

# Appendix A

**Document 6.a: Mountain Springs Water Agreement**  
(Document format may differ slightly from original.)

RECORDED AT REQUEST OF  
AND RETURN TO:  
TUOLUMNE UTILITIES DISTRICT  
18885 Nugget Blvd.  
Sonora, CA 95370

Doc # 2019003754  
Page 1 of 13  
Date: 4/23/2019 10:30A  
Recording Requested By:  
TUOLUMNE UTILITIES DISTRICT  
Filed & Recorded in Official Record  
of COUNTY OF TUOLUMNE  
KAENAN WHITMAN  
COUNTY RECORDER  
Fee: \$0.00

## **AGREEMENT FOR WATER SUPPLY TO THE MOUNTAIN SPRINGS GOLF COURSE**

THIS AGREEMENT is executed on **February 26, 2019**, by and between **TUOLUMNE UTILITIES DISTRICT**, a California special district organized pursuant to Water Code § 30000 et seq., hereinafter called DISTRICT, and the **TUOLUMNE ECONOMIC DEVELOPMENT AUTHORITY, INC.**, a federally chartered corporation wholly owned by the TUOLUMNE BAND OF ME-WUK INDIANS, a federally recognized Indian Tribe, hereinafter called OWNER (collectively called "PARTIES").

### **Recitals**

WHEREAS, OWNER is purchasing the Mountain Springs Golf Course, hereinafter called Golf Course, more particularly described in Exhibit A and by reference hereto, incorporated herein; and

WHEREAS, DISTRICT and OWNER acknowledge that the sale of the Golf Course property to OWNER does not include the transfer of any rights to DISTRICT's raw water supplies because capacity/connection fees were never paid for the sixty (60) miners inch contract for the Golf Course with such fees totaling of up to over one million six hundred thousand dollars (\$1,600,000); and

WHEREAS, DISTRICT collects, treats, and disposes of effluent, hereinafter referred to as Recycled Water, for beneficial uses, which after permitting would include golf course irrigation; and

WHEREAS, OWNER seeks a water supply from DISTRICT, and is willing to use both Recycled Water and raw water; and

WHEREAS, DISTRICT is willing to provide raw water to OWNER, but only if OWNER used Recycled Water as its primary supply; and

WHEREAS, DISTRICT and OWNER agree that a water supply agreement will provide benefits to the PARTIES; and

WHEREAS, the PARTIES intend to enter into this agreement so that the OWNER will have a reliable water supply for the non-potable uses at the Golf Course and that the DISTRICT will have a permanent location for the beneficial use of Recycled Water.

IT IS MUTUALLY AGREED by and between DISTRICT and OWNER as follows:

1. Recitals. The foregoing recitals are incorporated by reference as if fully set forth herein.

2. Water Rights. This Agreement for Water Supply to the Mountain Springs Golf Course, hereafter referred to as "Agreement", confers no right to a water supply, but does confer the ability to receive both Recycled Water and raw water under the same terms and conditions as the applicable class of customer in the District's most current Water Rules and Regulations.

3. Definitions.

a. Recycled Water. Water treated at DISTRICT's Sonora Regional Wastewater Treatment Plant and available for delivery by DISTRICT to OWNER under this Agreement subject to such terms and conditions as may be imposed by Law. Recycled Water does not include raw water as defined below.

b. Raw Water. Untreated or "raw" water delivered through the DISTRICT'S raw water system and made available to OWNER pursuant to DISTRICT's most current Water Rules and Regulations.

c. Points of Delivery.

1.) Recycled Water - the point of delivery shall be a metering device located at the boundary between DISTRICT owned property (APN: 059-070-080) and an easement located on APN: 059-070-075, more specifically identified in Exhibit B as "Recycled Water Point of Delivery."

