

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is effective as of October 4, 1999, and is entered into by and among the Mountaingate Open Space Maintenance Association, a California nonprofit corporation ("MOSMA"), the Mountaingate Community Association, a California [public benefit nonprofit corporation] ("MCA"), and Castle & Cooke California, Inc., a California corporation ("Castle & Cooke") (collectively the "Parties"). This MOU sets forth the agreement of the Parties relating to the future development of the property currently owned by Castle & Cooke consisting of an approximately 287 acre parcel of undeveloped land and located generally west of Sepulveda Boulevard and south of Mulholland Drive in the Brentwood area of the City of Los Angeles commonly known as "Mountaingate" (the "Property").

1. Castle & Cooke will withdraw from further consideration or processing its Vesting Tentative Tract Map No. 52428, which Castle & Cooke filed with the City of Los Angeles in January 1998, and which, if approved, would allow the construction of 117 new homes at the Property. Instead, Castle & Cooke will file a new vesting tentative tract map for the City to process which will set forth a substantially reduced 29-home development plan for the Property, which reduced density plan will be in all material respects as depicted in Exhibit A hereto (the "Reduced Density Plan").

2. Castle & Cooke will dismiss with prejudice its lawsuit against the City of Los Angeles alleging that the City's approval of the Brentwood-Pacific Palisades Community Plan Update violated the California Environmental Quality Act and applicable land use laws, which lawsuit is captioned Castle & Cooke California, Inc. v. The City of Los Angeles, et al., Los Angeles County Superior Court Case No. BS 052418. Castle & Cooke and MOSMA waive any and all claims for attorneys' fees or costs in that action.

3. In consideration of the foregoing, MOSMA and MCA agree as follows:  
(a) MOSMA and MCA endorse and agree with the development of the Property in accordance with the Reduced Density Plan, provided the City determines it complies with the Brentwood-Pacific Palisades Plan Update. Without limiting the generality of this, MOSMA and MCA agree to the development of twenty-nine units, and to the concept grading plans and quantities, as depicted on the Reduced Density Plan, provided the City determines such Reduced Density Plan complies with the Brentwood-Pacific Palisades Plan Update and other applicable City ordinances, rules, and policies.

(b) MOSMA, MCA, and Castle & Cooke acknowledge and agree that questions, conditions and approvals concerning (i) the proximity of the development to the Canyon 8 landfill and to methane, (ii) the granting of open space credit for the Canyon 8 landfill, (iii) the nature of prior agreements concerning the utilization of the ridge west of the Canyon 8 landfill, (iv) the impact of prior conditions imposed in connection with the Canyon 8 landfill, (v) emergency access, including Castle & Cooke's offer to improve the fire road to Sepulveda to satisfy the requirement of alternative emergency access and the requirements of the Fire Department, and (vi) the use of an EIR with focused areas to be analyzed as scoped by the City (but to include, at a minimum, geology, grading, and methane), shall all be decided by the City of Los

Angeles in accordance and consistent with standard City policy, precedent, and previous approvals which set forth development conditions on and affecting the Property.

(c) The Parties agree to negotiate in good faith towards an agreement on the following points: (i) the maintenance and/or disposition of the open space land now owned by Castle & Cooke, including land previously annexed to MOSMA but still owned by Castle & Cooke; (ii) the annexation by MOSMA or other appropriate associations or sub-associations of each home developed under the Reduced Density Plan, in a manner consistent with prior annexations, such that the homes will obtain all the benefits of, and be subject to all the obligations of, such association members generally, and (iii) reasonable cooperation by MOSMA and MCA with Castle & Cooke in disposing of its open space in a mutually beneficial manner (including maximizing potential tax benefits to Castle & Cooke).

(d) The Parties acknowledge MOSMA and MCA do not have the power or desire to prevent their members from commenting or protesting on any issue related to the proposed development. However, neither MOSMA nor MCA will support, finance, or participate in any effort, including without limitation any litigation, that seeks to prevent Castle & Cooke from developing the property in accordance with the Reduced Density Plan (subject to paragraph 4 below) or which challenges any final decision of the City as provided for in paragraph 3(b)(i) through (vi) above.

