Attachment No. CC 5

Ordinance approving the Development Agreement

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY OF NEWPORT BEACH APPROVING DEVELOPMENT AGREEMENT NO. DA2008-003 FOR NEWPORT BANNING RANCH LOCATED AT 5200 WEST COAST HIGHWAY (PA2008-114)

THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH HEREBY FINDS AS FOLLOWS:

SECTION 1. STATEMENT OF FACTS.

1. An application was filed by Newport Banning Ranch, LLC, with respect to a 401.1-gross-acre property generally located north of West Coast Highway, south of 19th Street, and east of the Santa Ana River requesting approval of a Development Agreement; General Plan Amendment to the Circulation Element; Code Amendment; a Pre-annexation Zone Change; Planned Community Development Plan; Master Development Plan; Tentative Tract Map; Affordable Housing Implementation plan; and Traffic Phasing Ordinance Traffic Study.

2. Consistent with the City's General Plan Land Use Element Policies LU 6.4.2 through LU 6.4.4, the applicant proposes a planned community, which may include the development of up to 1,375 residential dwelling units, a 75-room resort inn and ancillary resort uses, and up to 75,000 square feet of commercial uses, and would provide approximately 51.4 gross acres of parklands, and the preservation of approximately 252.3 gross acres of permanent open space.

3. California Government Code Section 65864 et seq. sets forth the findings and determinations of the California Legislature that a city may enter into a development agreement for the development of real property in order to provide assurance to the applicant for a development project that upon approval of the project, the applicant, among other things, may proceed with the project in accordance with existing policies, rules and regulations. A Development Agreement is required under Newport Beach Municipal Code Section 15.45.020 because the project requires a Zoning Code amendment that includes the development of more than fifty (50) residential units.

4. The subject property is located within the City of Newport Beach Planned Community (PC-25) Zoning District and the County of Orange Zoning Suburban Multi-family Residential (R-4), Local Business Commercial (C-1), Light Industrial (M-1) with Oil Production (O), Sign Restriction (SR), and Floodplain Zone (FP-2) Overlays. The City intends to annex that portion of the subject property currently within the County of Orange.

5. The City of Newport Beach General Plan Land Use Element category is Open Space/Residential Village (OS/RV).

6. The subject property is located within the coastal zone. The Coastal Land Use Plan (CLUP) designates this property as a Deferred Certification Area; therefore, the policies of the CLUP do not govern the development of the project site. In accordance with

Government Code Section 65869, a development agreement shall not be applicable to any development project located in area for which a local coastal program is required to be prepared and certified pursuant to the requirements of the California Coastal Act, Cal. Public Resources Code Section 30000 et seq., unless the California Coastal Commission approves such development agreement by formal commission action.

7. Study sessions were held on January 19, 2012, February 9, 2012, February 23, 2012, and March 8, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California.

8. Public hearings on the project application were held on March 22, 2012, April 19, 2012, and June 21, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of these meetings was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the Planning Commission at this meeting.

9. The Planning Commission held public hearings on March 22, 2012, April 19, 2012 and June 21, 2012. At the hearing on June 21, 2012 with a vote of 6-0, the Planning Commission recommended the City Council:

   a) Certify Environmental Impact Report No. ER2009-002 (SCH No. 2009031061);

   b) Approve General Plan Amendment No. GP2008-008, Code Amendment No. CA2008-004, Planned Community Development Plan No. PC2008-002, Master Development Plan No. MP2008-001, Tentative Tract Map No. NT2008-003, Affordable Housing Implementation Plan No. AH2008-001, and Traffic Study No. TS2008-002 and recommending to the City Council the adoption of a Statement of Overriding Considerations; and

   c) Approve the Development Agreement concerning Newport Banning Ranch Property (DA2008-003).

4. The City Council public hearing was held on July 23, 2012, in the City Hall Council Chambers, 3300 Newport Boulevard, Newport Beach, California. A notice of time, place and purpose of the meeting was given in accordance with the Newport Beach Municipal Code. Evidence, both written and oral, was presented to, and considered by, the City Council at this meeting.

SECTION 2. FINDINGS

1. In accordance with Municipal Code Section 15.45.020.A.2.a, a development agreement is required in conjunction with the City approval because the project requires a Zoning Code amendment that includes the development of more than fifty (50) residential units.

2. The Development Agreement includes all the mandatory elements for consideration.

a. The Development Agreement specifies a twenty-five (25) year term; and

b. The Development Agreement specifies a development plan that includes permitted uses of the property, the density or intensity of the uses, the maximum height and size of proposed buildings, provisions for reservation or dedication of land for public purposes, and conditions, terms, restrictions, and requirements for subsequent discretionary actions; and

c. The Development Agreement provides specified times for the construction and completion of certain improvements on the North Community Park, Central Community Park, and the segment of North Bluff Road between 17th Street and 19th Street.

3. The Development Agreement includes public benefits that are appropriate to support conveying the vested development rights.

   a. The Development Agreement provides for the payment of a public benefit fee in the sum of thirty thousand, nine hundred and nine dollars ($30,909.00) per residential dwelling unit developed as part of the project, including an annual adjustment to the public benefit fee.

   b. The Development Agreement provides for park land dedication and improvements in excess of the Quimby Act Requirement.

4. Consistent with Government Code Section 65867.5, the Development Agreement provides vested rights and public benefits for the proposed development, which is consistent with the General Plan. Newport Banning Ranch Final Environmental Impact Report (SCH No. 2009031061) included a consistency analysis that concluded that proposed project is consistent with the goals and policies of the General Plan.

5. City General Plan Land Use Policy LU 6.4.1 provides that "If not acquired for open space within a time period and pursuant to terms agreed to by the City and property owner, the site may be developed as a residential village, containing a mix of housing types, limited supporting retail, visitor accommodations, school, and active community parklands with a majority of the property preserved as open space." By approving this Development Agreement and vesting the applicant's rights to develop the proposed Project pursuant to the terms of the Development Agreement, the City hereby finds and determines that the Property has not been acquired for open space within the time periods established by the City, that approval of the Project and this Development Agreement is consistent with LU 6.3.1 and LU 6.3.2, in that acquisition for open space has not occurred, and that the land uses described in LU 6.4.1 shall be approved.

6. The Newport Banning Ranch Final Environmental Impact Report (SCH No. 2009031061) was prepared for the Project in compliance with the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and City Council Policy K-3. By Resolution No. 2012-xxxx, the City Council, having final approval

authority over the Project, adopted and certified as complete and adequate the Newport Banning Ranch Final Environmental Impact Report (SCH No. 2009031061), and adopted "Findings and Facts in Support of Findings for the Newport Banning Ranch Project Final Environmental Impact Report, Newport Beach, California" ("CEQA Findings") and a Statement of Overriding Considerations, which CEQA Findings and Statement of Overriding Considerations are hereby adopted and incorporated herein by reference.

SECTION 4. DECISION.

THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH DOES HEREBY ORDAIN AS FOLLOWS:

1. The Development Agreement attached hereto as Exhibit "A" and incorporated by reference, shall be adopted.

2. The applicability of the Development Agreement to the Project is subject to compliance with Government Code Section 65869(2).

3. If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase hereof, irrespective of the fact that anyone or more sections, subsections, sentences, clauses and phrases be declared unconstitutional.

4. This action shall become final and effective thirty days after the adoption of this Ordinance.

5. The Mayor shall sign and the City Clerk shall attest to the passage of this Ordinance. This Ordinance shall be published once in the official newspaper of the City, and the same shall become effective thirty (30) days after the date of its adoption.

This Ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 23rd of July, 2012, and adopted on the 14th day of August, 2012, by the following vote, to wit:

AYES, COUNCIL MEMBERS_____

NOES, COUNCIL MEMBERS_____

ABSENT, COUNCIL MEMBERS_____

MAYOR

_____

ATTEST:

_____
Leilani Brown, City Clerk

APPROVED AS TO FORM,
OFFICE OF CITY ATTORNEY:

_____ 7/18/12
Aaron Harp, City Attorney
for the City of Newport Beach

CC 4 Exhibit A

Development Agreement No. DA2008-003

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92663-3884
Attn: City Clerk

(Space Above This Line Is for Recorder's Use Only)

This Agreement is recorded at the request and for the benefit of the City of Newport Beach and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

DEVELOPMENT AGREEMENT NO. DA2008-003

by and between

CITY OF NEWPORT BEACH

and

AERA ENERGY LLC AND CHEROKEE NEWPORT BEACH, LLC

(CONCERNING NEWPORT BANNING RANCH PROPERTY)

DEVELOPMENT AGREEMENT

(Pursuant to California Government Code Sections 65864-65869.5)

This DEVELOPMENT AGREEMENT (the "Agreement") is dated for reference purposes as of the __ day of _____, 2012 (the "Agreement Date"), and is being entered into by and between the CITY OF NEWPORT BEACH ("City"), and AERA ENERGY, LLC and CHEROKEE NEWPORT BEACH, LLC (collectively, "Landowner"). City and Landowner are sometimes collectively referred to in this Agreement as the "Parties" and individually as a "Party."

RECITALS

A. The two entities comprising Landowner are the fee owners of that certain real property consisting of approximately four hundred one (401) gross acres of land area commonly referred to as the Newport Banning Ranch (the "Property"). Approximately 40 acres of the Property is located within the incorporated boundary of the City of Newport Beach and the remainder of the Property (the "County Property") is located within unincorporated Orange County, in City's sphere of influence, as approved by the Local Agency Formation Commission of Orange County. The Property is bounded generally on the north by Talbert Nature Preserve/Regional Park in the City of Costa Mesa and residential development in the City of Newport Beach; on the south by West Coast Highway and residential development in the City of Newport Beach; on the east by residential, light industrial, and office development in the cities of Costa Mesa and Newport Beach; and on the west by the United States Army Corps of Engineers wetlands restoration areas and the Santa Ana River. The entire Property is within the Coastal Zone as established by the California Coastal Act. The Property is more particularly described in the legal description attached hereto as Exhibit A and is depicted on the site map attached hereto as Exhibit B. The County Property is depicted on the site map attached hereto as Exhibit B-1.

B. In order to encourage investment in, and commitment to, comprehensive planning and public facilities financing, strengthen the public planning process and encourage private implementation of the local general plan, provide certainty in the approval of projects in order to avoid waste of time and resources, and reduce the economic costs of development by providing assurance to property owners that they may proceed with projects consistent with existing land use policies, rules, and regulations, the California Legislature adopted California Government Code sections 65864-65869.5 (the "Development Agreement Statute"). The Development Agreement Statute authorizes a city to enter into development agreements with persons or entities having a legal or equitable interest in real property located within the city's jurisdiction or within its sphere of influence, provided that a development agreement may not become operative as to property located in the city's sphere of influence until annexation proceedings annexing the property to the city are completed within the period of time specified by the agreement.

C. On March 13, 2007, the City Council adopted Ordinance No. 2007-6, entitled "Ordinance Amending Chapter 15.45 of City of Newport Beach Municipal Code Regarding Development Agreements" (the "Development Agreement Ordinance"). This Agreement is consistent with the Development Agreement Ordinance.

D. As detailed in Section 3 of this Agreement, Landowner has agreed to provide the following significant public benefits (collectively, the "Public Benefits") as consideration for this Agreement, which benefits are in excess of the obligations and requirements that City would be entitled to unilaterally impose on Landowner as a condition of development consistent with applicable provisions of law:

- Comprehensive oil field abandonment and remediation of the Property at an estimated cost of approximately Thirty Million Dollars ($30,000,000).

- Provision and perpetual protection of natural open space at no cost to the public.

- Capture and treatment of offsite surface water drainage in accordance with Best Management Practices, resulting in significant water quality benefits to the Property and downstream properties, including the Semeniuk Slough.

- Dedication of the North Community Park and the Central Community Park, totaling approximately 21.8 gross acres and 18 net acres of land area, and the improvement of those public parks in accordance with Exhibits 3-6a and 3-6b, respectively, of the approved Master Development Plan for the Project (the "Park Conceptual Design Plans"), which Public Benefits are well in excess of the requirements of California law (e.g., Government Code Section 66477 [the so-called "Quimby Act"]) and implementing City ordinances and regulations.

- Improvement of private open space and recreational amenities in the Project that will be open and available for public use in accordance with the approved Master Development Plan, including (i) the approximately 5.0 gross/3.7 net acre South Community Park, (ii) the approximately 24.6 gross/20.4 net acre Bluff Park and Interpretive Parks, (iii) a trail system through open space areas within the Property, and (iv), if the resort inn is constructed and subject to approvals required from other public agencies, including the California Department of Transportation and the California Coastal Commission, a coastal public access to be provided via a pedestrian and bicycle bridge from the Property across West Coast Highway to the beach.

- Payment to City of a Public Benefit Fee in the sum of Thirty Thousand Nine Hundred Nine Dollars ($30,909.00) for each residential unit constructed on the Property.

- Construction/installation of public street/traffic improvements in excess of the Project's obligation for payment of "fair share" traffic fees.

E. This Agreement is consistent with the City of Newport Beach General Plan, as the same is being amended on or before the Agreement Date. The General Plan was adopted by the City Council of City on July 25, 2006, and the land use plan in the General Plan was approved by City's voters on November 6, 2006. The General Plan land use designation for the Property is OS(RV), Open Space/Residential Village, which establishes Open Space as the Primary Use and Residential Village as the Alternative Use for the Property. In particular, the General Plan provides that "if not acquired for open space within a time period and pursuant to terms agreed to

by the City and property owner, the site may be developed as a residential village containing a mix of housing types, limited supporting retail, visitor accommodations, school, and active community parklands, with a majority of the property preserved as open space. The property owner may pursue entitlement and permits for a residential village during the time allowed for acquisition as open space." Additionally, General Plan Land Use Policy 6.5.2 anticipates that the Property will "[a]ccommodate a community park of 20 to 30 acres that contains active playfields that may be lighted and is of sufficient acreage to serve adjoining neighborhoods and residents of Banning Ranch, if developed." The General Plan identifies the maximum intensity of development allowed under the Property under the Alternative Use as one thousand three hundred seventy-five (1,375) residential dwelling units, seventy-five thousand (75,000) square feet of retail commercial uses oriented to serve the needs of local and nearby residents, and seventy-five (75) hotel rooms and associated ancillary uses in a small boutique hotel. The development project (referred to herein as the "Project") Landowner will be entitled to develop during the Term of this Agreement is consistent with the Alternative Use for the Property described in the General Plan. By its approval of this Agreement, the City Council of City finds and determines that City has no source of funds to acquire the Property for open space purposes, that City has no ability to negotiate with Landowner to acquire the Property for its fair market value, that the Primary Use of the Property described in the General Plan is infeasible, and, accordingly, that the Alternative Use of the Property is the appropriate and legally authorized use. Finally, subject to completion of City's planning and public hearing process and the approval of the Orange County Transportation Authority, the Parties anticipate the Circulation Element of City's General Plan will be amended on or before the Effective Date to delete the westerly extension of 15th Street to West Coast Highway through the Property and to make certain other revisions to the previously planned master plan circulation system within the Property such that the Project as approved will be consistent with the Circulation Element of the General Plan as so amended.

F. In recognition of the significant public benefits that this Agreement provides, the City Council finds and determines by its approval of this Agreement that this Agreement: (i) is consistent with the City of Newport Beach General Plan as of the Agreement Date; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City's police power; (iv) is consistent and has been approved consistent with the Final Environmental Impact Report for the City of Newport Beach General Plan 2006 Update (State Clearinghouse No. 2006011119), the Final Environmental Impact Report for the Newport Banning Ranch Project (the "Project EIR") that has been certified or is being certified for approval by the City Council of City on or before the Agreement Date, and all findings, conditions of approval, and mitigation measures (including the mitigation monitoring program) relating thereto; and (v) is consistent and has been approved consistent with provisions of California Government Code Section 65867 and City of Newport Beach Municipal Code Chapter 15.45.

G. On June 21, 2012, City's Planning Commission held a public hearing on this Agreement, made findings and determinations with respect to this Agreement, and recommended to the City Council that the City Council approve this Agreement.

H. On _____, 2012, the City Council also held a public hearing on this Agreement and considered the Planning Commission's recommendations and the testimony and information submitted by City staff, Landowner, and members of the public. On

_____, 2012, consistent with applicable provisions of the Development Agreement Statute and Development Agreement Ordinance, the City Council adopted its Ordinance No. ____ (the "Adopting Ordinance"), finding this Agreement to be consistent with the City of Newport Beach General Plan and approving this Agreement.

AGREEMENT

NOW, THEREFORE, City and Landowner agree as follows:

1. Definitions.

In addition to any terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the meanings set forth below:

"Action" shall have the meaning ascribed to that term in Section 8.10 of this Agreement.

"Adopting Ordinance" shall mean City Council Ordinance No. ____ approving and adopting this Agreement.