2.) Raw Water – the point of delivery shall be the metering device located at Phoenix Dam to measure the flow released by the DISTRICT into Sullivan Creek for subsequent withdrawal by the OWNER at a point of diversion to be determined by the OWNER. The current point of diversion is shown for reference only on Exhibit B as "Raw Water Point of Diversion."

d. Golf Course. The Mountain Springs Golf Course owned and operated by OWNER as set forth in Exhibit A "Property Description."

e. Law. Legislation, statutes, regulations and policies of federal, state and local government agencies, including DISTRICT.

f. Force Majeure Event. Flood, earthquake, an act of God and any other event beyond the reasonable control of the Parties; final judgment awarded by any court having jurisdiction, which judgments or injunctive relief have not been sought by any of the Parties; any change in law relating to water rights or water quality requirements for Recycled Water which makes DISTRICT's compliance with this Agreement impracticable; or an emergency event beyond the control of DISTRICT which renders impossible the continued provision of water service to the area to meet basic health and sanitation needs.

g. Liability. Liability, losses, claims, damages, expenses, demands, settlements and costs (including, but not limited to, interest, penalties, attorney, expert witness and consulting fees, and litigation costs).

#### 4. Obligations of OWNER.

a. Minimum Quantity. OWNER shall accept a minimum of **160** acre-feet per calendar year from DISTRICT, based on an estimated historical use of approximately 2.4 acre-feet per acre and a total of 68 acres of fairway and green, hereinafter referred to as "AFY", of recycled water ("Minimum Quantity") for use on the Golf Course. OWNER expressly understands and agrees that the Minimum Quantity is an absolute minimum quantity, and that OWNER's obligation to accept the Minimum Quantity is not dependent on the irrigation needs of the Golf Course, the quality of the Recycled Water, or any other factor whatsoever.

b. Additional Quantity. OWNER shall exercise its best efforts to use up to an additional **160** AFY ("Additional Quantity"), based on an estimated use of 2.0 acre feet per acre on an additional 80 acres of irrigable land, on the Golf Course if requested by DISTRICT. OWNER shall modify the Golf Course and complete any other actions as required to enable OWNER to accept the Additional Quantity within twelve (12) months after notice by DISTRICT.

c. Potential Phasing of Deliveries: The DISTRICT reserves the right to phase in the delivery of the Minimum Quantity as recycled water supplies become available. As Recycled Water supplies become available, the DISTRICT will provide written notice to OWNER of the firm supply. The OWNER shall be obligated in accordance with this Agreement to take delivery of the Minimum Quantity of 160 acre feet listed in section 4(a).

d. Modify Golf Course Facilities and Operations. OWNER, at its sole cost expense shall modify its facilities, including, but not limited to, pumps, motors, electrical controls and equipment, signage, installation of purple pipe and purple meter boxes denoting the use of Recycled Water, storage ponds, landscaped areas and other features of the golf course, in order to utilize Recycled Water for both the Minimum Quantity and Additional Quantity. In addition, OWNER will modify Golf Course operations to comply with any and all conditions subject to the permit requireme the use of Recycled Water.

e. Commitment to Take Recycled Water. OWNER acknowledges that DISTRICT is dependent on OWNER to dispose of Recycled Water, and that serious health and safety consequences, financial, legal, environmental and other consequences may result from OWNER's failure to take Recycled Water as agreed. OWNER acknowledges that DISTRICT is relying on OWNER's Agreement to take the Minimum Quantity and to exercise its best efforts to take the Additional Quantity. Accordingly, OWNER agrees that it shall not: refuse to take at least the Minimum Quantity for any reason except a Force Majeure Event; change the use of the Golf Course, directly or indirectly, that would result in the reduction of the need for Recycled Water; refuse to invest sufficient funds to modify the Golf Course to accept the Additional Quantity; or take any other action which limits OWNER's ability to convey, store or accept Recycled Water or Additional Quantity, for any reason whatsoever. OWNER's failure to take the Minimum Quantity or to exercise its best efforts to facilitate OWNER's acceptance of the Additional Quantity shall be considered a material breach of this Agreement and DISTRICT

may refuse to deliver any water to OWNER. OWNER further agrees maintain at all times the necessary pipelines, pumps, motors and appurtenances to take raw and recycled water up to and including the point of delivery. Such maintenance shall be exclusive of DISTRICT owned and operated facilities. OWNER agrees that in the event that the property is no longer operated as a Golf Course, or otherwise ceases to dispose of Recycled Water under the terms of this agreement, DISTRICT reserves the right to continue to use the property at DISTRICT's sole expense for the disposal of Recycled Water.