(e) Castle & Cooke will allow professional geological and engineering representatives of MOSMA and MCA to access and monitor the progress of the development on milestones agreeable to the Parties, in order to keep MOSMA and MCA informed about geological conditions and to assure that all Parties will continue to work amicably and with mutual cooperation during the anticipated construction phase.

4. MOSMA and MCA agree that Castle & Cooke may proceed with the development and construction of the Property in all material respects as depicted on the Reduced Density Plan, subject to City approval, but reserve the right to object to and challenge under the Subdivision Map Act, CEQA, or otherwise, specific aspects of the project, other than those set forth in paragraph 3(b)(i) through (vi) above, which are not depicted on the Reduced Density Plan. The substance of such a challenge, if through litigation, shall focus only on the areas of safety of persons, geology, safety related to traffic, safety related to methane management (including issues encompassed by the following Initial Study categories: earth, water, risk of upset, and human health), and grading and drainage (which are depicted on the Reduced Density Plan in concept only). Nothing in this agreement shall restrict the right of the Parties, or the members of MOSMA and MCA, to participate in public hearings or proceedings and to provide comment to the City on any aspect of the project prior to final City approval.

5. MOSMA and MCA acknowledge Castle & Cooke's position that it needs to develop the Property in a financially feasible manner. To reduce the possibility of costly litigation which could impact the feasibility of the Project, prior to any party hereto initiating litigation of any City approval or disapproval with respect to the Project, the Parties shall participate in non-binding mediation of said dispute, to be conducted within 25 days of the date of the City's action at issue. The Parties shall utilize a neutral

mediator, if available, and shall share the cost of mediation equally. The Parties' obligation to mediate hereunder shall not be a condition precedent of litigation.

6. In addition to any other available remedies, including seeking specific performance of this MOU, (a) in the event MOSMA or MCA violates any of the requirements of this MOU, Castle & Cooke may, in its discretion, re-commence the processing of any development plan it chooses for the Property, and (b) in the event Castle & Cooke exercises this remedy or violates any of the requirements of this MOU, MOSMA or MCA may oppose the development of the Reduced Density Plan or any other development plan Castle & Cooke chooses for the Property.

7. If all approvals necessary for the development and construction of the Reduced Density Plan are not received after Castle & Cooke has made good faith efforts to obtain such approvals, or if Castle & Cooke determines in good faith that costs or conditions arising or resulting from such approvals make the Reduced Density Plan economically or otherwise infeasible, Castle & Cooke may terminate this MOU. Castle & Cooke shall notify MOSMA and MCA in writing of any such termination, and upon such termination the rights, obligations, and understandings of the Parties under this MOU shall cease. In such event, MOSMA or MCA may oppose any development plan Castle & Cooke chooses for the Property.

8. The MOU binds each Party hereto and its successors and assigns.

9. This MOU shall be governed under the laws of the State of California.

10. Each person signing this MOU represents and warrants that he or she has the authority to sign this MOU on behalf of the party for which he or she is signing, and that his or her signature is sufficient to bind the party for which he or she is signing.

11. All parties were represented by counsel of their own choosing in negotiating this MOU, and therefore this MOU shall not be interpreted for or against any Party by reason of that Party having drafted all or part of this MOU.

12. This MOU is the entire agreement of the Parties concerning its subject matter, and may only be modified or amended by written agreement of the Parties.

13. This MOU may be signed in counterparts or by facsimile, and if so executed will create a single agreement binding on all Parties.

IN WITNESS WHEREOF, the Parties hereto execute this MOU.

Castle & Cooke California, Inc.

By: Bruce Freeman  
Name: Bruce Freeman  
Its: President

By: Kevin R. Shaney  
Name: KEVIN R. SHANEY  
Its: ASSISTANT SECRETARY

Mountaingate Open Space Maintenance Association

By: Robert A. Rieth *sub. to Board*  
Name: ROBERT A. RIETH *approved*  
Its: PRESIDENT *approved 10/13/99*

Mountaingate Community Association

By: Louise L. Frankel *subject to Board*  
Name: LOUISE L. FRANKEL *approved*  
Its: President

*approved*  
*10/13/99*  
*unanimously*