"Agreement" shall mean this Development Agreement No. DA2008-003, as the same may be amended from time to time.

"Agreement Date" shall mean the date first written above, which date is the date the City Council adopted the Adopting Ordinance.

"CDP" shall mean a coastal development permit issued by the California Coastal Commission pursuant to California Public Resources Code Section 30600 *et seq.* and the implementing regulations promulgated by the Commission.

"CEQA" shall mean the California Environmental Quality Act (California Public Resources Code sections 21000-21177) and the implementing regulations promulgated thereunder by the Secretary for Resources (California Code of Regulations, Title 14, Section 15000 *et seq.*), as the same may be amended from time to time.

"City" shall mean the City of Newport Beach, a California charter city, and any successor or assignee of the rights and obligations of the City of Newport Beach hereunder.

"City Council" shall mean the governing body of City.

"City's Affiliated Parties" shall have the meaning ascribed to that term in Section 10.1 of this Agreement.

"Claim" shall have the meaning ascribed to that term in Section 10.1 of this Agreement.

"County Property" shall mean that portion of the Property that as of the Agreement Date is located within unincorporated territory of the County of Orange and within City's sphere of influence.

"CPI Index" shall mean the Consumer Price Index published from time to time by the United States Department of Labor for all urban consumers (all items) for the smallest

geographic area that includes the City or, if such index is discontinued, such other similar index as may be publicly available that is selected by City in its reasonable discretion.

"Cure Period" shall have the meaning ascribed to that term in Section 8.1 of this Agreement.

"Default" shall have the meaning ascribed to that term in Section 8.1 of this Agreement.

"Develop" or "Development" shall mean to improve or the improvement of the Property for the purpose of completing the structures, improvements, and facilities comprising the Project, including but not limited to: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of all of the private improvements and facilities comprising the Project; the preservation or restoration, as required of natural and man-made or altered open space areas; and the installation of landscaping. The terms "Develop" and "Development," as used herein, do not include the maintenance, repair, reconstruction, replacement, or redevelopment of any structure, improvement, or facility after the initial construction and completion thereof.

"Development Agreement Ordinance" shall mean Chapter 15.45 of the City of Newport Beach Municipal Code.

"Development Agreement Statute" shall mean California Government Code Sections 65864-65869.5, inclusive.

"Development Exactions" shall mean any requirement of City in connection with or pursuant to any ordinance, resolution, rule, or official policy for the dedication of land, the construction or installation of any public improvement or facility, or the payment of any fee or charge in order to lessen, offset, mitigate, or compensate for the impacts of Development of the Project on the environment or other public interests.

"Development Plan" shall mean all of the land use entitlements, approvals, and permits approved by the City Council for the Project on or before the Agreement Date, as the same may be amended from time to time consistent with this Agreement. Such land use entitlements, approvals, and permits include, without limitation, the following: (i) General Plan Amendment No. GP2008-008 (amending the Circulation Element of the City's General Plan as referred to in Recital E of this Agreement); (ii) Zoning Code Amendment No. CA2008-004 (removing that portion of the Property previously located within the PC-25 zone and changing the zoning for this area to PC-57, approving a pre-annexation zone change for the portion of the Property located within the unincorporated County territory to PC-57, and approving an amendment to Section 20.65 of the Zoning Code to allow for a maximum height limit of 60 feet (as calculated in accordance with applicable provisions of City's Municipal Code) in the Mixed-Use/Residential land use area of the Project site); (iii) Planned Community Development Plan No. PC2008-002 (approving the Newport Banning Ranch Planned Community Development Plan that will serve as the zoning and development regulations for the Property (as to the portion of the Property currently within City's sphere of influence, upon the effective date of the annexation of said portion of the Property into the City)); (iv) the Newport Banning Ranch Master Development Plan No. MP2008-001 (which implements the NBR-PC requirements for the Property by establishing design criteria for each land use component proposed for

development within the NBR-PC and provides a sufficient level of detail, as determined by City, to guide the review of subsequent development approvals, including construction-level permits, as required by the NBR-PC); (v) Tentative Tract Map No. NT2008-003 (subdividing the Property for development purposes and establishing lots for public dedication or conveyance, easements for trails and public utilities, lots for residential development and conveyance to merchant builders and/or homebuyers, and lots for financing and conveyance that may be either developed on a single family or residential condominium basis or for hotel and commercial uses); (vi) Affordable Housing Implementation Plan ("AHIP") No. AH2008-001 (which, if complied with, satisfies the Project's requirements for provision of affordable housing); (vii) Traffic Study No. TS2008-002 for the Project; (viii) the Project EIR; and (ix) all conditions of approval and all mitigation measures approved for the Project on or before the Agreement Date, including without limitation all of the provisions in the adopted Mitigation Monitoring and Reporting Program approved for the Project pursuant to the Project EIR and applicable provisions of CEQA.

"Development Regulations" shall mean the following regulations as they are in effect as of the Agreement Date and to the extent they govern or regulate the development of the Property, but excluding any amendment or modification to the Development Regulations adopted, approved, or imposed after the Agreement Date that impairs or restricts Landowner's rights set forth in this Agreement, unless such amendment or modification is expressly authorized by this Agreement or is agreed to by Landowner in writing: the General Plan; the Development Plan; and, to the extent not expressly superseded by the Development Plan or this Agreement, all other land use and subdivision regulations governing the permitted uses, density and intensity of use, design, improvement, and construction standards and specifications, procedures for obtaining required City permits and approvals for development, and similar matters that may apply to development of the Project on the Property during the Term of this Agreement that are set forth in Title 15 of the Municipal Code (buildings and construction), Title 19 of the Municipal Code (subdivisions), and Title 20 of the Municipal Code (planning and zoning), but specifically excluding all other sections of the Municipal Code, including without limitation Title 5 of the Municipal Code (business licenses and regulations). Notwithstanding the foregoing, the term "Development Regulations," as used herein, does not include any City ordinance, resolution, code, rule, regulation or official policy governing any of the following: (i) the conduct of businesses, professions, and occupations; (ii) taxes and assessments (provided that this exclusion of taxes and assessments from the definition of Development Regulations shall not be interpreted to authorize City to impose Development Exactions on the Property in excess of the amount of such Development Exactions that would be authorized by applicable law in the absence of this Agreement and nothing in this Agreement is intended to or shall be interpreted to constitute a waiver by Landowner of its right to protest or contest the imposition of taxes or assessments against the Property that are not in effect as of the Agreement Date); (iii) the control and abatement of nuisances; (iv) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; or (v) the exercise of the power of eminent domain.

"Effective Date" shall mean the latest of the following dates, as applicable: (i) the date that is thirty (30) days after the Agreement Date; (ii) if a referendum concerning the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date is timely qualified for the ballot and a referendum election is held concerning the Adopting Ordinance or any of such Development Regulations, the date on which the referendum is

certified resulting in upholding and approving the Adopting Ordinance and such Development Regulations and becomes effective, if applicable; (iii) if a lawsuit is timely filed challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations approved on or before the Agreement Date, the date on which said challenge is finally resolved in favor of the validity or legality of the Adopting Ordinance, this Agreement, and/or the applicable Development Regulations, whether such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of any time required to appeal an involuntary dismissal), or binding written settlement agreement; (iv) the date on which annexation into the City of the portion of the Property currently located in City's sphere of influence becomes effective, and subject to the Parties' understanding and agreement that if Landowner elects to defer annexation into the City of all or a portion of the Oil Well Operational Area, as permitted by Section 2.5 of this Agreement, the condition in this clause (iv) will be satisfied on a phased basis, with the condition in this clause (iv) being deemed satisfied as to the portion of the Property initially annexed into the City (together with the portion of the Property already located in the City) on the date the first annexation of the portion of the County Property, excluding the Oil Well Operational Area (or portion thereof) becomes effective, and the condition in this clause (iv) being deemed satisfied as to the Oil Well Operational Area (or portion thereof) as to which annexation is so deferred on such later date, if at all, that the annexation of such area into the City becomes effective; (v) the date on which both of the following have occurred: (A) the City Council of City has amended the Circulation Element of City's General Plan to delete the most westerly extension of 15th Street to West Coast Highway (at the southwest corner of the Property) through the Property and to make certain other revisions to the previously planned master plan circulation system within the Property, such that the Project as approved is consistent with the Circulation Element of the General Plan as so amended (with the understanding that City reserves its full legislative discretion with respect thereto); and (B) the Orange County Transportation Authority has approved such amendment or amendments to the Orange County Master Plan of Arterial Highways ("MPAH") necessary to make the Development Plan and Development Regulations consistent therewith; and (vi) the date on which the California Coastal Commission approves a CDP for the Project consistent with the Development Plan and Development Regulations. Promptly after the Effective Date occurs, the Parties agree to cooperate in causing an appropriate instrument to be executed and recorded against the Property (or the portion thereof as to which the Effective Date has occurred consistent with clause (iv) in the immediately preceding sentence) memorializing the Effective Date.

"Environmental Laws" means all federal, state, regional, county, municipal, and local laws, statutes, ordinances, rules, and regulations which are in effect as of the Agreement Date, and all federal, state, regional, county, municipal, and local laws, statutes, ordinances, rules, and regulations which may hereafter be enacted and which apply to the Property or any part thereof, pertaining to the use, generation, storage, disposal, release, treatment, or removal of any Hazardous Substances, including without limitation the following: the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, et seq., as amended ("CERCLA"); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, et seq., as amended ("RCRA"); the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Sections 11001 et seq., as amended; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., as amended; the Clean Air Act, 42 U.S.C. Sections 7401 et seq., as amended; the Clean Water Act, 33 U.S.C. Section 1251, et seq., as amended; the Toxic

Substances Control Act, 15 U.S.C. Sections 2601 et seq., as amended; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136 et seq., as amended; the Federal Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq., as amended; the Federal Radon and Indoor Air Quality Research Act, 42 U.S.C. Sections 7401 et seq., as amended; the Occupational Safety and Health Act, 29 U.S.C. Sections 651 et seq., as amended; and California Health and Safety Code Section 25100, et seq.

"Fire Station No. 2 Fee" shall have the meaning ascribed to that term in Section 3.5 of this Agreement.

"General Plan" shall mean City's 2006 General Plan adopted by the City Council on July 25, 2006, by Resolution No. 2006-76, and approved by City's voters in the November 7, 2006, general municipal election, as amended by General Plan Amendment No. __ included within the Development Plan, and excluding any amendment to City's General Plan adopted or approved after the Agreement Date that impairs or restricts Landowner's rights set forth in this Agreement, unless such amendment is expressly authorized by this Agreement, is authorized by Sections 8 or 9, or is agreed to in writing by Landowner.

"Hazardous Substances" shall mean any toxic substance or waste, pollutant, hazardous substance or waste, contaminant, special waste, industrial substance or waste, petroleum or petroleum-derived substance or waste, or any toxic or hazardous constituent or additive to or breakdown component from any such substance or waste, including without limitation any substance, waste, or material regulated under or defined as "hazardous" or "toxic" under any Environmental Law.

"Landowner" shall mean Aera Energy LLC, a California limited liability company, as to an undivided one-half (1/2) interest in the Property, and Cherokee Newport Beach, LLC, a Delaware limited liability company, as to an individed one-half (1/2) interest in the Property, and any successor or assignee to all or any portion of the right, title, and interest of Aera Energy LLC and Cherokee Newport Beach, LLC, in and to ownership of all or a portion of the Property. In this regard, Landowner has represented to City that Landowner previously granted to Newport Banning Ranch Limited Liability Company, a California limited liability company in which Aera Energy LLC and Cherokee Newport Beach, LLC, are the sole voting members ("NBR"), the exclusive right and option to purchase the Property from Landowner pursuant to that certain Restated and Amended Purchase Option Agreement dated as of December 20, 2005, and City acknowledges that if NBR acquires fee title to the Property pursuant to said agreement or otherwise NBR will at that time become the "Landowner" as referred to herein.

"Mortgage" shall mean a mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance in which the Property, or a part or interest in the Property, is pledged as security and contracted for in good faith and for fair value.

"Mortgagee" shall mean the holder of a beneficial interest under a Mortgage or any successor or assignee of the Mortgagee.

"Notice of Default" shall have the meaning ascribed to that term in Section 8.1 of this Agreement.

"Oil Well Operational Area" shall mean the approximately twenty (20) acre portion of the Property upon which oil drilling operations are permitted in accordance with the City Charter. The Oil Well Operational Area is depicted in Exhibit A to the City Charter.

"Park Conceptual Design Plans" shall have the meaning ascribed to that term in Recital D of this Agreement.

"Party" or "Parties" shall mean either City or Landowner or both, as determined by the context.

"Permitted Transferee" shall mean any person, partnership, joint venture, corporation, or other business entity to whom Landowner sells, transfers, or assigns all or any portion of the Property pursuant to the terms set forth in Section 11 of this Agreement. In the event of a Transfer to a Permitted Transferee, all references in this Agreement to "Landowner" shall be deemed to refer to the Permitted Transferee with respect to the Property or the portion thereof so Transferred.

"Project" shall mean all on-site and off-site improvements that Landowner is authorized and/or required to construct with respect to each parcel of the Property, as provided in this Agreement and the Development Regulations, as the same may be modified or amended from time to time consistent with this Agreement and applicable law.

"Project EIR" shall mean Final Environmental Impact Report SCH No. 2009031061 prepared and certified for the Project on or before the Agreement Date.

"Property" is described in Exhibit A and depicted on Exhibit B.

"Public Benefit Fee" shall have the meaning ascribed to that term in Section 3.1 of this Agreement.

"Public Financing" shall mean the capital financing raised through the issuance of bonds or other public financing mechanisms.

"Subsequent Development Approvals" shall mean all discretionary development and building approvals that Landowner is required to obtain to Develop the Project on and with respect to the Property after the Agreement Date consistent with the Development Regulations and this Agreement, with the understanding that except as expressly set forth herein City shall not have the right subsequent to the Agreement Date and during the Term of this Agreement to adopt or impose requirements for any such Subsequent Development Approvals that do not exist as of the Agreement Date.

"Term" shall have the meaning ascribed to that term in Section 2.4 of this Agreement.

"Termination Date" and "Lot Termination Date" shall have the meaning ascribed to that term in Section 2.4 of this Agreement.

"Transfer" shall have the meaning ascribed to that term in Section 11 of this Agreement.

2. General Provisions.

2.1 Plan Consistency, Zoning Implementation.

This Agreement and the Development Regulations applicable to the Property will cause City's zoning and other land use regulations for the Property to be consistent with the General Plan.

2.2 Binding Effect of Agreement.

From and after the Effective Date and for the Term of this Agreement, the Property (or the portion of the Property for which the Effective Date has occurred pursuant to this Agreement) shall be subject to this Agreement and Development of the Property is authorized and shall be carried out in accordance with the terms of this Agreement.

2.3 Landowner Representations and Warranties Regarding Ownership of the Property and Related Matters Pertaining to this Agreement.

Landowner and each person executing this Agreement on behalf of Landowner hereby represents and warrants to City as follows: (i) that Landowner is the owner of the fee simple title to the Property; (ii) if Landowner or any co-owner comprising Landowner is a legal entity that such entity is duly formed and existing and is authorized to do business in the State of California; (iii) if Landowner or any co-owner comprising Landowner is a natural person that such natural person has the legal right and capacity to execute this Agreement; (iv) that all actions required to be taken by all persons and entities comprising Landowner to enter into this Agreement have been taken and that Landowner has the legal authority to enter into this Agreement; (v) that Landowner's entering into and performing its obligations set forth in this Agreement will not result in a violation of any obligation, contractual or otherwise, that Landowner or any person or entity comprising Landowner has to any third party; (vi) that neither Landowner nor any co-owner comprising Landowner is the subject of any voluntary or involuntary petition in bankruptcy, nor is Landowner or any such co-owner insolvent or unable to pay its debts and perform its obligations when due; (vii) that all persons executing this Agreement on behalf of Landowner are authorized to do so and their signatures on this Agreement are sufficient to make this Agreement a legally binding obligation of Landowner; and (viii) that Landowner has no actual knowledge of any pending or threatened claims of any person or entity affecting the validity of any of the representations and warranties set forth in clauses (i)-(vii), inclusive, or affecting Landowner's authority or ability to enter into or perform any of its obligations set forth in this Agreement.

2.4 Term.

The term of this Agreement (the "Term") shall commence on the Effective Date and shall terminate on the "Termination Date."