f. Compliance with Law. OWNER's use and disposal of all water provided under this Agreement shall at all times comply with Law, including compliance with District's most current Water Rules and Regulations and Wastewater Ordinance, which may be further limited by District, resolutions and policies as may be amended, water moratoriums and water shortage emergencies established under Water Code Section 350 et seq.

g. Access to Facilities. OWNER agrees to provide DISTRICT's personnel unlimited access on a 24-hour per day / 7-day a week basis to OWNER's pumping, storage, transmission, distribution and irrigation facilities, including the controls and equipment used to operate these facilities at the golf course for purposes of monitoring and compliance with this agreement. In addition, OWNER agrees to allow DISTRICT to install such electronic, radio, telemetry and/or other equipment, at DISTRICT's sole discretion and expense, in order to monitor the use of recycled and raw water. Such access shall include, but not be limited to, vehicle access to OWNER's property, building access where equipment is housed and access to equipment and facilities used for pumping, storage, transmission, distribution and irrigation.

h. Recorded Easement. OWNER agrees to have this agreement and a permanent easement on the golf course property for use of Recycled Water recorded with the County of Tuolumne Recorder's Office.

## 5. Obligations of DISTRICT.

a. Recycled Water Discharge Permit. Upon execution of this Agreement, DISTRICT will diligently pursue a State Water Board and/or Regional Water Quality Control Board permit in coordination with OWNER for discharge of Recycled Water on the Golf Course. OWNER and DISTRICT shall each bear their own costs for compliance with the permit, except as otherwise set forth in a separate written agreement. OWNER may also be named on the permit.

b. Recycled Water Quantity. Absent a Force Majeure Event, DISTRICT shall make available to OWNER at the Point of Delivery (1) the Minimum Quantity; and (2) a maximum of the lesser of (a) OWNER's ability to take in addition to the Minimum Quantity, the Additional Quantity under Section 4b. of this Agreement, or (b) the amount of Additional Quantity that DISTRICT allocates for delivery. The DISTRICT shall provide a minimum of 350 gallons per minute (gpm) flow rate at the Recycled Water Point of Delivery and maintain a minimum pressure of 5 psi.

c. Recycled Water Quality. Absent a Force Majeure Event, DISTRICT shall ensure that the Recycled Water meets applicable water quality criteria set forth in Title 22 of the California Code of Regulations for disinfected secondary-23 recycled water, as of the date of the execution of this Agreement. If Title 22 is amended to impose new criteria on Recycled Water,

DISTRICT shall use its best efforts to satisfy that criteria within a reasonable period of time.

d. Recycled Water Facilities. DISTRICT shall be wholly responsible for and bear the entire liability associated with facilities used for treatment and conveyance of Recycled Water up to the Golf Course facilities' Recycled Water Point of Delivery. DISTRICT at its sole discretion will determine the type of conveyance facility to be constructed and the timing for construction of those facilities. DISTRICT shall have no responsibility or liability whatsoever for measurement, conveyance, storage, costs or use facilities at or after the Recycled Water Point of Delivery, or for the Golf Course.

e. Discharge Permit. DISTRICT will work with OWNER to pursue a State Water Board and/or Regional Water Quality Control permit for discharge of Recycled Water on the Golf Course.

#### 6. Raw Water Delivery.

a. DISTRICT will provide up to 60 miner's inches of Raw Water to the Golf Course under the same terms, conditions and costs as that class of customers identified as "Supplemental Water Users" in the District's most current Water Rules and Regulations and may be further limited by District water ordinances, re policies as may be amended, water moratoriums and water shortage emergencies established under Water Code Section 350 et seq. Such Raw Water delivery and use shall be subject to OWNER's obligation to first take Recycled Water under Section 4 of this agreement. If OWNER's need for water exceeds the amount of Recycled Water DISTRICT can make available at that time, then OWNER may use Raw Water.

b. DISTRICT makes no guarantees, warranties, or any promises whatsoever as to availability, quantity or quality of Raw Water. DISTRICT has no responsibility or liability whatsoever for facilities used to store, divert, or convey Raw Water operated by the Raw Water Point of Delivery. OWNER shall be wholly responsible for and bear any and all liability associated with these conveyance facilities.

