March 6, 2001, at Colfax, California.

SIERRA VISTA CENTER
Trustee

By 
LYNN FONTANA
President


LORRAINE SIMPSON
Secretary

AMENDMENT TO CARL BIANCHINI COMMUNITY TRUST

The Bianchini Advisory Board and the Sierra Vista Center Inc. Board amend the Bianchini Community Trust as follows:

1. Page one paragraph two, final sentence shall be:

The Beneficiaries of this trust shall consist of a class of persons who are 1) Residents of the City of Colfax, and/or 2) Sponsors of programs with a 95713 zip code, and/or 3) participating in programs which will be held within the City of Colfax.

2. Section 2.02(a.) shall be:

City Council appointments to the Bianchini Advisory Board shall be of a term of one year.

3. Section 2.02(c) shall be:

The Bianchini Advisory Board meetings shall occur every other month, beginning in January 2008 (six meetings a year).

EXECUTED on _____ [January 28,] 2008, at Colfax, California

SIERRA VISTA CENTER
Trustee

BY --S--
CAROLINE HICKSON
President

BIANCHINI ADVISORY BOARD
officer

 --S--
JIM ALBRIGHT
Vice President

3. Section 2.02(c) shall be:

The Bianchini Advisory Board meetings shall occur every other month, beginning in January 2008 (six meetings a year).

EXECUTED on January 28, 2008, at Colfax, California

SIERRA VISTA CENTER
Trustee

By Caroline Hickson
CAROLINE HICKSON
President

BIANCHINI ADVISORY BOARD
officer

By Jim Albright
JIM ALBRIGHT
Vice President