Notwithstanding any other provision set forth in this Agreement to the contrary, if (i) the Effective Date does not occur as to the entire Property, excepting only all or part of the Oil Well Operational Area, within sixty (60) months after the Agreement Date or (ii) either Party reasonably determines that the Effective Date of this Agreement will not occur as to the entire Property, excepting only all or part of the Oil Well Operational Area, because one or more of the

conditions precedent to the occurrence of the Effective Date have been disapproved by the governmental agency having jurisdiction with respect thereto, or (iii) the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date for the Project has/have been disapproved by City's voters at a referendum election or (iv) a final non-appealable judgment is entered in a judicial action challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations for the Project approved on or before the Agreement Date such that this Agreement and/or any of such Development Regulations is/are invalid and unenforceable in whole or in such a substantial part that the judgment substantially impairs such Party's rights or substantially increases its obligations, costs, or risks hereunder or thereunder, then such Party, in its sole and absolute discretion, shall have the right to terminate this Agreement upon delivery of a written notice of termination to the other Party, in which event neither Party shall have any further rights or obligations hereunder except that Landowner's indemnity obligations set forth in Article 10 shall remain in full force and effect and shall be enforceable. Such termination shall not affect the validity or enforceability of those Development Regulations otherwise applicable to the Property or portions thereof that would survive independent of this Agreement.

If the Effective Date timely occurs as to the entire Property, excepting only all or a portion of the Oil Well Operational Area, the Effective Date of this Agreement as to the Oil Well Operational Area (or portion thereof) may be deferred until the annexation of such area into the City becomes effective, which may occur at any time prior to the Termination Date.

The Termination Date (as to the entire Property, including the Oil Well Operational Area) shall be the earliest of the following dates: (i) the twenty-fifth (25^{th}) anniversary of the Agreement Date, as said date may be extended in accordance with Section 5 of this Agreement; (ii) such earlier date that this Agreement may be terminated in accordance with Section 3.2, Articles 5, 7, and/or Section 8.3 of this Agreement and/or Sections 65865.1 and/or 65868 of the Development Agreement Statute, as the same may be applicable; (iii) as to any separate legal lot within the Property (but not as to the balance of the Property or the portion thereof that remains subject to this Agreement at such time), upon the "Lot Termination Date" (defined below); or (iv) completion of the Project in accordance with the terms of this Agreement, including Landowner's complete satisfaction, performance, and payment, as applicable, of all Development Exactions, the issuance of all required final occupancy permits, and acceptance by City or applicable public agency(ies) or private entity(ies) of all required offers of dedication.

As used herein, the term "Lot Termination Date" for any separate legal lot within the Property means the date on which all of the following conditions have been satisfied with respect to said lot: (i) the lot has been finally subdivided and sold or leased (for a period longer than one year) to a Permitted Transferee, a member of the public, or other ultimate user; (ii) a final Certificate of Occupancy or "Release of Utilities" has been issued for the building or buildings approved for construction on said lot; and (iii) as to any lot that is to be dedicated to City or other applicable governmental agency, the date on which an irrevocable offer of dedication or other conveyance instrument reasonably satisfactory to City has been recorded against said lot, all improvements that are required to be Developed on and with respect to said lot by Landowner have been completed to the satisfaction of City, a Notice of Completion has been recorded with respect to such improvements, and the time period for the filing/recordation of any stop notices or lien claims shall have expired and all stop notices or lien claims timely filed/recorded shall have been satisfied or bonded against to the reasonable satisfaction of City.

Notwithstanding any other provision set forth in this Agreement to the contrary, the provisions set forth in Article 10 and Section 13.10 (as well as any other Landowner obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive the Termination Date of this Agreement.

2.5 Annexation of County Property.

Subject to the provisions set forth in the immediately succeeding paragraph, from and after the Agreement Date, Landowner at its sole cost and expense shall diligently pursue to completion all necessary proceedings before the Orange County Local Agency Formation Commission ("LAFCO") for the annexation of the County Property into the City. Landowner and City shall cooperate with LAFCO in connection with the annexation of the County Property, at no cost to City.

Notwithstanding the foregoing, Landowner shall have the right to defer annexation of one or both of the Oil Well Operational Areas into the City (and, thereby, to phase the annexation of the County Property into the City) as long as (i) Landowner determines in its sole and absolute discretion that such areas will or may continue to be used for a period of time for oil drilling and related purposes and (ii) such a phased annexation is consistent with applicable statutes and LAFCO rules and regulations and will not hinder or delay annexation of the balance of the County Property into the City.

In addition to the foregoing, the Parties mutually acknowledge and agree that Landowner shall not be required to consent to completion of the annexation of any portion of the County Property into City prior to the date that the California Coastal Commission approves a Coastal Development Permit for the Project consistent with the Development Plan and such approval becomes "final." As used herein, the Coastal Commission's approval of the Coastal Development Permit for the Project shall be deemed to be "final" on the later of the following dates, as applicable: (i) the day after the date on which the statute of limitations for filing a judicial challenge to the California Coastal Commission's approval of the Coastal Development Permit expires without any such judicial challenge being timely filed; or (ii) if a judicial challenge to the California Coastal Commission's approval of the Coastal Development Permit is timely filed, the last of the following dates: (A) the date upon which such judicial action is dismissed with prejudice; (B) the date upon which such judicial action is dismissed without prejudice and the statute of limitations for re-filing the same or similar action challenging the California Coastal Commission's approval of the Coastal Development Permit expires without such action being re-filed, (C) or the date upon which such judicial action is successfully resolved in a manner which results in the California Coastal Commission's approval of the Coastal Development Permit being upheld, either by a final non-appealable judgment or final binding settlement agreement.

It is understood that the Property is "uninhabited" within the meaning of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (California Government Code Section 56046) and Landowner agrees to promptly provide all necessary approvals, written consents, and waivers of protest or election rights as may be necessary and appropriate to cause said annexation to be completed at the earliest feasible date; provided, however, that (i) nothing in this paragraph is intended to modify or limit Landowner's right to defer annexation of one or both of the Oil Well Opeational Areas, as hereinabove set forth, and (ii) Landowner shall not be

required to provide such approvals, consents, and waivers of protest or election rights if, as a condition to the annexation of the County Property (or applicable portions thereof) to the City, LAFCO subjects the County Property to any conditions or burdens inconsistent with the terms and conditions set forth in this Agreement.

Upon receipt of Landowner's written request, City agrees to support Landowner's annexation application(s) with LAFCO by means of a written letter or City Council resolution, and City further agrees to cooperate with Landowner with respect to such application(s), all at no cost to City. City also agrees to timely perform all of its statutory duties as the "conducting authority" with respect to annexation of the County Property or applicable portions thereof.

The Parties agree that the Development Regulations for the Property satisfy the requirements of Government Code Sections 65859 and 56375 with respect to prezoning of the County Property.

3. Public Benefits.

3.1 Public Benefit Fee.

Subject to the provisions set forth in the next paragraph below and in Sections 3.2 and 3.3, and as consideration for City's approval and performance of its obligations set forth in this Agreement, Landowner shall pay to City a fee, referred to herein as the "Public Benefit Fee," in the sum of Thirty Thousand Nine Hundred Nine Dollars ($30,909.00) per residential dwelling unit Developed as part of the Project (including all on-site market rate and affordable units). The Public Benefit Fee shall be paid on a per unit basis as a condition to the issuance of each residential building permit.

The amount of the Public Benefit Fee shall be increased (as to residential dwelling units for which the Public Benefit Fee has not previously been paid) based upon percentage increases in the CPI Index. The first CPI adjustment to the Public Benefit Fee shall occur on the third anniversary of the Agreement Date of this Agreement (the first "Adjustment Date") and subsequent CPI adjustments shall occur on each anniversary of the first Adjustment Date thereafter until expiration of the Term of this Agreement (each, an "Adjustment Date"). The amount of the CPI adjustment on the first Adjustment Date shall be the percentage increase in the CPI Index between the second anniversary of the Agreement Date and the third anniversary of the Agreement Date. The amount of the CPI adjustment on each subsequent Adjustment Date shall be the percentage increase between said Adjustment Date and the immediately preceding Adjustment Date. The amount of the percentage increase in the CPI Index on the applicable Adjustment Dates shall in each instance be calculated based on the then most recently available CPI Index figures such that, for example, if the first Adjustment Date occurs on July 1, 2016, and the most recently available CPI Index figure on that date is the CPI Index for May 2015 (2 months prior to the first Adjustment Date), the percentage increase in the CPI Index on the first Adjustment Date shall be calculated by comparing the CPI Index for May 2014 with the CPI Index for May 2015. In no event, however, shall application of the CPI Index on any Adjustment Date reduce the amount of the Public Benefit Fee (or unpaid portion thereof) below the amount in effect prior to that Adjustment Date. Notwithstanding any other provision set forth in this Agreement to the contrary, during the Term of this Agreement City shall not increase the Public Benefit Fee except pursuant to the CPI Index as stated in this Section 3.1.

Landowner acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Public Benefit Fee, that its obligation to pay the Public Benefit Fee is an essential term of this Agreement and is not severable from City's obligations and Landowner's vesting rights to be acquired hereunder, and that Landowner expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of such fee on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 *et seq.*), or otherwise. In addition to any other remedy set forth in this Agreement for Landowner's default, if Landowner, including any Permitted Transferee, shall fail to timely pay any portion of the Public Benefit Fee when due City shall have the right to (i) withhold issuance of the occupancy permit and any other building, inspection, or development permit or approval for the unit for which the Public Benefit Fee remains unpaid or (ii) withhold issuance of building, occupancy, and other building or development permits for any other portion of the Project that at that time is under common ownership with the defaulting Landowner or Permitted Transferee, as applicable.

City shall have the right to spend the Public Benefit Fee on any public purpose that City determines to be in the public interest, as designated by City in its sole and absolute discretion. The Public Benefit Fee is not intended to constitute a Development Exaction, is in addition to the Development Exactions applicable to the Project (i.e., except as otherwise expressly set forth in Section 3.3 of this Agreement, Developer shall not be entitled to a credit against the Public Benefit Fee for the amount of any Development Exaction paid or performed by Developer and vice versa), and is not subject to restrictions on the use of various forms of Development Exactions.

3.2 Renegotiation of Public Benefit Fee if Development Plan Is Not Approved by California Coastal Commission.

The Parties recognize that subsequent to the Agreement Date and prior to the commencement of Development of the Project on the Property City and/or Landowner will be required to apply to the California Coastal Commission ("Commission") for approval of a CDP for the Project pursuant to applicable provisions of the California Coastal Act and that no assurances can be provided as of the Agreement Date that the Commission will approve that CDP application consistent with the Development Plan approved by City. The Parties further acknowledge they have negotiated the amount and level of the Public Benefit Fee set forth in Section 3.1 of this Agreement based upon the Development Plan approved by City. Accordingly, and in addition to the fact that the Effective Date is conditioned upon the Commission approving the CDP consistent with the Development Plan approved by City, in the event the Commission's approval of the Project is issued subject to conditions or requirements that (i) the number of residential dwelling units in the Project be reduced to a number less than 1,375, (ii) the net developable acreage of the Project on the Property be reduced below the amount of net developable acreage approved by City as of the Agreement Date, or (iii) imposing any other conditions or requirements on Landowner's development rights that Landowner, in its sole and absolute discretion, determines materially increases the cost of Development above the costs that would be incurred by Landowner to Develop the Project pursuant to the Development Plan approved by City as of the Agreement Date, then, in such event, the Parties agree to negotiate in good faith regarding a reduction in the amount of the Public Benefits and/or the

Public Benefit Fee. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to commit City to approve a reduction in the amount of the Public Benefits or the Public Benefit Fee, and City reserves the right to approve or disapprove such a reduction in its sole and absolute discretion, and if the Parties are unable to agree upon such a reduction Landowner's sole and exclusive remedy shall be to terminate this Agreement by delivering written notice of termination to City. In such event, the provisions set forth in Article 10 and Section 13.10 (as well as any other Landowner obligations set forth in this Agreement that are expressly written to survive the Termination Date) shall survive such termination. In addition, Landowner recognizes and agrees that since all of the City actions relating to the items comprising the Development Plan are being approved conditionally and contingent upon Landowner's performance of its obligations set forth in this Agreement, Landowner's termination of this Agreement automatically will result in the termination of the Development Plan and Landowner's right to Develop the Project pursuant to the Development Plan.

3.3 Park Land Dedication and Improvements in Excess of Landowner's Quimby Act Requirement; City Option to Develop North and Central Community Parks; Possible Increase or Decrease in Public Benefit Fee.

Based upon the number of residential dwelling units approved in the Development Plan (1,375), City has calculated that Landowner's Quimby Act obligation for the Project would be to dedicate to City 15.1 net useable acres of park land within the Property in a rough graded condition, with full improvement of adjacent public street access and all utility lines stubbed in to a location approved by City (herein, "Rough Grade Condition"), to pay in-lieu park fees to City based upon said acreage figure, or a combination of the two. Notwithstanding such limitations on Landowner's Quimby Act obligations, and as further consideration for City's approval and performance of its obligations set forth in this Agreement, Landowner agrees to dedicate to City and City agrees to accept two public parks within the Property comprising a total of approximately 18 net useable acres (21.8 gross acres) of land area (the North Community Park and the Central Community Park) in a Rough Grade Condition.

In addition to the foregoing, and notwithstanding the aforedescribed limitations on Landowner's Quimby Act obligations, and as further consideration for City's approval and performance of its obligations set forth in this Agreement, Landowner agrees to improve the North and Central Community Parks in accordance with the Park Conceptual Design Plans (as the same may be supplemented or revised from time to time by City) and the final plans and specifications for the North and Central Community Park improvements as approved by City in accordance with City's Development Regulations. In this regard, prior to issuance of the fiftieth (50^{th}) certificate of occupancy for a residential dwelling unit (excluding model homes) within the Project Landowner shall prepare, submit to City, and obtain City approval of (i) final plans and specifications for the North and Central Community Park improvements and (ii) a detailed line-item cost estimate for said park improvements based on the approved final plans and specifications together with adequate supporting information to justify the amount and reasonableness of each line item (collectively, the "Park Improvement Cost Estimate"). The only costs included in Landowner's Park Improvement Cost Estimate shall be those costs Landowner reasonably determines it will incur after (but not before) the Agreement Date to design, engineer, construct, install, supervise, and inspect the North and Central Community Park improvements and maintain such improvements prior to the time City accepts the North and Central Community Parks for maintenance purposes, including any permit and inspection fees to

be paid to City with respect thereto and the cost of obtaining and maintaining in effect security instruments for the work (collectively, the "Eligible Estimated Park Improvement Costs"). The Eligible Estimated Park Improvement Costs shall not include any costs that Landowner anticipates it will incur to deliver the North or Central Community Park in a Rough Grade Condition. Construction management fees included in Eligible Estimated Park Improvement Costs shall not exceed five percent (5%) of the estimated "hard cost" of construction/installation and no other costs for developer profit, overhead, or similar charges, by whatever name called, shall be included in Eligible Park Improvement Costs. The contingency amount included in Eligible Estimated Park Improvement Costs shall not exceed ten percent (10%) of the sum of the other costs. In the event Landowner retains third party contractors, planners, engineers, landscape architects, or other contractors and consultants to perform work with respect to construction of the North and Central Community Parks, on the one hand, and other elements of the Project, on the other hand, Landowner shall fairly allocate costs between Eligible Park Improvement Costs and other (non-eligible) costs.

City shall have the right to review and approve the final plans and specifications for the North Park and Central Community Park improvements, the Park Improvement Cost Estimate, and the Eligible Estimated Park Improvement Costs, including without allocation the reasonableness of any allocation of costs between Eligible Estimated Park Improvement Costs and other non-eligible costs. City shall not unreasonably delay, deny, or condition approval of any of said matters.

Prior to the later of (i) City's issuance of a building permit for Development of the one hundredth (100^{th}) residential dwelling unit (excluding model homes) within the Project and (ii) City approval of the final specifications for the North and Central Community Parks, the Park Improvement Cost Estimate, and the Eligible Estimated Park Improvement Costs, City shall have the right, but not the obligation, to deliver a written notice to Landowner informing Landowner that City has elected to construct/install the North and Central Community Park improvements itself (the "City Park Notice"). City's failure to timely deliver the City Park Notice by said deadline shall conclusively be deemed to constitute an election by City to not construct/install the North Park and Central Park improvements and to require Landowner to construct/install the same.