#### 7. Permitting and Construction of Recycled Water Facilities.

DISTRICT shall coordinate with OWNER on the timing and conditions of the permitting process for the use of Recycled Water on the Golf Course. After receipt of the necessary permits DISTRICT shall notify OWNER at least 6 months in advance of the DISTRICT's intent to commence construction activities associated with bringing a pipeline and other appurtenances to allow for the delivery of Recycled Water. Within six (6) months of completion of the construction work by DISTRICT, OWNER shall complete all construction work to allow for the delivery of Recycled Water on OWNER's property and begin using Recycled Water on the Golf Course.

8. Cost of Recycled Water. There shall be no volumetric cost for Recycled Water for the first 10 years from the first date of full or partial delivery of recycled water. Following the expiration of 10 years, volumetric charges maybe imposed, at the discretion of the DISTRICT, and in accordance with the DISTRICT's then current Wastewater Ordinance. However, in no case shall Recycled Water charges exceed the charges the OWNER would have paid for the same volume of Raw Water.

9. Indemnification/Hold Harmless.

OWNER will indemnify, defend and hold harmless DISTRICT and its directors, officers, employees, agents and authorized volunteers from any liability arising out of or connected with the control, carriage, handling, use, disposal, distribution or quality of water supplies made available to OWNER under this Agreement, or for changes in water quality at or downstream of the Points of Delivery, unless the cause of such liability, change or violation is DISTRICT's willful or negligent action or inaction in making water available before the Points of Delivery, in which case the liability of DISTRICT and DISTRICT's directors, officers, employees, agents and authorized volunteers shall only exist to the extent of such willful or negligent action or inaction.

10. Successors in Interest. The rights and obligations under this Agreement shall accrue to the benefit of and be binding upon the successors and assigns of the parties hereto; however, OWNER shall not assign or transfer (by operation of law or otherwise) its interest or any part thereof without the prior written consent of DISTRICT, which consent shall not be unreasonably withheld.

11. Attorney's Fees. If either party brings any action to enforce this Agreement, or for the breach thereof, the losing party shall pay the prevailing party's costs and reasonable attorneys' fees and costs (including, without limitation, including, but not limited to, interest, penalties, attorney, expert witness and consulting fees, and litigation costs) incurred in connection with the action.

12. Cooperation. The parties shall promptly do all acts and execute and deliver all instruments required or convenient to carry out the purpose and intent thereof.

13. Notices. All notices and demands or other communications under this Agreement shall be in writing and shall be given by one party to the other at the following addresses for each:

OWNER                      President  
   TEDA, Inc.  
   P.O. Box 1300  
   Tuolumne, CA 95379  
   V (209) 928-9391

DISTRICT                      General Manager  
   Tuolumne Utilities District  
   18885 Nugget Blvd.  
   Sonora, CA 95370  
   V (209) 532.5536 / F (209) 536.6485

Any such notice or other communication shall be deemed delivered on the day on which it is mailed by certified mail or, in the case of any such notice or other communications not mailed by certified mail, on the date of actual delivery.

14. Review by Counsel. It is agreed and acknowledged by OWNER and DISTRICT that the

provisions of this Agreement have been arrived at through negotiation and that OWNER and DISTRICT have had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this Agreement.

15. Assignment. Neither party hereto shall assign, delegate, sublet or transfer any interest in or duty under this Agreement without written consent of the other, which such consent shall not be unreasonable withheld, and no assignment shall be of any force or effect whatsoever unless and until the other party shall have so consented.

16. No Waiver of Breach. The waiver by DISTRICT of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.

17. Obligations. All of OWNER's duties and obligations under this Agreement make up the consideration for DISTRICT entering into this Agreement; therefore, if any duty or obligation of OWNER hereunder becomes non-enforceable, DISTRICT may elect to terminate this Agreement. Alternatively, DISTRICT may elect to modify the Agreement to ensure adequate consideration to DISTRICT, subject to written agreement by OWNER.

18. No Third-Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the Parties do not intend to create any rights in third parties.

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflict of laws principles. Any action to enforce this Agreement shall be venued in Tuolumne County.

20. Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to California Code of Civil Procedure §1856. Any other agreement, whether express or implied, is null and void. No amendment or modification of this Agreement shall be effective unless and until such amendment or modification is evidenced by a writing signed by both PARTIES.

