

GROVELAND COMMUNITY SERVICES DISTRICT

RESOLUTION NUMBER 4-08

RESOLUTION OF THE BOARD OF DIRECTORS REGARDING COLLECTION OF DELINQUENT CHARGES

WHEREAS, GROVELAND COMMUNITY SERVICES DISTRICT (hereinafter the "District") is a community services district duly organized and validly existing pursuant to the laws of the State of California, Government Code Section 61000 et seq., and

WHEREAS, Government Code Section 61115 specifies the permissible methods for collection and enforcement of unpaid charges for services which the district provides including, but not limited to, the following: (1) by recording in the office of the County Recorder of the county in which the affected parcel is located, a certificate declaring the amount of the charges and penalties due and the name and last known address of the person liable for those charges and penalties which shall constitute a lien against all real property of the delinquent property owner in that county; and (2) to provide that any charges and penalties may be collected on the tax roll in the same manner as property taxes after giving notice to the affected property owner of the time and place for a public hearing to consider any objections or protests to the district's statement of delinquent charges; and (3) to provide for a basic penalty for the nonpayment of charges of not more than ten percent (10%); and

WHEREAS, the District's Water Ordinance authorizes the District to charge applicants for annexation to the District and new water service the costs incurred by the District for administrative, legal, engineering and environmental services incurred in reviewing an applicant's application for annexation and provision of water services. Specifically, Section 7.02 of the Water Ordinance provides for funding a development account upon a request to provide water to a proposed development to fund the costs of the District's efforts to investigate the proposed development and any subsequent work that the District needs to complete to satisfy the needs of the proposed development. Section 7.02 further provides for the funding of a development account by the developer to reimburse the District for such costs. Section 7.03 authorizes the District Engineer to investigate the proposed development and to engage the services of consulting engineers and other specialists deemed necessary to review the Preliminary Design Report submitted by the developer with respect to the subdivision. Section 7.11 provides that all costs and expenses incurred by the District in reviewing the developer's application for annexation and provision of water service, including the costs of investigation, inspection, legal and consulting engineer services shall be paid to the District by the developer. Section 8.1 of

the Water Ordinance provides that the owner of the premises to which the services are to be provided shall in all cases be liable for charges and fees for services rendered with respect to reviewing the development's application for annexation and new water service; and

WHEREAS, the District's Sewer Ordinance requires an applicant for annexation and/or for new sewer service on behalf of the development to reimburse the District the costs incurred by the District for administrative, engineering, and other related costs necessary to process that application, including all costs incurred with respect to compliance with the requirements of the California Environmental Quality Act ("CEQA"). Section 4.05 of the Sewer Ordinance requires an applicant for sewer service to be responsible for the District's costs incurred for administration, engineering, legal and other related costs necessary to process the application. Section 5.05 requires the developer to make required deposits with the District to cover engineering, administrative and inspection costs. Section 5.13 requires the developer to be responsible for all costs incurred in complying with the environmental documentation requirements of CEQA; and

WHEREAS, the District has incurred significant administrative, legal, engineering, and environmental consulting costs in reviewing the application of Yosemite Club Partners, L.P. ("the Developer") for annexation of its Long Gulch Ranch residential project into the District and for receipt of water, sewer and fire suppression services from the District as set forth in the attached spreadsheet, marked Exhibit A and incorporated herein by this reference; and

WHEREAS, the Developer has paid periodic reimbursements to the District for its administrative, legal, engineering and environmental consulting costs incurred in reviewing the Developer's application for annexation and water and sewer service between February 2004 and May 2007 in the total amount of \$135,000.00, as set forth in Exhibit A attached hereto, but has failed to reimburse the District for all such costs and expenses incurred despite demand for payment having previously been made in writing; and