If City timely delivers the City Park Notice, the following obligations shall apply: (i) within thirty (30) days after City's delivery of the City Park Notice Landowner shall deliver or cause to be delivered to City (A) ownership and true and correct copies of all plans, drawings, specifications, surveys, and other records in the possession of Landowner and any contractor or consultant retained directly or indirectly by Landowner with respect to the North and Central Community Park improvements (collectively, the "Park Plans"), free and clear of any claim of any third party that would restrict City's free and unfettered right to use the same, but without any representation or warranty by Landowner as to the completeness or adequacy of the same or suitability for City's intended use, and (B) a written assignment of all of Landowner's right, title, and interest in and to the Park Plans; (ii) upon Landowner's satisfaction of all of the requirements set forth in clause (i) Landowner's obligation with respect to the North and Central Community Parks shall be limited to delivering such parks to City in a Rough Grade Condition, which Landowner shall do at least one (1) year prior to the estimated date upon which Landowner (including Permitted Transferees) will be requesting the two hundredth (200^{th}) certificate of occupancy for a residential dwelling unit within the Project, and thereafter

Landowner shall be released from any further obligation under this Agreement and any of the Development Regulations to improve the North and Central Community Park Improvements; (iii) the amount of the Public Benefit Fee payable by Landowner to City shall be increased by the sum of Eight Million Dollars ($8,000,000) total (Five Thousand Eight Hundred Eighteen Dollars and Eighteen Cents [$5,818.18] per residential dwelling unit [1,375 DUs X $5,818.18 = $8,000,000], with such $8,000,000 sum increased by the percentage increases in the CPI Index commencing with the first Adjustment Date referred to in Section 3.1 (and with the amount of the increase(s) calculated in the same manner as provided in Section 3.1) and on each Adjustment Date thereafter through the date on which Landowner has fully performed its obligations set forth in clauses (i) and (ii) (but not earlier than the date on which City has issued the two hundredth (200th) certificate of occupancy for a residential dwelling unit, excluding model homes, within the Project), and with said increased Public Benefits Fee also payable on a per building permit basis as provided in Section 3.1; and (iv) subject to Section 9 of this Agreement, City shall exercise commercially reasonable diligence to complete the Development of the North and Central Community Park improvements within one (1) year of the date upon which Landowner fully performs its obligations set forth in clauses (i) and (ii).

Notwithstanding the City's right to construct/install the North and Central Community Park improvements, if City delivers the City Park Notice but it thereafter fails to timely commence either or both of said improvements, Landowner shall have the right, but not the obligation, to elect to construct/install said improvements itself. If Landowner desires to exercise this "self-help" remedy, it shall be required to deliver a written "Notice of Default" to City, which Notice of Default shall clearly state that Landowner is electing to take over and perform the work of constructing/installing the park improvements that are the subject of the Notice of Default if City does not cure the "Default" within the "Cure Period" applicable thereto (see Section 8.1 below for definitions of those terms). If City fails to cure its Default during the applicable Cure Period, then Landowner shall be authorized to proceed to construct/install the park improvements that were the subject of the Notice of Default as though City had never delivered the City Park Notice.

If City does not timely deliver the City Park Notice, the following obligations shall apply: (i) if the City-approved Estimated Eligible Park Improvement Costs are equal to or less than Eight Million Dollars ($8,000,000), with said sum adjusted in accordance with the percentage increases in the CPI Index commencing with the first Adjustment Date referred to in Section 3.1 (and with the amount of the increase(s) calculated in the same manner as provided in Section 3.1) and on each Adjustment Date thereafter through the date on which City has issued the two hundredth (200th) certificate of occupancy for a residential dwelling unit, excluding model homes, within the Project (herein, the "Landowner's Estimated Cost Cap"), then Landowner shall plan, design, engineer, construct, install, supervise, and inspect the North and Central Community Park improvements and maintain such improvements prior to the time City accepts the North and Central Community Parks for maintenance purposes, including payment of any permit and inspection fees to be paid to City with respect thereto and the cost of obtaining and maintaining in effect security instruments for the work, all at Landowner's sole cost and expense, and regardless of whether the actual costs incurred by Landowner for said purposes actually exceed the Landowner's Cost Cap; (ii) if the City-approved Eligible Park Improvement Costs exceed the Landowner's Estimated Cost Cap, then Landowner's Public Benefit Fee shall be decreased by the difference between the City-approved Eligible Park Improvement Costs and the Landowner's Estimated Cost Cap such that, for example (and without taking CPI adjustments

into account), if the Landowner's Estimated Cost Cap is $9,000,000 and the Eligible Park Improvement Costs equal $10,000,000, Landowner would be entitled to a $1,000,000 reduction in its Public Benefit Fee or a reduction in said fee per residential unit that is equal to $1,000,000 divided by the number of residential units that are ultimately vested in Landowner for development on the Property ($727.27 per residential unit assuming Landowner is vested with the right to develop 1,375 on-site residential units); (iii) Landowner shall commence construction of the North and Central Community Park improvements no later than City's issuance of the two hundredth (200th) certificate of occupancy for a residential dwelling unit (excluding model homes) within the Project and Landowner shall complete construction of the North and Central Community Park improvements in strict conformance with the City-approved final park plans and specifications and applicable Development Regulations and otherwise to the reasonable satisfaction of City no later than City's issuance of the three hundredth (300th) certificate of occupancy for a residential dwelling unit (excluding model homes) within the Project; and (iv) promptly after Landowner submits a written request to City for acceptance of the completed North and Central Community Park improvements (with the understanding that such a request may be submitted separately for each park), together with a certification by Landowner's design professional that the improvements satisfy the requirements for acceptance set forth herein, City shall consider such request and, if construction of the applicable Park improvements has been satisfactorily completed, City shall accept the completed improvements in accordance with applicable Development Regulations, provided that City's acceptance of the completed improvements shall be subject to whatever rights City would normally have under its applicable Development Regulations in the absence of this Agreement with respect to reservation of claims for defective work and resort to any improvement security held by City relating thereto.

From time to time during the progress of Landowner's (and Permitted Transferees') Development of the Project and upon Landowner's written request, City shall promptly advise Landowner of the status of the number of certificates of occupancy for residential dwelling units that City has issued, in order to enable Landowner to plan the timing of its performance obligations set forth in this Section 3.3 with respect to the North and Central Community Park improvements. Said City obligation shall terminate when City has advised Landowner that City has issued the 300th certificate of occupancy for a residential dwelling unit within the Project.

The aforedescribed obligations of Landowner with respect to the North and Central Community Parks shall be in addition to its obligations to dedicate, develop, and/or restore other public and private trails, park, habitat areas, and park/open space improvements on other portions of the Property.

City acknowledges that Landowner's performance of its obligations set forth in the Development Regulations and this Agreement will satisfy all of Landowner's Quimby Act obligations for the dedication and improvement of park and recreational land and payment of in-lieu fees relating thereto.

3.4 Transportation Improvements; Fair Share Traffic Fee Credit; Acquisition of 15th Street Right-of-Way.

If the California Coastal Commission approves the Project so as to authorize construction/installation of the portion of Bluff Road between 17th Street and 19th Street the Parties agree (subject to any contrary conditions that may be imposed by the California Coastal

Commission) that said road improvements shall be constructed/installed in conjunction with the final phase of Landowner's Project. Landowner shall offer to dedicate the right-of-way needed for said road improvements on the first final tract map(s) that include(s) the portion of the Property within which said portion of Bluff Road is located and Landowner shall deliver said right-of-way to City in a rough graded condition on or before the date on which the 800th certificate of occupancy is issued for a residential unit on the Property.

If the California Coastal Commission approves the construction/installation of the portion of Bluff Road between 17th Street and 19th Street, said road improvements (beyond the rough grading stage of Development) may be constructed/installed either by Landowner or by City, as City may elect. City shall make such election by delivering written notice to Landowner sufficiently in advance of the date that such construction/installation will need to commence in order to enable each Party to timely plan to fulfill its responsibilities with respect thereto and, in this regard, the Parties agree to consult and cooperate with one another during the course of Landowner's Development of the Project consistent with that objective. If City elects to construct/install the portion of Bluff Road between 17th Street and 19th Street, Landowner shall pay to City a fair share traffic fee for said improvement based on (i) the amount, reasonably estimated by City, to be the estimated cost of said work (including the cost to engineer, design, construct, supervise, and inspect all improvements within the dedicated right-of-way, but excluding the cost/value of the right-of-way, the rough grading cost, and the cost of complying with any environmental mitigation requirements attributable to the grading required for said roadway and construction/installation of the roadway itself and whether such environmental mitigation requirements are imposed by City or some other federal, state, or local agency with jurisdiction, which costs shall all be Landowner's sole responsibility) and (ii) Landowner's fair share percentage for said improvement, which shall be calculated by City in accordance with the standard methodology used by City in allocating fair share percentages for other road improvements used to determine City's fair share traffic fee, and otherwise City shall be responsible to construct said road improvements at City's sole cost and expense. If City elects to have Landowner construct/install said road improvements, City shall pay to Landowner the entire estimated cost of said improvements less the amount that would have been Landowner's fair share fee for said improvements (calculated in accordance with the preceding sentence). The Party obligated to pay the other Party (depending upon which Party is responsible to perform the work) shall make such payment to the other Party in cash within ten (10) days after the Party performing the work submits to the Party obligated to make payment (i) an invoice requesting payment and (ii) satisfactory evidence that the Party responsible to perform the work has entered into a construction contract to complete the work and said Party's contractor has commenced work pursuant to said construction contract. It is understood and agreed that Landowner's fair share traffic fee payment to City (if City elects to construct/install the portion of Bluff Road between 17th Street and 19th Street) or City's cash payment to Landowner for said improvements (if City elects to have Landowner construct/install the same) shall be based on the City's estimated cost of said roadway and not the actual construction/installation cost.

If City elects to construct/install the portion of Bluff Road between 17th Street and 19th Street, City shall accept Landowner's offer of dedication of the right-of-way for said roadway in accordance with applicable Development Regulations promptly after Landowner submits a written request therefor, together with a certification by Landowner's civil engineer that the lines and grades of the graded road extension conform to the plans therefor and City verifies the work has in fact been satisfactorily completed. If City elects to have Landowner construct/install said

road improvements, City shall accept Landowner's offer of dedication of the right-of-way and improvements for said roadway in accordance with applicable Development Regulations promptly after Landowner submits a written request therefor, together with a certification by Landowner's civil engineer that the lines and grades of the graded road extension and the improvements conform to the plans therefor and City verifies the work has in fact been satisfactorily completed. In either case, City's acceptance shall be subject to whatever rights City would normally have under its applicable Development Regulations in the absence of this Agreement with respect to reservation of claims for defective work and resort to any improvement security held by City relating thereto.

Except as set forth in the preceding paragraph, the Parties agree that Landowner shall not be obligated to pay a "fair share traffic fee" pursuant to City's Fair Share Traffic Contribution Ordinance (Chapter 15.38 of City's Municipal Code) based upon City's determination that Landowner will be constructing street/transportation improvements with public benefits in excess of Landowner's fair share traffic fee obligation even if, for whatever reason, the California Coastal Commission requires the Development Plan to be modified to delete construction of the portion of Bluff Road between 17th Street and 19th Street. Landowner shall not be entitled to a refund or reimbursement for the cost of constructing/installing the street/transportation improvements required as part of the Project in excess of what its fair share traffic fee would be in the absence of this Agreement, nor shall Landowner be entitled to any other fee credit based on its estimated or actual costs incurred to construct/install street/transportation improvements for the Project, whether on-site or off-site.

In addition to the foregoing, Landowner shall be responsible for paying the entire cost of obtaining the offsite right-of-way needed to widen 15th Street in accordance with the Project EIR and applicable Development Regulations, including, if applicable, City's cost of acquisition. If Landowner fails to acquire the needed right-of-way for the 15th Street widening prior to recordation of the first final tract map within the Property that authorizes development of residential units, City and Landowner shall enter into an agreement pursuant to Government Code Sections 66462 and 66462.5 which provides for City's acquisition of the right-of-way and Landowner's payment of the entire cost therefor, including without limitation all of City's legal, appraisal, engineering, and other costs, all amounts of compensation paid to the persons and entities having a compensable interest in the right-of-way, City's litigation expenses and court costs, and City payroll costs for the time spent working on said acquisition by in-house City staff.

3.5 Landowner's Contribution Toward Cost of Redevelopment of Fire Station No. 2.

In order to implement Mitigation Measure 4.14-2 in the Project EIR relating to redevelopment of City's Fire Station No. 2 and as further consideration for City's approval and performance of its obligations set forth in this Agreement, Landowner shall pay to City a fee that shall be in addition to any other fee or charge to which the Property and the Project would otherwise be subject (herein, the "Fire Station No. 2 Fee") in the sum of Five Hundred Ten Dollars ($510) per residential dwelling unit, with the per/unit fee to be paid upon the issuance of a building permit for each residential unit developed within the Project. The amount of said Fire Station No. 2 Fee shall be increased (as to residential dwelling units for which the Fire Station No. 2 Fee has not previously been paid) on each Adjustment Date in accordance with changes in the CPI Index, calculated at the same times and in the same manner as set forth in Section 3.1 of

this Agreement for CPI adjustment to the Public Benefit Fee. Notwithstanding any other provision set forth in this Agreement to the contrary, during the Term of this Agreement City shall not increase the Fire Station No. 2 Fee except pursuant to the CPI Index as stated in this Section 3.5. Landowner acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Fire Station No. 2 Fee, that its obligation to pay the Fire Station No. 2 Fee is an essential term of this Agreement and is not severable from City's obligations and Landowner's vesting rights to be acquired hereunder, and that Landowner expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of such fee on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 *et seq.*), or otherwise. In addition to any other remedy set forth in this Agreement for Landowner's default, if Landowner, including any Permitted Transferee, shall fail to timely pay any portion of the Fire Station No. 2 Fee when due City shall have the right to (i) withhold issuance of the occupancy permit and any other building, inspection, or development permit or approval for the unit as to which the Fire Station No. 2 Fee remains unpaid or (ii) withhold issuance of building, occupancy, and other building or development permits for any other portion of the Project that at that time is under common ownership.

4. Development of Project.

4.1 Applicable Regulations; Landowner's Vested Rights and City's Reservation of Discretion With Respect to Subsequent Development Approvals.

Other than as expressly set forth in this Agreement, during the Term of this Agreement, (i) Landowner shall have the vested right to Develop the Project on and with respect to the Property in accordance with the terms of the Development Regulations and this Agreement and (ii) City shall not prohibit, prevent, or delay development of the Property on grounds inconsistent with the Development Regulations or this Agreement. Notwithstanding the foregoing, nothing herein is intended to limit or restrict City's discretion with respect to (i) review and approval requirements contained in the Development Regulations, (ii) exercise of any discretionary authority City retains under the Development Regulations, (iii) the approval, conditional approval, or denial of any Subsequent Development Approvals that are required for Development of the Project as of the Effective Date, (iv) approval, conditional approval, or denial of any modifications or amendments to the Development Regulations as may be required in order to conform to or comply with the action taken by the California Coastal Commission with respect to the Coastal Development Permit approved by the Commission with respect to the Project; or (v) any environmental approvals that may be required under CEQA or any other federal or state law or regulation in conjunction with any Subsequent Development Approvals that may be required for the Project, and in this regard, as to future actions referred to in clauses (i)-(v) of this sentence, City reserves its full discretion to the same extent City would have such discretion in the absence of this Agreement. In addition, it is understood and agreed that nothing in this Agreement is intended to vest Landowner's rights with respect to any laws, regulations, rules, or official policies of any other governmental agency or public utility company with jurisdiction over the Property or the Project; or any applicable federal or state laws, regulations, rules, or official policies that may be inconsistent with this Agreement and that override or supersede the provisions set forth in this Agreement, and regardless of whether such overriding

or superseding laws, regulations, rules, or official policies are adopted or applied to the Property or the Project prior or subsequent to the Agreement Date.

Landowner has expended and will continue to expend substantial amounts of time and money planning and preparing for Development of the Project. Landowner represents and City acknowledges that Landowner would not make these expenditures without this Agreement, and that Landowner is and will be making these expenditures in reasonable reliance upon its vested rights to Develop the Project as set forth in this Agreement.

Landowner may apply to City for permits or approvals necessary to modify or amend the Development specified in the Development Regulations, provided that the request does not propose an increase in the maximum density, intensity, height, or size of proposed structures, or a change in use that generates more peak hour traffic or more daily traffic than the Project as approved as of the Agreement Date and, in addition, Landowner may apply to City for approval of minor amendments to existing tentative tract maps, tentative parcel maps, or associated conditions of approval, consistent with City of Newport Beach Municipal Code section 19.12.090. This Agreement does not constitute a promise or commitment by City to approve any such permit or approval, or to approve the same with or without any particular requirements or conditions, and City's discretion with respect to such matters shall be the same as it would be in the absence of this Agreement.

Notwithstanding any other provision set forth in this Agreement, nothing in this Agreement is intended or shall be interpreted to place an affirmative obligation on Landowner to proceed with or Develop the Project; provided, that if Landowner does elect to do so it shall do so in strict conformity with the provisions set forth in this Agreement and the Development Plan (as the same may be amended from time to time consistent herewith).