21. Time of Essence. Time is and shall be of the essence in this Agreement and of each and every provision contained in this Agreement.

22. No Joint Venture. Nothing in this Agreement will be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation or liability between the PARTIES.

23. Term of Agreement. The term of this Agreement shall be for an initial period of thirty (30) years commencing upon the first delivery and use of recycled water on the golf course, or other lands. This Agreement shall automatically renew for additional periods of ten (10) years unless Owner or District gives the other party written notice one year prior to a renewal. Additionally, because each party is dependent on the other for water (OWNER) and disposal of Recycled Water (DISTRICT), the Agreement

may otherwise be terminated, and/or the obligations hereunder cease only upon mutual written Agreement of the PARTIES, except that DISTRICT may suspend or terminate delivery of treated effluent due to Force Majeure, treatment/conveyance malfunction or failure, or for health or safety reasons.

24. Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.

25. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original instrument, but all of which together shall constitute one and the same instrument.

26. Representations, Warranties and Covenants. DISTRICT and OWNER hereby each represents and warrants to the other that:

a. The execution and delivery of this Agreement, been duly authorized by all necessary action on its part, and it has full power, right and authority to enter into this Agreement and to perform its obligations hereunder;

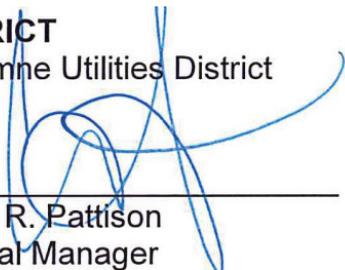
b. Neither the execution and delivery of this Agreement by it, nor the performance by it of any of its obligations under this Agreement, violates any applicable federal, state or local law, whether statutory or common, or regulation, or its charter documents, it any, or constitutes a violation of, or a breach or default under, any agreement or instrument, or judgment or order of any court or governmental authority, to which it is a party or which it or any of its property is subject;

c. This Agreement is a valid and binding obligation of it, enforceable against it in accordance with its terms, except as such enforceability may be limited by equitable principles or by bankruptcy or other laws affecting creditors, rights generally.

27. Recording. DISTRICT shall record this Agreement against the Golf Course property.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first written above,

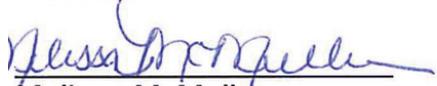
**DISTRICT**  
Tuolumne Utilities District

  
\_\_\_\_\_  
Edwin R. Pattison  
General Manager

**OWNER**  
Tuolumne Economic Development Authority,  
Inc.

  
\_\_\_\_\_  
Rhonda Standage  
President

**ATTEST:**

  
\_\_\_\_\_  
Melissa McMullen  
Clerk to the Board  
Tuolumne Utilities District

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

# CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California )  
County of Tuolumne )

On Feb. 25, 2019 before me, Anne C. Keathley, Notary Public,  
(here insert name and title of the officer)  
personally appeared Rhonda Stordage

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Anne C. Keathley

(Seal)

### OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

#### Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of \_\_\_\_\_ containing \_\_\_\_\_ pages, and dated \_\_\_\_\_.

The signer(s) capacity or authority is/are as:  
 Individual(s)  
 Attorney-in-Fact  
 Corporate Officer(s) \_\_\_\_\_ Title(s)  
  
 Guardian/Conservator  
 Partner - Limited/General  
 Trustee(s)  
 Other: \_\_\_\_\_  
representing: \_\_\_\_\_  
Name(s) of Person(s) or Entity(ies) Signer is Representing

Additional Information	
<b>Method of Signer Identification</b>	
Proved to me on the basis of satisfactory evidence: <input type="checkbox"/> form(s) of identification <input type="checkbox"/> credible witness(es)	
Notarial event is detailed in notary journal on: Page # _____ Entry # _____	
Notary contact: _____	
<b>Other</b>	
<input type="checkbox"/> Additional Signer(s)	<input type="checkbox"/> Signer(s) Thumbprint(s)
<input type="checkbox"/> _____	

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of Tuolumne )

On April 22, 2019 before me, Melissa McMullen, Public Notary,  
*Date Here Insert Name and Title of the Officer*  
personally appeared Edwin R. Pattison  
*Name(s) of Signer(s)*