WHEREAS, pursuant to Government Code Section 61115, the District has provided to Developer a written Notice of Hearing for Filing of Report and Collection of Charges on Property Tax Roll (CA Gov. Code § 61115) on March 5, 2008 delivered by Certified Mail, Return Receipt Requested, notifying Developer, as the property owner, of the property subject to the application for annexation and new water and sewer service, of a public hearing before the Board of Directors of this District on March 24, 2008 at 9:00 a.m. for the purpose of hearing and making determinations on a report by the General Manager regarding charges and delinquencies incurred in connection with the parcels owned by Developer as a result of the Developer's failure to pay those costs and expenses incurred by District in assessing and implementing its request for annexation and receipt of water and sewer services; and

WHEREAS, said Notice of Hearing for Filing of Report and Collection of Charges on Property Tax Roll (CA Gov. Code § 61115), attached hereto, marked Exhibit B, and incorporated herein by this reference, was published in The Union Democrat Newspaper, Sonora, California, as required by Government Code Section 61115 on March 10, 2008 and March 17, 2008. The Proof of Publication is attached hereto, marked Exhibit C, and incorporated herein by this reference; and

WHEREAS, the Board of Directors of District conducted said public hearing on March 24, 2008. At the hearing the Board of Directors received and reviewed a protest letter from the Developer, Thomas C. Dashiell, General Partner, Yosemite Partners, L.P., objecting to the amounts claimed by District to be owed by Developer for unreimbursed costs incurred by District in reviewing the Developer's application for annexation and water and sewer service. There was no personal appearance by a representative of Developer at the public hearing; and

WHEREAS, the Board of Directors of District has conducted and completed the public hearing in accordance with the notice requirements specified in Government Code Section 61115.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the District as follows:

SECTION 1. The following documents are entered into the District administrative record:

1. The District's Spreadsheet dated March 20, 2008 specifying the administrative, legal, engineering, and environmental expenses incurred by the District in reviewing the annexation and water and sewer application for Long Gulch Ranch and the amounts paid by Developer on such account to date attached hereto as Exhibit A;
2. Declaration of Vicki West dated March 24, 2008 regarding the preparation of said spreadsheet;
3. Declaration of David McMurchie, Esq., regarding the expenses incurred by McMurchie Law, District General Counsel, with respect to Developer's application;
4. The protest letter from General Partner of the Developer, Tom Dashiell, dated March 17, 2008;
5. Response letter from District Counsel, David W. McMurchie, to Mr. Dashiell, General Partner of the Developer dated March 20, 2008;

6. Correspondence from Mr. Dashiell, a General Partner of Developer dated November 3, 2003 advising the District of Developer's intention to purchase the property and annex the property to the District for water and sewer service;

7. Correspondence from Mr. Dan Levin, representative of the Developer, dated April 17, 2006, declaring the Developer's understanding and agreement to reimburse the District for all administrative, legal, and engineering costs incurred in reviewing the Developer's application for annexation and receipt of water and sewer service;

8. The report from the General Manager to the Board of Directors regarding the unpaid charges owed by Long Gulch Ranch Development as required by Government Code Section 61115, entitled "Agenda Submittal" dated March 24, 2008.

SECTION 2. After reviewing the record, the Board of Directors of District makes the following findings:

1. That provisions of the District Water Ordinance and Sewer Ordinance provide proper notice to property owners and Developers of their obligation to reimburse the District for all administrative, legal, engineering and environmental consulting costs incurred in reviewing the Developer or property owner's request for annexation and/or new water and/or sewer services; and

2. The District was advised of Developer's intent to annex its property known as Long Gulch Ranch into the District and apply for new water and sewer service by written correspondence dated November 2, 2003; and

3. The District proceeded to incur costs and expenses for administrative, legal, engineering and environmental consulting services required to process the Developer's application for annexation and new water and sewer service. The District received a letter from Developer's representative, Mr. Levin, dated April 17, 2006, stating that the Developer agreed to reimburse the District for all such costs and expenses incurred, in reviewing such application, which was accompanied by a check for \$50,000; and