4.2 No Conflicting Enactments.

Subject to City's reserved right to reconsider the Development Regulations for the Project if and to the extent the California Coastal Commission does not approve a CDP consistent therewith and except to the extent City otherwise reserves its discretion as expressly set forth in this Agreement, during the Term of this Agreement City shall not apply to the Project or the Property any ordinance, policy, rule, regulation, or other measure relating to Development of the Project that is enacted or becomes effective after the Agreement Date to the extent it conflicts with this Agreement. This Section 4.2 shall not restrict City's ability to enact an ordinance, policy, rule, regulation, or other measure applicable to the Project pursuant to California Government Code Section 65866 consistent with the procedures specified in Section 4.3 of this Agreement. In *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, the California Supreme Court held that a construction company was not exempt from a city's growth control ordinance even though the city and construction company had entered into a consent judgment (tantamount to a contract under California law) establishing the company's vested rights to develop its property consistent with the zoning. The California Supreme Court reached this result because the consent judgment failed to address the timing of development. The Parties intend to avoid the result of the *Pardee* case by acknowledging and providing in this Agreement that Landowner shall have the vested right to Develop the Project on and with respect to the Property at the rate, timing, and sequencing that Landowner deems appropriate within the exercise of Landowner's sole subjective business judgment and notwithstanding adoption by

City's electorate of an initiative or referendum to the contrary after the Agreement Date; provided, however, that (i) any such Development shall occur in accordance with this Agreement and the Development Regulations and (ii) nothing in this Agreement is intended as a representation or warranty by City to Landowner that a referendum will not be filed or approved that overturns one or more of the elements of the approved Development Plan or this Agreement prior to the time the same become final and effective. No City moratorium or other similar limitation relating to the rate, timing, or sequencing of the Development of all or any part of the Project and whether enacted by initiative, referendum (excepting a referendum that overturns one or more of the elements of the approved Development Plan prior to the time the same become final and effective), or another method, affecting subdivision maps, building permits, occupancy certificates, or other entitlement to use, shall apply to the Project to the extent such moratorium or other similar limitation restricts Landowner's vested rights in this Agreement or otherwise conflicts with the express provisions of this Agreement.

4.3 Reservations of Authority.

Notwithstanding any other provision set forth in this Agreement to the contrary, the laws, rules, regulations, and official policies set forth in this Section 4.3 shall apply to and govern the Development of the Project on and with respect to the Property.

4.3.1 Procedural Regulations. Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure shall apply to the Property, provided that such procedural regulations are adopted and applied City-wide or to all other properties similarly situated in City.

4.3.2 Processing and Permit Fees. City shall have the right to charge and Landowner shall be required to pay all applicable processing and permit fees that are charged on a non-discriminatory basis to similarly situated development projects in City as needed to cover the reasonable cost to City of processing and reviewing applications and plans for any required Subsequent Development Approvals, building permits, excavation and grading permits, encroachment permits, and the like, for performing necessary studies and reports in connection therewith, inspecting the work constructed or installed by or on behalf of Landowner, and monitoring compliance with any requirements applicable to Development of the Project, all at the rates in effect at the time fees are due.

4.3.3 Consistent Future City Regulations. City ordinances, resolutions, regulations, and official policies governing Development which do not conflict with the Development Regulations, or with respect to such regulations that do conflict, where Landowner has consented in writing to the regulations, shall apply to the Property.

4.3.4 Development Exactions Applicable to Property. During the Term of this Agreement, Landowner shall be required to satisfy and pay all Development Exactions that are in effect as of the Agreement Date at the time performance or payment is due in the amounts that would apply to Landowner and the Project at that time in the absence of this Agreement; provided, however, that to the extent the scope and extent of a particular Development Exaction or charge has been established and fixed by City in Sections 3.3-3.5 of this Agreement (with respect to Quimby Act dedication/in-lieu fee requirements, fair share traffic fees, and the Fire Station No. 2 Fee) or the conditions of approval for any of the Development Regulations

approved on or before the Agreement Date City shall not alter, increase, or modify said Development Exaction in a manner that is inconsistent with such Development Regulations without Landowner's prior written consent or as may be otherwise required pursuant to overriding federal or state laws or regulations (Section 4.3.5 hereinbelow). In addition, nothing in this Agreement is intended or shall be deemed to vest Landowner against the obligation to pay any of the following (which are not included within the definition of "Development Exactions") in the full amount that would apply in the absence of this Agreement: (i) City's normal fees for processing, environmental assessment and review, tentative tract and parcel map review, plan checking, site review and approval, administrative review, building permit, grading permit, inspection, and similar fees imposed to recover City's costs associated with processing, reviewing, and inspecting project applications, plans, and specifications; (ii) fees and charges levied by any other public agency, utility, district, or joint powers authority, regardless of whether City collects those fees and charges; or (iii) community facilities district special taxes or special district assessments or similar assessments, business license fees, bonds or other security required for public improvements, transient occupancy taxes, sales taxes, property taxes, sewer lateral connection fees, water service connection fees, new water meter fees, and the Property Development Tax payable under Section 3.12 of City's Municipal Code.

4.3.5 Overriding Federal and State Laws and Regulations. Federal and state laws and regulations that override Landowner's vested rights set forth in this Agreement, including without limitation the provisions of the California Coastal Act, shall apply to the Property, together with any non-discriminatory City ordinances, resolutions, regulations, and official policies that are necessary to enable City to comply with the provisions of any such overriding federal or state laws and regulations, provided that (i) Landowner does not waive its right to challenge or contest the validity of any such purportedly overriding federal, state, or City law or regulation; and (ii) upon the discovery of any such overriding federal, state, or City law or regulation that is not consistent with the provisions of this Agreement or otherwise prevents or precludes compliance with any provision of this Agreement, City or Landowner shall provide to the other Party a written notice identifying the federal, state, or City law or regulation, together with a copy of the law or regulation and a brief written statement of the conflict(s) between that law or regulation and the provisions of this Agreement. Promptly thereafter City and Landowner shall meet and confer in good faith in a reasonable attempt to determine whether a modification or suspension of this Agreement, in whole or in part, is necessary to comply with such overriding federal, state, or City law or regulation. In such negotiations, City and Landowner agree to preserve the terms of this Agreement and the rights of Landowner as derived from this Agreement to the maximum feasible extent while resolving the conflict. City agrees to cooperate with Landowner at no cost to City in resolving the conflict in a manner which minimizes any financial impact of the conflict upon Landowner. City also agrees to process in a prompt manner Landowner's proposed changes to the Project and any of the Development Regulations as may be necessary to comply with such overriding federal, state, or City law or regulation; provided, however, that the approval of such changes by City shall be subject to the discretion of City, consistent with this Agreement.

4.3.6 Public Health and Safety. Any City ordinance, resolution, rule, regulation, program, or official policy that City reasonably determines is necessary to protect persons on the Property or in the immediate vicinity from conditions dangerous to their health or safety shall apply to the Property, even though the application of the ordinance, resolution, rule regulation,

program, or official policy would result in the impairment of Landowner's vested rights under this Agreement.

4.3.7 Uniform Building Standards. Existing and future building and building-related standards set forth in the uniform codes adopted and amended by City from time to time, including building, plumbing, mechanical, electrical, housing, swimming pool, and fire codes, and any modifications and amendments thereof shall all apply to the Project and the Property to the same extent that the same would apply in the absence of this Agreement.

4.3.8 Public Works Improvements. To the extent Landowner constructs or installs any public improvements, works, or facilities, the City standards in effect for such public improvements, works, or facilities at the time of City's issuance of a permit, license, or other authorization for construction or installation of same shall apply.

4.3.9 Water and Wastewater Utility Service. City covenants to provide water and wastewater utility services to the Project on a non-discriminatory basis (i.e., on the same terms and conditions that City undertakes to provide such services to other similarly situated new developments in the City of Newport Beach from time to time, as and when service connections are provided and service commences). While City represents that as of the Agreement Date City has adequate capacity to provide water and wastewater services to the Project if the Project were fully built out as of the Agreement Date, City makes no representation or warranty to Landowner that the infrastructure needed to provide water and wastewater services will be sufficient at the time Landowner Develops the Project, City is not hereby committing to improve or upgrade existing water or wastewater utility infrastructure for the benefit of Landowner or the Project, City does not warrant or represent that adequate water supplies or wastewater treatment capacity will be available to serve Landowner or the Project at the time Development occurs, and, with the exception of City's commitment that after the Agreement Date it will not adopt or enforce any discriminatory City laws or regulations (as defined above) against the Project relating to the provision of water or wastewater utility services.

If water or wastewater utility services are provided to the Project by an entity other than City, City shall not impose any conditions or restrictions on the provision of such services to any parcel or lot within the Property in excess of the restrictions imposed by the service provider; provided, that City is not representing, warranting, or guaranteeing that any other entity has the capacity, willingness, or ability to provide such services.

4.4 Tentative Subdivision Maps

Any tentative subdivision map for the Project shall comply with the provisions of California Government Code Sections 66473.7.

City agrees that Landowner may file and process new and existing vesting tentative maps for the Property consistent with California Government Code Sections 66498.1-66498.9 and City of Newport Beach Municipal Code Chapter 19.20. Pursuant to the applicable provision of the California Subdivision Map Act (California Government Code Section 66452.6(a)), the life of any tentative subdivision map approved for the Property, whether designated a "vesting tentative map" or otherwise, together with any Subsequent Development Approval, shall be extended for the Term of this Agreement.

4.5 Responsibility for Processing Application for Coastal Development Permit; Costs

Within ninety (90) days after the Agreement Date, Landowner shall prepare and submit to the California Coastal Commission a complete application for approval of a Coastal Development Permit for the Project consistent with the Development Regulations and this Agreement and thereafter Landowner shall exercise commercially reasonable diligence in an effort to obtain an acceptable final decision by the California Coastal Commission with respect to said application as soon as is reasonably practicable. Landowner shall be responsible for all costs and expenses incurred with respect to said application. City agrees to reasonably cooperate with and support Landowner in the processing of said application, at no cost to City; provided, that City's cooperation shall not require City to agree to perform any obligations in excess of or inconsistent with the Development Regulations or this Agreement, nor shall City be required to waive Landowner's full compliance with any of Landowner's obligations set forth in the Development Regulations or this Agreement. Landowner shall reimburse City for all of City's reasonable costs and expenses incurred with respect to Landowner's CDP application (including without limitation City's payroll costs and costs for outside counsel and consultants (if required), prorated with respect to City staff time for the periods of time that City staff devote to said application) within thirty (30) days after receipt of invoices and supporting information. Landowner shall not be liable to City for any City staff time spent with respect to the CDP application following the date of City's receipt of Landowner's written notice to City that Landowner has abandoned the application for the CDP.

Notwithstanding any other provision set forth in this Agreement to the contrary, if the California Coastal Commission does not approve a CDP for the Project as submitted and City is called upon to consider a revised Project or revised conditions of approval or mitigation measures in response to the Commission's action, City shall not be deemed to be in violation of any of its obligations set forth herein.

4.6 Public Financing

Upon receipt of Landowner's written request, City shall consider in good faith any requests for Public Financing to assist in Landowner's Development of the Project; provided, however, that (i) in no event shall City be responsible to pay any costs or incur any liabilities in connection therewith and, to the extent City will be required to incur any such costs, Landowner shall advance or reimburse the same pursuant to a subsequent agreement to be entered into by City and Landowner; (ii) in no event shall any City funds or property be used as a source of payment or security for any such Public Financing; (iii) City reserves its full legislative discretion with respect to the formation of any Public Financing districts (including without limitation a community facilities district or assessment district), issuance of bonds secured by the Property (or portions thereof), and all matters relating thereto, including without limitation the total amount of Public Financing to be provided, the eligible improvements for such Public Financing, provisions as to how any special taxes or assessments shall be allocated by means of the rate and method of apportionment or engineer's report, the term of any bonds to be issued, the minimum value-to-lien ratio to be used in sizing the bonds, and such other bond-related matters as the identity of consultants, issuance costs, and the amount of capitalized interest and reserve fund requirements; and (iv) in no event shall City be deemed to be in Default of its obligations set forth in this Agreement if it fails or refuses to form a Public Financing district,

issue bonds, or take any other related action requested or desired by Landowner with respect thereto.

5. Amendment or Cancellation of Agreement

Except as expressly set forth herein, including without limitation Sections 3.2 and 8.3, this Agreement may be amended or canceled in whole or in part only by mutual written and executed consent of the Parties in compliance with California Government Code Section 65868 and City of Newport Beach Municipal Code Section 15.45.060 or by unilateral termination by City in the event of an uncured default of Landowner.

6. Enforcement.

Unless this Agreement is amended, canceled, modified, or suspended as authorized herein or pursuant to California Government Code Section 65869.5, this Agreement shall be enforceable by either Party in accordance with its terms and without regard to any change in any applicable general or specific plan, zoning, subdivision, or building regulation or other applicable ordinance or regulation adopted by City (including by City's electorate) that purports to apply to any or all of the Property.

In the event of any inconsistency or conflict between the terms set forth in this Agreement and any of the documents comprising the Development Plan, the terms and conditions set forth in this Agreement shall govern.

7. Annual Review of Landowner's Compliance With Agreement.

7.1 General.

City shall review this Agreement once during every twelve (12) month period following the Effective Date for compliance with the terms of this Agreement as provided in Government Code Section 65865.1. Landowner (including any successor to the owner executing this Agreement on or before the Agreement Date) shall pay City a reasonable fee in an amount City may reasonably establish from time to time to cover the actual and necessary costs for the annual review. City's failure to timely provide or conduct an annual review shall not constitute a Default hereunder by City.

7.2 Landowner Obligation to Demonstrate Good Faith Compliance.

During each annual review by City, Landowner is required to demonstrate good faith compliance with the terms of the Agreement in accordance with the provisions of the Development Agreement Ordinance and City's generally applicable policies and procedures. Landowner agrees to furnish such evidence of good faith compliance as City, in the reasonable exercise of its discretion, may require, thirty (30) days prior to each anniversary of the Effective Date during the Term.

7.3 Procedure.

The City Council of City shall conduct a duly noticed hearing and shall determine, on the basis of substantial evidence, whether or not Landowner has, for the period under review,

complied with the terms of this Agreement. If the City Council finds that Landowner has so complied, the annual review shall be concluded. If the City Council finds, on the basis of substantial evidence, that Landowner has not so complied, written notice shall be sent to Landowner by first class mail of the City Council's finding of non-compliance, and Landowner shall be given at least ten (10) days to cure any noncompliance that relates to the payment of money and thirty (30) days to cure any other type of noncompliance. If a cure not relating to the payment of money cannot be completed within thirty (30) days for reasons which are beyond the control of Landowner, Landowner must commence the cure within such thirty (30) days and diligently pursue such cure to completion. If Landowner fails to cure such noncompliance within the time(s) set forth above, such failure shall be considered to be a Default and City shall be entitled to exercise the remedies set forth in Article 8 below.

7.4 Annual Review a Non-Exclusive Means for Determining and Requiring Cure of Landowner's Default.

The annual review procedures set forth in this Article 7 shall not be the exclusive means for City to identify a Default by Landowner or limit City's rights or remedies for any such Default.

8. Events of Default.

8.1 General Provisions; Notice of Default and Cure Period; Judicial Reference for Resolution of Certain Disputes.

In the event of any material default, breach, or violation of the terms of this Agreement ("Default"), the Party alleging a Default shall have the right to deliver a written notice (each, a "Notice of Default") to the defaulting Party. The Notice of Default shall specify the nature of the alleged Default and a reasonable manner and sufficient period of time (ten (10) days if the Default relates to the failure to timely make a monetary payment due hereunder, not less than thirty (30) days in the event of non-monetary Defaults excepting only a City Default in failing to timely commence construction/installation of the North and/or Central Community Park improvements after delivering the City Park Notice, as referred to in Section 3.3, and ninety (90) days if the Default relates to a City Default in failing to timely commence construction/installation of the North and/or Central Community Park improvements after delivering the City Park Notice) in which the Default must be cured (the "Cure Period"). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of this Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then the Default thereafter shall be deemed not to exist. If a non-monetary Default cannot be cured during the Cure Period with the exercise of commercially reasonable diligence, the defaulting Party must promptly commence to cure as quickly as possible, and in no event later than thirty (30) days after it receives the Notice of Default as to all non-monetary Defaults other than a City Default in failing to timely commence construction/installation of the North and/or Central Community Park improvements after delivering the City Park Notice, and in no event later than ninety (90) days after City receives a Notice of Default with respect to its failure to timely commence construction/installation of the North and/or Central Community Park improvements, and thereafter the defaulting Party shall diligently pursue said cure to completion.