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Melissa McMullen  
*Signature of Notary Public*

*Place Notary Seal Above*

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

Corporate Officer — Title(s): \_\_\_\_\_

Partner —  Limited  General

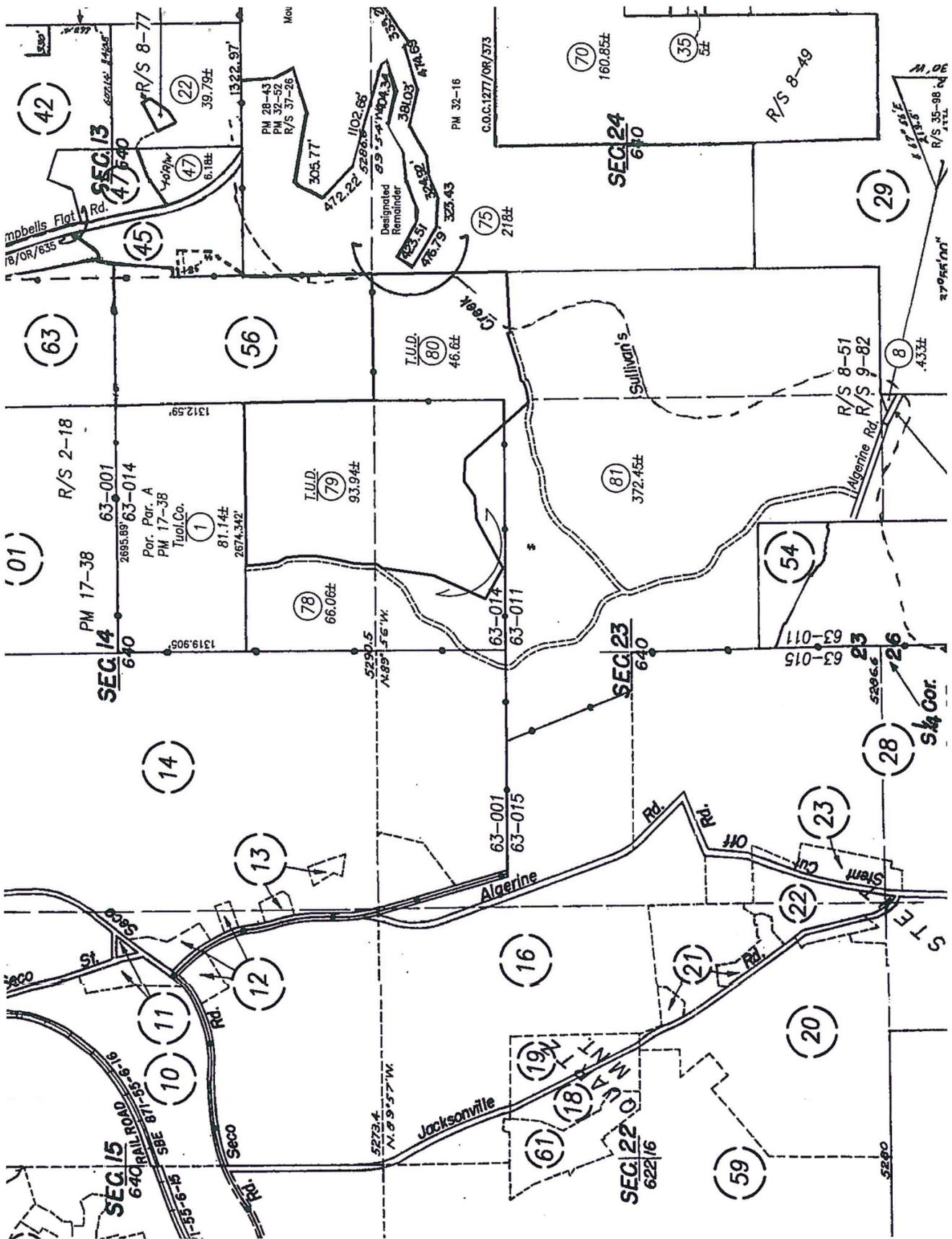
Individual  Attorney in Fact

Trustee  Guardian or Conservator

Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Teledi Golf Course - Exhibit A



Project