4. The District has previously received from Developer the following payments as reimbursement of District's administrative, legal, engineering, and environmental costs incurred in reviewing Developer's application as follows: (a) the amount of \$5,000 in February 2004; (b) the amount of \$50,000 in April 2006; (c) the amount of \$50,000 in October 2006; (d) the amount of \$30,000 in May 2007 for a total of \$135,000; and

5. The District's total expenditures including all administrative, legal, engineering, and environmental consulting services required to review

Developer's application for annexation and new water and sewer service as of March 24, 2008 is the amount of \$219,214.30. After credit for payments previously made by Developer, there is a delinquent balance in the amount of \$84,214.30 which represents actual costs incurred and previously paid by the District as specified in Exhibit A; and

6. Written demand to Developer to pay delinquent charges was first made on November 15, 2005 which included a statement to Developer that if delinquent payments were not paid within thirty days, that said delinquent amounts would be subject to a ten percent (10%) penalty and continuing interest charges; and

7. Since the written demand in November 15, 2007, District has received no payments from Developer on account of such delinquent charges.

SECTION 3. Based upon its review of the administrative record and its findings as specified above, the Board of Directors of District hereby orders as follows:

1. That the amount of administrative, legal, engineering and environmental consulting costs incurred by District in reviewing Developer's application for annexation and new water and sewer service which remain unpaid by Developer amount to the sum of \$84,214.30 as of March 24, 2008 which amount is delinquent pursuant to the District's Water and Sewer Ordinances, which amount shall be assessed a ten percent (10%) penalty for delinquency in the amount of \$8,421.43, bring the total principal balance of unpaid delinquent charges owing to the District by Developer to the amount of \$92,635.73, which is all now currently due and payable by Developer; and

2. Of said past due delinquent amount, the amount of \$48,874.16 was the subject of a written demand for payment from District to Developer on November 15, 2007, which became delinquent on December 15, 2007. The amount of \$48,874.16 shall bear interest at the rate of .5% per month from and after December 15, 2007, on the declining balance, until paid; and

3. The balance of the unpaid delinquent charges in the amount of \$43,761.57 shall bear interest at the rate of .5% per month from and after March 24, 2008, on the declining balance, unpaid paid; and

4. A report from the General Manager regarding the amount of the delinquent charges owed by Developer entitled "Agenda Submittal" dated March 24, 2008, is hereby approved, received and filed; and

5. Staff is hereby directed to prepare a Certificate of the delinquent charges, penalties and interest as specified in this Resolution and record said Certificate with the County Recorder of the County of Tuolumne, to

constitute a lien against all real property of Developer Yosemite Club Partners, L.P., owned in Tuolumne County consisting of Tuolumne County Assessor Parcel Nos. 066-160-26, 066-160-39, 066-220-08 and 066-220-40; and

6. The Board hereby determines that the amount of delinquent charges, penalties and interest shall be collected by the Tuolumne County Tax Collector on the Property Tax Roll in the same manner as property taxes with respect to each of the following parcels owned by Developer in Tuolumne County: Parcel Nos. 066-160-26, 066-160-39, 066-220-08 and 066-220-40; and

7. Staff is hereby directed to file with the County Auditor a copy of this Resolution on or before August 10, 2008, whereby the County Auditor shall enter the amount of the delinquent charges, penalties and interest as specified in this Resolution against each of the affected parcels of real property specified herein as they appear on the current assessment roll, and collect the charges, penalties and interest in the same manner as property taxes.


PASSED, APPROVED AND ADOPTED this 24th day of March 2008, by the following roll call vote:

AYES: Allegri, Johnson, Gray, Perreira

NOES: None

ABSTENTIONS: None

ABSENT: Lennen



John L. Gray, Vice President

ATTEST: 
Vicki L. West, Board Secretary

I hereby certify that the above Resolution No. 4-08 was duly introduced, read and adopted by the District at a regular meeting held on March 24, 2008, and that such Resolution has not been modified, amended, or rescinded, and is currently in full force and effect.



Vicki L. West, Board Secretary