Notwithstanding the foregoing, in the event City and Landowner cannot resolve any dispute arising under either Section 3.3 or 3.4 of this Agreement within thirty (30) days following either Party's delivery of a Notice of Default to the other Party, then either Party shall have the right thereafter to submit such dispute to a reference judge for a binding decision. Such dispute shall be heard by a reference proceeding from the Orange County Superior Court pursuant to California Code of Civil Procedure Section 638 et seq. A single referee shall try all issues arising under Section 3.3 and/or 3.4, as applicable (but not issues arising under any other provision of this Agreement unless the Parties so agree in writing at the time of such judicial reference, with each Party reserving the right in its sole and absolute discretion to decline to submit to judicial reference any dispute not arising under Section 3.3 or 3.4), whether of fact or law, and report a finding and judgment thereon, and issue all relief appropriate under the circumstances of the controversy before him/her (and subject to the limitations on remedies set forth in Sections 8.6-8.10). The referee may be asked to issue orders for the settlement, cure, correction, or remedy of any such Default, or to enforce any covenant or agreement in Section 3.3 or 3.4 herein (or other covenant or agreement set forth in this Agreement if and only if the Parties subsequently agree in writing to submit it to judicial reference), to issue mandatory or prohibitory injunctions, to issue a writ of mandamus, issue a declaration in any declaratory relief action, or to grant any other remedies consistent with the limitations on remedies set forth in Sections 8.6-8.10 and the purposes of this Agreement. All decisions of the referee within the permitted scope of the judicial reference shall be final and binding on the Parties. From the date of the filing of a complaint or petition with respect to any dispute that is subject to resolution by judicial reference, as set forth above, until the date upon which the one referee chosen by Landowner and City agree to serve and in fact begins serving, the Orange County Superior Court Judge sitting as the writs and receivers judge shall be the referee for the purposes of issuing all orders in any proceedings hereunder. Any referee selected pursuant to this Section shall be considered a temporary judge appointed pursuant to Article 6, Section 21 of the California Constitution. Immediately upon the service of a complaint that is subject to judicial reference, as set forth above, counsel for Landowner and City shall be obligated to cooperate in good faith to select and formally retain the services of a referee, in writing, through the services of the Judicial Arbitration and Mediation Service. If Landowner and City are unable to agree on the identity of a referee within ten (10) days of the service of such a complaint, either Party may seek to have one appointed pursuant to California Code of Civil Procedure Section 640. The cost of such reference proceeding shall initially be borne equally by the Parties, but the prevailing party shall ultimately be awarded a judgment for its share of such costs.

8.2 Default by Landowner.

If Landowner is alleged to have committed a non-monetary Default and it disputes the claimed Default, it may make a written request for an appeal hearing before the City Council within ten (10) days of receiving the Notice of Default, and a public hearing shall be scheduled at the next available City Council meeting to consider Landowner's appeal of the Notice of Default. Failure to appeal a Notice of Default to the City Council within the ten (10) day period shall waive any right to a hearing on the claimed Default. If Landowner's appeal of the Notice of Default is timely and in good faith but after a public hearing of Landowner's appeal the City Council concludes that Landowner is in Default as alleged in the Notice of Default, the accrual date for commencement of the thirty (30) day Cure Period provided in Section 8.1 shall be extended until the City Council's denial of Landowner's appeal is communicated in writing to Landowner.

8.3 City's Option to Terminate Agreement.

In the event of an alleged Landowner Default, City may not terminate this Agreement without first delivering a written Notice of Default and providing Landowner with the opportunity to cure the Default within the Cure Period, as provided in Section 8.1, and complying with Section 8.2 if Landowner timely appeals any Notice of Default with respect to a non-monetary Default. A termination of this Agreement by City shall be valid only if good cause exists and is supported by evidence presented to the City Council at or in connection with a duly noticed public hearing to establish the existence of a Default. The validity of any termination may be judicially challenged by Landowner. Any such judicial challenge must be brought within sixty (60) days of service on Landowner, by personal delivery, delivery by a reputable overnight delivery service (such as Federal Express) that provides a receipt confirming delivery, or by certified mail, return receipt required, of written notice of termination by City or a written notice of City's determination of an appeal of the Notice of Default as provided in Section 8.2.

8.4 Default by City.

If Landowner alleges a City Default and alleges that the City has not cured the Default within the Cure Period, Landowner may, in accordance with the provisions in Section 8.3 above, pursue any equitable remedy available to it under this Agreement, including, without limitation, an action for a writ of mandamus, injunctive relief, or specific performance of City's obligations set forth in this Agreement. Upon a City Default, any resulting delays in Landowner's performance hereunder shall neither be a Landowner Default nor constitute grounds for termination or cancellation of this Agreement by City and shall, at Landowner's option (and provided Landowner delivers written notice to City within thirty (30) days of the commencement of the alleged City Default), extend the Term for a period equal to the length of the delay.

8.5 Waiver.

Failure or delay by either Party in delivering a Notice of Default shall not waive that Party's right to deliver a future Notice of Default of the same or any other Default.

8.6 Specific Performance Remedy.

Due to the size, nature, and scope of the Project, it will not be practical or possible to restore the Property to its pre-existing condition once implementation of this Agreement has begun. After such implementation, both Landowner and City may be foreclosed from other choices they may have had to plan for the development of the Property, to utilize the Property or provide for other benefits and alternatives. Landowner and City have invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement. It is not possible to determine the sum of money which would adequately compensate Landowner or City for such efforts. For the above reasons, City and Landowner agree that damages would not be an adequate remedy if either City or Landowner fails to carry out its obligations under this Agreement. Therefore, specific performance of this Agreement is necessary to compensate

Landowner if City fails to carry out its obligations under this Agreement or to compensate City if Landowner falls to carry out its obligations under this Agreement.

8.7 Monetary Damages.

The Parties agree that monetary damages shall not be an available remedy for either Party for a Default hereunder by the other Party or for any acts or omissions by a Party arising out of this Agreement; provided, however, that (i) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict City's right to recover the Public Benefit Fees, Landowner's 14% fair share traffic fee for City's construction of Bluff Road from 17th Street to 19th Street in accordance with Section 3.4 (if applicable), and the Fire Station No. 2 Fee at such time that said fees are due from Landowner as set forth herein; and (ii) nothing in this Section 8.7 is intended or shall be interpreted to limit or restrict Owner's indemnity obligations set forth in Article 10 or the right of the prevailing Party in any Action to recover its litigation expenses, as set forth in Section 8.10.

8.8 Additional City Remedy for Landowner's Default.

In the event of any Default by Landowner, in addition to any other remedies which may be available to City, whether legal or equitable, City shall be entitled to retain any Development Exactions applicable to the Project or the Property, including any fees, grants, dedications, or improvements to public property which it may have received prior to Landowner's Default without recourse from Landowner or its successors or assigns.

8.9 No Personal Liability of City Officials, Employees, or Agents or Landowner Members, Managers, Employees, or Agents.

No City official, employee, or agent and no member, manager, officer, employee, or consultant of Landowner or of any of Landowner's respective members shall have any personal liability hereunder for a Default by City or Landowner, as applicable, of any of its obligations set forth in this Agreement.

8.10 Recovery of Legal Expenses by Prevailing Party in Any Action.

In any judicial proceeding, arbitration, or mediation (collectively, an "Action") between the Parties that seeks to enforce the provisions of this Agreement or arises out of this Agreement, the prevailing Party shall recover all of its actual and reasonable costs and expenses, regardless of whether they would be recoverable under California Code of Civil Procedure section 1033.5 or California Civil Code section 1717 in the absence of this Agreement. These costs and expenses include expert witness fees, attorneys' fees, and costs of investigation and preparation before initiation of the Action. The right to recover these costs and expenses shall accrue upon initiation of the Action, regardless of whether the Action is prosecuted to a final judgment or decision.

9. Force Majeure.

Neither Party shall be deemed to be in Default where failure or delay in performance of any of its obligations under this Agreement is caused, through no fault of the Party whose performance is prevented or delayed, by floods, earthquakes, other acts of God, fires, wars, riots

or similar hostilities, acts of terrorism, strikes or other labor difficulties, state or federal regulations, court actions, acts or omissions of the other Party, third party lawsuits, initiatives, and referenda. Except as specified above, nonperformance shall not be excused because of the act or omission of a third person. In no event shall the occurrence of an event of force majeure operate to extend the deadline for commencement of the Term of this Agreement or the Termination Date. In addition, in no event shall the time for performance of a monetary obligation, including without limitation Landowner's obligation to pay Public Benefit Fees, be extended pursuant to this Section.

10. Indemnity Obligations of Landowner.

10.1 Indemnity Arising From Acts or Omission of Landowner.

Except to the extent caused by the intentional misconduct or gross negligence of City or one or more of City's officials, employees, agents, attorneys, lessees, or contractors (collectively, "City's Affiliated Parties"), Landowner shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against all suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to attorneys' fees and costs) that may arise, directly or indirectly, from the acts, omissions, or operations of Landowner or Landowner's agents, contractors, subcontractors, agents, or employees in the course of Development of the Project or any other activities of Landowner relating to the Property or pursuant to this Agreement (collectively, a "Claim"). City shall have the right to select and retain counsel reasonably acceptable to Landowner to defend any Claim filed against City and/or any of City's Affiliated Parties, and Landowner shall pay the reasonable cost for defense of any Claim, but in any event Landowner shall only be obligated to pay the fees and costs of one counsel irrespective of any actual or perceived conflict of interest among the City's Affiliated Parties. The indemnity provisions in this Section 10.1 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.2 Third Party Litigation.

In addition to its indemnity obligations set forth in Section 10.1, Landowner shall indemnify, defend (with one counsel selected by City and reasonably acceptable to Landowner, irrespective of any actual or perceived conflict of interest among the City's Affiliated Parties), and hold harmless City and City's Affiliated Parties from and against any Claim against City or City's Affiliated Parties seeking to attack, set aside, void, or annul the approval of this Agreement, the Adopting Ordinance, any of the Development Regulations for the Project (including without limitation any actions taken pursuant to CEQA with respect thereto), any Subsequent Development Approval, or the approval of any permit granted pursuant to this Agreement. Said indemnity obligation shall include payment of reasonable attorney's fees, expert witness fees, and court costs. City shall promptly notify Landowner of any such Claim and City shall cooperate with Landowner in the defense of such Claim. If City fails to promptly notify Landowner of such Claim, Landowner shall not be responsible to indemnify, defend, and hold City harmless from such Claim until Landowner is so notified and if City fails to cooperate in the defense of a Claim Landowner shall not be responsible to defend, indemnify, and hold harmless City during the period that City so fails to cooperate or for any losses attributable thereto. City shall be entitled to retain separate counsel reasonably acceptable to Landowner to represent City against the Claim and the City's defense costs for its separate counsel shall be

included in Landowner's indemnity obligation, provided that such counsel shall reasonably cooperate with Landowner in an effort to minimize the total litigation expenses incurred by Landowner. In the event either City or Landowner recovers any attorney's fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, Landowner shall be entitled to retain the same (provided it has fully performed its indemnity obligations hereunder). The indemnity provisions in this Section 10.2 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

10.3 Environmental Indemnity.

In addition to its indemnity obligations set forth in Section 10.1, from and after the Agreement Date Landowner shall indemnify, defend (with one counsel selected by City and reasonably acceptable to Landowner, irrespective of any actual or perceived conflict of interest among the City's Affiliated Parties), and hold harmless City and City's Affiliated Parties from and against any and all third party Claims filed against City and/or City's Affiliated Parties for personal injury or death, property damage, economic loss, statutory penalties or fines, and damages of any kind or nature whatsoever, including without limitation reasonable attorney's fees, expert witness fees, and costs, based upon or arising from any of the following: (i) the actual or alleged presence of any Hazardous Substance on or under any of the Property in violation of any applicable Environmental Law; (ii) the actual or alleged migration of any Hazardous Substance from the Property through the soils or groundwater to a location or locations off of the Property; and (iii) the storage, handling, transport, or disposal of any Hazardous Substance on, to, or from the Property and any other area disturbed, graded, or developed by Landowner in connection with Landowner's Development of the Project. The foregoing indemnity obligations shall not apply to any Hazardous Substance placed or stored on a separate legal lot within the Property after the Lot Termination Date for said lot, as provided in Section 2.4 of this Agreement.

Notwithstanding any provision set forth in this Section 10.3 to the contrary, Landowner's obligation to indemnify, defend, and hold harmless City and City's Affiliated Parties with respect to Environmental Laws and Hazardous Substances shall not apply to any Claims arising out of the actual or alleged acts or omissions of any person or entity other than Landowner or any of Landowner's members, directors, officials, employees, agents, attorneys, lessees, or contractors (collectively, "Landowner's Affiliated Parties") with respect to oil drilling or extraction operations conducted by, on, or from the non-contiguous portion of the Oil Well Operational Area comprised of approximately 7.219 acres of land area that is closest to Pacific Coast Highway and has been under City's control for a number of years prior to the Agreement Date.

The indemnity provisions in this Section 10.3 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

11. Assignment.

Landowner shall have the right to sell, transfer, or assign (hereinafter, collectively, a "Transfer") Landowner's fee title to the Property, in whole or in part, to a Permitted Transferee (which successor, as of the effective date of the Transfer, shall become the "Landowner" under this Agreement) at any time from the Agreement Date until the Termination Date; provided,

however, that no such Transfer shall violate the provisions of the Subdivision Map Act (Government Code Section 66410 et seq.) or City's local subdivision ordinance and any such Transfer shall include the assignment and assumption of Landowner's rights, duties, and obligations set forth in or arising under this Agreement as to the Property or the portion thereof so Transferred and shall be made in strict compliance with the following conditions precedent: (i) no transfer or assignment of any of Landowner's rights or interest under this Agreement shall be made unless made together with the Transfer of all or a part of the Property; and (ii) prior to the effective date of any proposed Transfer, Landowner (as transferor) shall notify City, in writing, of such proposed Transfer and deliver to City a written assignment and assumption, executed in recordable form by the transferring and successor Landowner and in a form subject to the reasonable approval of the City Attorney of City (or designee), pursuant to which the transferring Landowner assigns to the successor Landowner and the successor Landowner assumes from the transferring Landowner all of the rights and obligations of the transferring Landowner with respect to the Property or portion thereof to be so Transferred, including in the case of a partial Transfer the obligation to perform such obligations that must be performed off of the portion of the Property so Transferred that are a condition precedent to the successor Landowner's right to develop the portion of the Property so Transferred. Any Permitted Transferee shall have all of the same rights, benefits, duties, obligations, and liabilities of Landowner under this Agreement with respect to the portion of the Property sold, transferred, and assigned to such Permitted Transferee; provided, however, that in the event of a Transfer of less than all of the Property no such Permitted Transferee shall have the right to enter into an amendment of this Agreement that jeopardizes or impairs the rights or increases the obligations of the Landowner with respect to the balance of the Property.

Notwithstanding any Transfer, the transferring Landowner shall continue to be jointly and severally liable to City, together with the successor Landowner, to perform all of the transferred obligations set forth in or arising under this Agreement unless there is full satisfaction of all of the following conditions, in which event the transferring Landowner shall be automatically released from any and all obligations with respect to the portion of the Property so Transferred: (i) the transferring Landowner no longer has a legal or equitable interest in the portion of the Property so Transferred other than as a beneficiary under a deed of trust; (ii) the transferring Landowner is not then in Default under this Agreement and no condition exists that with the passage of time or the giving of notice, or both, would constitute a Default hereunder; (iii) the transferring Landowner has provided City with the notice and the fully executed written and recordable assignment and assumption agreement required as set forth in the first paragraph of this Section 11; and (iv) the successor Landowner either (A) provides City with substitute security equivalent to any security previously provided by the transferring Landowner to City to secure performance of the successor Landowner's obligations hereunder with respect to the Property or the portion of the Property so Transferred or (B) if the transferred obligation in question is not a secured obligation, the successor Landowner either provides security reasonably satisfactory to City or otherwise demonstrates to City's reasonable satisfaction that the successor Landowner has the financial resources or commitments available to perform the transferred obligation at the time and in the manner required under this Agreement and the Development Regulations for the Project.

12. Mortgagee Rights.

12.1 Encumbrances on Property.

The Parties agree that this Agreement shall not prevent or limit Landowner in any manner from encumbering the Property, any part of the Property, or any improvements on the Property with any Mortgage securing financing with respect to the construction, development, use, or operation of the Project.

12.2 Mortgagee Protection.

This Agreement shall be superior and senior to the lien of any Mortgage. Nevertheless, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. Any acquisition or acceptance of title or any right or interest in the Property or part of the Property by a Mortgagee (whether due to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise) shall be subject to all of the terms and conditions of this Agreement. Any Mortgagee who takes title to the Property or any part of the Property shall be entitled to the benefits arising under this Agreement.

12.3 Mortgagee Not Obligated.

Notwithstanding the provisions of this Section 12.3, a Mortgagee will not have any obligation or duty under the terms of this Agreement to perform the obligations of Landowner or other affirmative covenants of Landowner, or to guarantee this performance except that: (i) the Mortgagee shall have no right to develop the Project under the Development Regulations without fully complying with the terms of this Agreement; and (ii) to the extent that any covenant to be performed by Landowner is a condition to the performance of a covenant by City, that performance shall continue to be a condition precedent to City's performance.

12.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure.

Each Mortgagee shall, upon written request to City, be entitled to receive written notice from City of: (i) the results of the periodic review of compliance specified in Article 7 of this Agreement, and (ii) any default by Landowner of its obligations set forth in this Agreement.

Each Mortgagee shall have a further right, but not an obligation, to cure the Default within thirty (30) days after receiving a Notice of Default with respect to a monetary Default and within sixty (60) days after receiving a Notice of Default with respect to a non-monetary Default. If the Mortgagee can only remedy or cure a non-monetary Default by obtaining possession of the Property, then the Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure the non-monetary Default within thirty (30) days after obtaining possession and, except in case of emergency or to protect the public health or safety, City may not exercise any of its judicial remedies set forth in this Agreement to terminate or substantially alter the rights of the Mortgagee until expiration of said cure period. In the case of a non-monetary Default that cannot with diligence be remedied or cured within said cure period, the Mortgagee shall have additional time as is reasonably necessary to remedy or cure the Default, provided the Mortgagee promptly commences to cure the non-monetary Default within sixty (60) days and diligently prosecutes the cure to completion.

13. Miscellaneous Terms.

13.1 Notices.

Any notice or demand that shall be required or permitted by law or any provision of this Agreement shall be in writing. If the notice or demand will be served upon a Party, it either shall be personally delivered to the Party; deposited in the United States mail, certified, return receipt requested, and postage prepaid; or delivered by a reliable courier service that provides a receipt showing date and time of delivery with courier charges prepaid. The notice or demand shall be addressed as follows:

TO CITY:	City of Newport Beach 3300 Newport Boulevard Post Office Box 1768 Newport Beach, California 92663-3884 Attn: City Manager
With a copy to:	City Attorney City of Newport Beach 3300 Newport Boulevard Post Office Box 1768 Newport Beach, California 92663-3884
TO LANDOWNER:	Aera Energy LLC Attn: Newport Banning Ranch LLC 3030 Saturn Street, Suite 101 Brea, California 92821 Attn: George L. Basye
TO LANDOWNER:	Cherokee Investment Partners Attn: Cherokee Newport Beach, LLC 111 E. Hargett Street, Suite 300 Raleigh, NC 27601 Attn: Bret Batchelder
With a copy to:	Newport Banning Ranch LLC 1300 Quail Street, Suite 100 Newport Beach, California 92660 Attn: Michael A. Mohler

Either Party may change the address stated in this Section 13.1 by delivering notice to the other Party in the manner provided in this Section 13.1, and thereafter notices to such Party shall be addressed and submitted to the new address. Notices delivered in accordance with this Agreement shall be deemed to be delivered upon the earlier of: (i) the date received or (iii) three business days after deposit in the mail as provided above.

13.2 Project as Private Undertaking.

The Development of the Project is a private undertaking. Neither Party is acting as the agent of the other in any respect, and each Party is an independent contracting entity with respect to the terms, covenants, and conditions set forth in this Agreement. This Agreement forms no partnership, joint venture, or other association of any kind. The only relationship between the Parties is that of a government entity regulating the Development of private property by the owner of the property.

13.3 Cooperation.

Each Party shall cooperate with and provide reasonable assistance to the other Party to the extent consistent with and necessary to implement this Agreement. Upon the request of a Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record the required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

13.4 Estoppel Certificates.

At any time, either Party may deliver written notice to the other Party requesting that that Party certify in writing that, to the best of its knowledge: (i) this Agreement is in full force and effect and is binding on the Party; (ii) this Agreement has not been amended or modified either orally or in writing or, if this Agreement has been amended, the Party providing the certification shall identify the amendments or modifications; and (iii) the requesting Party is not in Default in the performance of its obligations under this Agreement and no event or situation has occurred that with the passage of time or the giving of Notice or both would constitute a Default or, if such is not the case, then the other Party shall describe the nature and amount of the actual or prospective Default. Such estoppel certificates may be relied upon only by the Parties, their respective successors and assigns, and, in the event of an estoppel certificate issued by City, a Mortgagee of Landowner, including a Permitted Transferee and its actual or prospective Mortgagee. City shall be entitled to payment/reimbursement for its actual and reasonable costs of investigation and preparation of an estoppel certificate prior to issuing the same.

The Party requested to furnish an estoppel certificate shall execute and return the certificate within thirty (30) days following receipt (assuming, in the case of an estoppel certificate to be issued by City, Landowner has paid City the cost thereof, as provided above).

13.5 Rules of Construction.

The singular includes the plural; the masculine and neuter include the feminine; "shall" is mandatory; and "may" is permissive.

13.6 Time Is of the Essence.

Time is of the essence regarding each provision of this Agreement as to which time is an element.

13.7 Waiver.

The failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a Default by the other Party, shall not constitute a waiver of that Party's right to demand strict compliance by the other Party in the future.

13.8 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be identical and may be introduced in evidence or used for any other purpose without any other counterpart, but all of which shall together constitute one and the same agreement.

13.9 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter addressed in this Agreement.

13.10 Severability.

The Parties intend that each and every obligation of the Parties is interdependent and interrelated with the other, and if any provision of this Agreement or the application of the provision to any Party or circumstances shall be held invalid or unenforceable to any extent, it is the intention of the Parties that the remainder of this Agreement or the application of the provision to persons or circumstances shall be rendered invalid or unenforceable. The Parties intend that neither Party shall receive any of the benefits of the Agreement without the full performance by such Party of all of its obligations provided for under this Agreement. Without limiting the generality of the foregoing, the Parties intend that Landowner shall not receive any of the benefits of this Agreement if any of Landowner's obligations are rendered void or unenforceable as the result of any third party litigation, and City shall be free to exercise its legislative discretion to amend or repeal the Development Regulations applicable to the Property and Landowner shall cooperate as required, despite this Agreement, should third party litigation result in the nonperformance of Landowner's obligations under this Agreement. The provisions of this Section 13.10 shall apply regardless of whether the Effective Date occurs and after the Termination Date.

13.11 Construction.

This Agreement has been drafted after extensive negotiation and revision. Both City and Landowner are sophisticated parties who were represented by independent counsel throughout the negotiations or City and Landowner had the opportunity to be so represented and voluntarily chose to not be so represented. City and Landowner each agree and acknowledge that the terms of this Agreement are fair and reasonable, taking into account their respective purposes, terms, and conditions. This Agreement shall therefore be construed as a whole consistent with its fair meaning, and no principle or presumption of contract construction or interpretation shall be used to construe the whole or any part of this Agreement in favor of or against either Party.

13.12 Successors and Assigns; Constructive Notice and Acceptance.

The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to Development of the Property: (i) is for the benefit of and is a burden upon every portion of the Property; (ii) runs with the Property and each portion thereof; and (iii) is binding upon each Party and each successor in interest during its ownership of the Property or any portion thereof. Every person or entity who now or later owns or acquires any right, title, or interest in any part of the Project or the Property is and shall be conclusively deemed to have consented and agreed to every provision of this Agreement. This Section 13.12 applies regardless of whether the instrument by which such person or entity acquires the interest refers to or acknowledges this Agreement and regardless of whether such person or entity has expressly entered into an assignment and assumption agreement as provided for in Section 11.

13.13 No Third Party Beneficiaries.

The only Parties to this Agreement are City and Landowner. This Agreement does not involve any third party beneficiaries, and it is not intended and shall not be construed to benefit or be enforceable by any other person or entity.

13.14 Applicable Law and Venue.

This Agreement shall be construed and enforced consistent with the internal laws of the State of California, without regard to conflicts of law principles. Any action at law or in equity arising under this Agreement or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or the United States District Court for the Central District of California. The Parties waive all provisions of law providing for the removal or change of venue to any other court.

13.15 Section Headings.

All section headings and subheadings are inserted for convenience only and shall not affect construction or interpretation of this Agreement.

13.16 Incorporation of Recitals and Exhibits.

All of the Recitals are incorporated into this Agreement by this reference. Exhibits A and B are attached to this Agreement and incorporated by this reference as follows:

EXHIBIT DESIGNATION	DESCRIPTION
A	Legal Description of Property
B	Depiction of the Property
B-1	Depiction of County Property

13.17 Recordation.

The City Clerk of City shall record this Agreement and any amendment, modification, or cancellation of this Agreement in the Office of the County Recorder of the County of Orange within the period required by California Government Code section 65868.5 and City of Newport Beach Municipal Code section 15.45.090. The date of recordation of this Agreement shall not modify or amend the Effective Date or the Termination Date.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE TO
ZONING IMPLEMENTATION AND PUBLIC BENEFIT SPACE AGREEMENT

"LANDOWNER"

AERA ENERGY LLC,
a California limited liability company

By:_____

Its:_____

By:_____

Its:_____

CHEROKEE NEWPORT BEACH, LLC, a
Delaware limited liability company

By:_____

Its:_____

By:_____

Its:_____

"CITY"

CITY OF NEWPORT BEACH

By: _____

Its: Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Aaron Harp, City Attorney

SIGNATURE PAGE TO
ZONING IMPLEMENTATION AND PUBLIC BENEFIT SPACE AGREEMENT

"LANDOWNER"

AERA ENERGY LLC,
a California limited liability company

By: _____

Its: Senior Vice President

By: _____

Its: Vice President

CHEROKEE NEWPORT BEACH, LLC, a
Delaware limited liability company

By: _____

Its: _____

By: _____

Its: _____

"CITY"

CITY OF NEWPORT BEACH

By: _____

Its: Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Aaron Harp, City Attorney

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange }

On July 11, 2012 (Date) before me, Meg Peckham (Here Insert Name and Title of the Officer),

personally appeared Van N. Schultz (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.

MEG PECKHAM
Commission # 1824084
Notary Public - California
Orange County
My Comm. Expires Nov 30, 2012

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 Meg Peckham (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Development Agreement No. DA2008-003

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____
☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____
Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

©2007 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-2402 • www.NationalNotary.org Item #5907 Reorder: Call Toll-Free 1-800-876-6827

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

On July 12, 2012 (Date) before me, Meg Peckham (Here Insert Name and Title of the Officer),

personally appeared George L. Basye (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 Meg Peckham (Signature of Notary Public)

MEG PECKHAM
Commission # 1824084
Notary Public - California
Orange County
My Comm. Expires Nov 30, 2012

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Development Agreement No. DA2008-003

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____

☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

©2007 National Notary Association • 9350 De Soto Ave., P.O. Box 2402 • Chatsworth, CA 91313-2402 • www.NationalNotary.org Item #5907 Reorder: Call Toll-Free 1-800-876-6827

SIGNATURE PAGE TO
ZONING IMPLEMENTATION AND PUBLIC BENEFIT SPACE AGREEMENT

"LANDOWNER"

AERA ENERGY LLC,
a California limited liability company

By:_____

Its:_____

By:_____

Its:_____

CHEROKEE NEWPORT BEACH, LLC, a
Delaware limited liability company

By: Bret Batchelder

Its: Vice President

By:_____

Its:_____

"CITY"

CITY OF NEWPORT BEACH

By: _____

Its: Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Aaron Harp, City Attorney

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

_____
Notary Public in and for
said County and State

NORTH CAROLINA
STATE OF ~~CALIFORNIA~~
COUNTY OF ~~ORANGE~~ WAKE

On July 9, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared BRET BATCHELDER and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

Andrea P. Meli
Notary Public in and for ANDREA P. MELI
said County and State

ANDREA P. MELI
Notary Public, North Carolina
Wake County
My Commission Expires
February 14, 2015

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

_____
Notary Public in and for
said County and State

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

_____
Notary Public in and for
said County and State

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

_____
Notary Public in and for
said County and State

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

_____
Notary Public in and for
said County and State

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

Witness my hand and official seal.

_____
Notary Public in and for
said County and State

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Real property in the unincorporated area of the County of Orange, State of California, described as follows:

PARCEL 1:

A PORTION OF LOTS "B", "C" AND "D", ALL IN THE BANNING TRACT, AS SHOWN ON A MAP OF SAID TRACT FILED IN THE CASE OF HANCOCK BANNING AND OTHERS VS. MARY H. BANNING, FOR PARTITION, BEING CASE NO. 6385 UPON THE REGISTER OF ACTIONS OF THE SUPERIOR COURT OF LOS ANGELES COUNTY, CALIFORNIA, AND A PORTION OF RANCHO SANTIAGO DE SANTA ANA, DESCRIBED IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE BOUNDARY LINE BETWEEN LOTS "A" AND "B" OF SAID BANNING TRACT, WHICH POINT IS THE POINT OF INTERSECTION OF THE CENTER LINE OF NINETEENTH STREET AND THE NORTHWESTERLY LINE OF THE FIRST ADDITION TO THE NEWPORT MESA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE SOUTH 89 DEGREES 26' 55" WEST ALONG THE NORTHERLY LINE OF SAID LOT "B", 3315.29 FEET TO THE NORTHWESTERLY CORNER OF LOT "B" OF SAID BANNING TRACT; THENCE SOUTHERLY ALONG THE WESTERLY BOUNDARY LINE OF LOT "B" OF SAID BANNING TRACT, THE FOLLOWING COURSES AND DISTANCES: SOUTH 1 DEGREE 45' WEST 462.00 FEET; THENCE SOUTH 34 DEGREES 15' WEST 462.95 FEET; THENCE SOUTH 6 DEGREES 15' EAST 1058.48 FEET; THENCE SOUTH 19 DEGREES 45' WEST 529.21 FEET; THENCE SOUTH 34 DEGREES 30' WEST 463.08 FEET; THENCE SOUTH 42 DEGREES 45' WEST 397.00 FEET; THENCE SOUTH 4 DEGREES 45' WEST 462.00 FEET; THENCE SOUTH 21 DEGREES 15' WEST 198.50 FEET TO THE SOUTHWEST CORNER OF LOT "B", AS SHOWN ON SAID MAP OF THE BANNING TRACT, WHICH CORNER IS ALSO STATION NO. 149 OF THE BOUNDARY LINE OF RANCHO SANTIAGO DE SANTA ANA, AS DESCRIBED IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA; THENCE SOUTH 72 DEGREES 51' 36" EAST 807.47 FEET TO A POINT WHICH BEARS NORTH 20 DEGREES 32' 44" EAST 606.79 FEET FROM THE POINT OF INTERSECTION OF THE CENTER LINE OF THE SANTA ANA RIVER, AS SHOWN ON THE MAP FILED IN AND ANNEXED TO THE COMPLAINT IN THE CASE OF J. B. BANNING JR. VS. SMITH AND OTHERS, BEING CASE NO. 22797 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR ORANGE COUNTY, A COPY OF THE JUDGMENT OF SAID CASE NO. 22797 HAVING BEEN RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS, WITH THE SOUTHEASTERLY LINE OF SUMMIT STREET, 30 FEET IN WIDTH, AS SHOWN ON A MAP OF EL MORO TRACT RECORDED IN BOOK 8, PAGE 75 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE EASTERLY, NORTHEASTERLY AND SOUTHEASTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER AND 600.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: SOUTH 78 DEGREES 02' EAST 486.60 FEET; THENCE SOUTH 66 DEGREES 42' 20" EAST 517.33 FEET; THENCE NORTH 20 DEGREES 06' 15" EAST 539.49 FEET; THENCE NORTH 51 DEGREES 48' EAST 405.76 FEET; THENCE NORTH 74 DEGREES 07' EAST 722.86 FEET; THENCE SOUTH 45 DEGREES 20' 28" EAST 740.97 FEET; THENCE SOUTH 27 DEGREES 46' EAST 498.37 FEET; THENCE SOUTH 13 DEGREES 35' 40" EAST 820.19 FEET; THENCE SOUTH 1 DEGREE 38' 25" WEST 871.22 FEET TO A POINT IN A LINE 600.00 FEET NORTHERLY OF AND PARALLEL WITH THE NORTHERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY, AS DESCRIBED IN DEED RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS; THENCE SOUTHEASTERLY, PARALLEL WITH THE NORTHERLY AND

NORTHEASTERLY LINE OF SAID CALIFORNIA STATE HIGHWAY, THE FOLLOWING COURSES AND DISTANCES: THENCE SOUTH 83 DEGREES 18' EAST 328.62 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 1650.00 FEET AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 500.12 FEET; THENCE SOUTH 65 DEGREES 56' EAST, TANGENT TO SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1650.00 FEET AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 48.34 FEET TO A POINT IN THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF WHITTIER AVENUE (60 FEET IN WIDTH), AS SHOWN ON A MAP OF THE NEWPORT MESA TRACT RECORDED IN BOOK 5, PAGE 1 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, A RADIAL LINE FROM SAID POINT BEARS SOUTH 25 DEGREES 44' 43" WEST; THENCE NORTH 0 DEGREES 36' 01" WEST ALONG THE SAID PROLONGATION OF WHITTIER AVENUE, 3061.05 FEET TO A POINT IN THE SOUTHWESTERLY LINE OF SAID FIRST ADDITION TO NEWPORT MESA TRACT; THENCE NORTH 29 DEGREES 24' 45" WEST ALONG THE SOUTHWESTERLY LINE OF SAID FIRST ADDITION TO THE NEWPORT MESA TRACT, 2706.70 FEET TO THE MOST WESTERLY CORNER OF SAID FIRST ADDITION TO THE NEWPORT MESA TRACT; THENCE NORTH 19 DEGREES 01' 55" EAST ALONG THE NORTHWESTERLY LINE OF THE LAST MENTIONED TRACT, 1065.62 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, THAT PORTION OF LOT "B" OF SAID BANNING TRACT DESCRIBED AS FOLLOWS: BEGINNING AT A POINT IN THE EASTERLY LINE OF THE 300-FOOT STRIP OF LAND FOR SANTA ANA RIVER CHANNEL, AS DESCRIBED IN THE DEED TO THE NEWBERT PROTECTION DISTRICT, RECORDED JUNE 22, 1911 IN BOOK 197, PAGE 300 OF DEEDS, ORANGE COUNTY, WHICH POINT IS NORTH 71 DEGREES 20' EAST 510.47 FEET FROM THE SOUTHWEST CORNER OF SAID LOT "B", WHICH LAST MENTIONED CORNER IS ALSO STATION 149 OF THE RANCHO SANTIAGO DE SANTA ANA; THENCE NORTH 13 DEGREES 25' EAST ALONG THE EASTERLY LINE OF SAID 300-FOOT STRIP OF LAND, 660 FEET; THENCE SOUTH 76 DEGREES 35' EAST 660 FEET; THENCE SOUTH 13 DEGREES 25' WEST 660 FEET; THENCE NORTH 76 DEGREES 35' WEST 660 FEET TO THE POINT OF BEGINNING, AS CONDEMNED BY THE CITY OF NEWPORT BEACH IN THE ACTION ENTITLED "CITY OF NEWPORT BEACH, A MUNICIPAL CORPORATION, PLAINTIFF VS. TOWNSEND LAND COMPANY AND OTHERS, DEFENDANTS", BEING CASE NO. 34747 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR ORANGE COUNTY, A CERTIFIED COPY OF THE FINAL JUDGMENT HAVING BEEN RECORDED AUGUST 20, 1937 IN BOOK 910, PAGE 19 OF OFFICIAL RECORDS OF ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THAT PORTION OF LOT "B" IN SAID BANNING TRACT CONVEYED BY THE TOWNSEND LAND COMPANY TO THE NEWBERT PROTECTION DISTRICT FOR A RIVER CHANNEL, 300 FEET WIDE, BY DEED RECORDED JUNE 22, 1911 IN BOOK 197, PAGE 300 OF DEEDS, ORANGE COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT IN THE SOUTHERLY LINE OF SAID LOT "B" OF THE BANNING TRACT, SOUTH 84 DEGREES 45' EAST 135.84 FEET DISTANT FROM THE SOUTHWESTERLY CORNER OF SAID LOT "B", WHICH CORNER IS ALSO STATION 149 OF THE RANCHO SANTIAGO DE SANTA ANA; THENCE NORTH 13 DEGREES 25' EAST ALONG THE WESTERLY SIDE OF SAID 300-FOOT RIGHT OF WAY, 946.75 FEET TO A POINT IN THE WESTERLY LINE OF SAID LOT "B"; THENCE ALONG THE WESTERLY LINE OF SAID LOT "B", NORTH 42 DEGREES 45' EAST 38.70 FEET TO AN ANGLE IN SAID WESTERLY LINE; THENCE NORTH 34 DEGREES 30' EAST 462.00 FEET TO AN ANGLE IN SAID WESTERLY LINE; THENCE NORTH 19 DEGREES 45' EAST 528.00 FEET TO AN ANGLE IN SAID WESTERLY LINE; THENCE STILL ALONG SAID WESTERLY LINE, NORTH 6 DEGREES 15' WEST 723.17 FEET TO A POINT IN THE WESTERLY LINE OF SAID 300-FOOT RIGHT OF WAY; THENCE NORTH 13 DEGREES 25' EAST ALONG THE WESTERLY LINE OF

SAID RIGHT OF WAY, 607.27 FEET TO A POINT IN THE WESTERLY LINE OF SAID LOT "B"; THENCE ALONG THE WESTERLY LINE OF SAID LOT "B", NORTH 34 DEGREES 15' EAST 148.48 FEET TO AN ANGLE IN SAID LINE; THENCE NORTH 1 DEGREE 45' EAST 436.44 FEET TO THE NORTHWEST CORNER OF SAID LOT "B"; THENCE ALONG THE NORTHERLY LINE OF SAID LOT "B", NORTH 89 DEGREES 28' EAST 346.14 FEET TO A POINT IN THE EASTERLY LINE OF SAID 300-FOOT RIGHT OF WAY; THENCE SOUTH 13 DEGREES 25' WEST 3831.55 FEET TO THE SOUTHERLY LINE OF SAID LOT "B"; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT "B", NORTH 84 DEGREES 45' WEST 303.08 FEET TO THE POINT OF COMMENCEMENT.

ALSO EXCEPTING THEREFROM, THE PORTIONS THEREOF INCLUDED WITHIN A STRIP OF LAND 30 FEET IN WIDTH, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS: BEGINNING AT THE POINT WHERE THE EASTERLY BOUNDARY LINE OF THE RANCHO LAS BOLSAS BETWEEN STATIONS 78 AND 79 OF THE SAID BOUNDARY LINE IS INTERSECTED BY THE LINE WHICH BEARS NORTH 13 DEGREES 26' 30" EAST FROM THE POINT ON THE SOUTH LINE OF SECTION 18, TOWNSHIP 6 SOUTH, RANGE 10 WEST, SAN BERNARDINO BASE AND MERIDIAN, 2294.92 FEET NORTH 89 DEGREES 38' EAST FROM THE SOUTH QUARTER SECTION CORNER OF SAID SECTION, SAID BEGINNING POINT BEING ON THE SURVEYED CENTER LINE OF THE SANTA ANA-ANAHEIM JOINT OUTFALL SEWER; THENCE FROM SAID POINT OF BEGINNING, SOUTH 13 DEGREES 26' 30" WEST ALONG SAID CENTER LINE TO STATION 187+74.49, BEING THE POINT ON THE SOUTH LINE OF SAID SECTION 18, 2294.92 FEET NORTH 89 DEGREES 38' EAST FROM THE SOUTH QUARTER CORNER OF SAID SECTION; THENCE CONTINUING SOUTH 13 DEGREES 26' 30" WEST ALONG SAID SURVEYED CENTER LINE, 2795.66 FEET TO STATION 215+70.15; THENCE SOUTH 16 DEGREES 27' 30" WEST ALONG SAID CENTER LINE, 1050.35 FEET TO A POINT 15.30 FEET SOUTH 84 DEGREES 45' EAST FROM STATION 68 OF THE RANCHO LAS BOLSAS, TOGETHER WITH THE STRIP OF LAND OF VARYING WIDTHS LYING BETWEEN THE EASTERLY LINE OF THE ABOVE DESCRIBED 30-FOOT STRIP AND THE WESTERLY LINE OF THE RIGHT OF WAY OF THE SANTA ANA RIVER THROUGH THE NEWBERT PROTECTION DISTRICT, AS CONVEYED TO THE CITY OF SANTA ANA BY DEED RECORDED APRIL 14, 1934 IN BOOK 670, PAGE 147 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THAT PORTION OF SAID LAND INCLUDED WITHIN A STRIP OF LAND 180 FEET WIDE, DESCRIBED AS PARCELS D3-121.1 AND D3-122.1 IN THE FINAL ORDER OF CONDEMNATION RENDERED JANUARY 26, 1962 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, IN THE ACTION ENTITLED "ORANGE COUNTY FLOOD CONTROL DISTRICT VS. CITY OF NEWPORT BEACH, AND OTHERS" (CASE NO. 77399), A CERTIFIED COPY OF WHICH DECREE WAS RECORDED JANUARY 30, 1962 IN BOOK 5993, PAGE 441 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THAT PORTION OF SAID LAND INCLUDED WITHIN THE FOLLOWING DESCRIBED LAND:

THAT PORTION OF BLOCK C OF THE BANNING TRACT, AS SHOWN ON A MAP ATTACHED TO REPORT OF THE REFEREES FILED APRIL 14, 1890 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, AND THAT PORTION OF LOTS 1111 AND 1112 AND PORTION OF SIXTEENTH STREET AND WHITTIER AVENUE ADJOINING, AS SHOWN ON THE MAP OF NEWPORT MESA TRACT RECORDED IN BOOK 5, PAGE 1 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID SIXTEENTH STREET WITH THE SOUTHWESTERLY BOUNDARY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE SOUTH 89 DEGREES 21' 50" WEST 16.50 FEET TO

THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 500.00 FEET; THENCE WESTERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 28 DEGREES 48' 33", A DISTANCE OF 251.41 FEET TO A LINE TANGENT; THENCE SOUTH 60 DEGREES 33' 17" WEST ALONG SAID LINE TANGENT, A DISTANCE OF 404.60 FEET; THENCE NORTH 29 DEGREES 26' 43" WEST 804.50 FEET; THENCE NORTH 60 DEGREES 33' 17" EAST 300.00 FEET; THENCE SOUTH 88 DEGREES 48' 26" EAST 316.57 FEET TO A POINT IN A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 50.00 FEET, A RADIAL LINE FROM SAID POINT BEARS NORTH 89 DEGREES 21' 50" EAST; THENCE NORTHERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 44 DEGREES 24' 55", A DISTANCE OF 38.76 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 90.00 FEET; THENCE NORTHERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 44 DEGREES 24' 55", A DISTANCE OF 69.77 FEET TO A LINE TANGENT; THENCE NORTH 0 DEGREES 38' 10" WEST ALONG SAID LINE TANGENT, A DISTANCE OF 11.11 FEET TO THE SAID SOUTHWESTERLY BOUNDARY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT; THENCE SOUTH 29 DEGREES 26' 43" EAST ALONG SAID SOUTHWESTERLY BOUNDARY LINE, A DISTANCE OF 789.32 FEET TO THE POINT OF BEGINNING.

AS DESCRIBED IN THE FINAL ORDER OF CONDEMNATION RENDERED AUGUST 4, 1965 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, ENTITLED "COSTA MESA UNION SCHOOL DISTRICT OF ORANGE COUNTY, CALIFORNIA VS. SECURITY FIRST NATIONAL BANK, ETC., AND OTHERS" (CASE NO. 123141), A CERTIFIED COPY OF WHICH ORDER WAS RECORDED AUGUST 5, 1965 IN BOOK 7620, PAGE 215 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THAT PORTION DESCRIBED AS FOLLOWS:

THAT PORTION OF LOT B OF THE BANNING TRACT, AS SHOWN ON A MAP FILED IN THE CASE OF HANCOCK BANNING AND OTHERS VS. MARY H. BANNING, FOR PARTITION, BEING CASE NO. 6385 UPON THE REGISTER OF ACTIONS OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR LOS ANGELES COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF SAID LOT B; THENCE SOUTHERLY ALONG THE WESTERLY BOUNDARY OF SAID LOT B, SOUTH 01 DEGREE 45' 00" WEST 462.00 FEET TO RANCHO LAS BOLSAS, STATION 75, AND SOUTH 34 DEGREES 15' 00" WEST 462.95 FEET TO RANCHO LAS BOLSAS, STATION 74, BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID WESTERLY BOUNDARY, SOUTH 06 DEGREES 15' 00" EAST TO THE WESTERLY LINE OF THE STRIP OF LAND DESCRIBED IN DEED TO THE CITY OF SANTA ANA, RECORDED APRIL 14, 1934 IN BOOK 670, PAGE 147 OF OFFICIAL RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE NORTHERLY ALONG SAID WESTERLY LINE TO THE INTERSECTION WITH THAT CERTAIN COURSE HEREINABOVE CITED AS "SOUTH 34 DEGREES 15' 00" WEST 462.95 FEET"; THENCE ALONG SAID CERTAIN COURSE, SOUTH 34 DEGREES 15' 00" WEST TO THE TRUE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THOSE PORTIONS DESCRIBED AS PARCELS 100, 103, 106 AND 108 IN THE NOTICE OF LIS PENDENS, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA CASE NO. CV 91-3991-IH, A CERTIFIED OF WHICH WAS RECORDED AUGUST 23, 1991 AS INSTRUMENT NO. 91-455338 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, WHICH INCLUDES A DECLARATION OF TAKING.

ALSO EXCEPTING THEREFROM, THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS, AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS, UPON, OVER AND BENEATH THE SURFACE OF SAID LAND, AT

ALL TIMES TO EXPLORE FOR, EXTRACT AND REMOVE ANY OF SAID MINERALS LOCATED BELOW A DEPTH OF 6200 FEET, BUT WITHOUT THE RIGHT TO USE THE SURFACE OF SAID LAND DOWN TO A DEPTH OF 500 FEET, AS RESERVED IN THE DEED EXECUTED BY HANCOCK BANNING JR. AND OTHERS, DATED AUGUST 1, 1958, RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228, AS AMENDED BY THE DEED AND AGREEMENT EXECUTED BY HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665, ALL IN OFFICIAL RECORDS, ORANGE COUNTY.

PARCEL 2:

BEGINNING AT THE SOUTHWEST CORNER OF THAT CERTAIN LAND AS DESCRIBED IN PARCEL 1 IN DEED FROM HANCOCK BANNING JR. AND OTHERS, DATED AUGUST 1, 1958, RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, ORANGE COUNTY, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS, ORANGE COUNTY, ALSO BEING THE SOUTHWEST CORNER OF LOT "B" OF THE BANNING TRACT, AS SHOWN ON THE MAP ATTACHED TO THE REPORT OF THE REFEREES FILED APRIL 14, 1890 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, CALIFORNIA, WHICH CORNER IS ALSO STATION 149 OF THE BOUNDARY LINE OF RANCHO SANTIAGO DE SANTA ANA, AS DESCRIBED IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 1, SOUTH 72 DEGREES 51' 36" EAST 807.47 FEET TO A POINT WHICH BEARS NORTH 20 DEGREES 32' 44" EAST 606.79 FEET FROM THE POINT OF INTERSECTION OF THE CENTER LINE OF THE SANTA ANA RIVER, AS SHOWN ON THE MAP FILED IN AND ANNEXED TO THE COMPLAINT IN THE CASE OF J. B. BANNING JR. VS. SMITH AND OTHERS, BEING CASE NO. 22797 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR ORANGE COUNTY, A COPY OF THE JUDGMENT OF SAID CASE NO. 22797 HAVING BEEN RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS, WITH THE SOUTHEASTERLY LINE OF SUMMIT STREET, 30 FEET IN WIDTH, AS SHOWN ON A MAP OF EL MORO TRACT RECORDED IN BOOK 8, PAGE 75 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE EASTERLY, NORTHEASTERLY AND SOUTHEASTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER AND 600.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: SOUTH 78 DEGREES 02' EAST 486.60 FEET; SOUTH 66 DEGREES 42' 20" EAST 517.33 FEET; NORTH 20 DEGREES 06' 15" EAST 539.49 FEET; NORTH 51 DEGREES 48' EAST 405.76 FEET; NORTH 74 DEGREES 07' EAST 722.86 FEET; SOUTH 45 DEGREES 20 28" EAST 740.97 FEET; SOUTH 27 DEGREES 46' EAST 498.37 FEET; SOUTH 13 DEGREES 35' 40" EAST 820.19 FEET; SOUTH 1 DEGREE 38' 25" WEST 871.22 FEET TO A POINT IN A LINE 600.00 FEET NORTHERLY OF AND PARALLEL WITH THE NORTHERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY, AS DESCRIBED IN DEED RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE SOUTHEASTERLY, PARALLEL WITH THE NORTHERLY AND NORTHEASTERLY LINE OF SAID CALIFORNIA STATE HIGHWAY, THE FOLLOWING COURSES AND DISTANCES: SOUTH 83 DEGREES 18' EAST 328.62 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 1650.00 FEET AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 500.12 FEET; THENCE SOUTH 65 DEGREES 56' EAST, TANGENT TO SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1650.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 48.34 FEET TO A POINT IN THE SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF WHITTIER AVENUE (60 FEET IN WIDTH), AS SHOWN ON A MAP OF THE FIRST ADDITION TO NEWPORT MESA TRACT RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, A RADIAL

LINE FROM SAID POINT BEARS SOUTH 25 DEGREES 44' 43" WEST, WHICH POINT IS THE SOUTHEAST CORNER OF SAID PARCEL 1; THENCE SOUTH 0 DEGREES 36' 01" EAST ALONG THE SAID PROLONGATION OF WHITTIER AVENUE, 404.46 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY LINE OF THAT CERTAIN STRIP OF LAND 250 FEET IN WIDTH, AS DESCRIBED IN PARCEL 1, ARTICLE II OF SAID DEED RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, ORANGE COUNTY, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS, ORANGE COUNTY, A RADIAL LINE FROM SAID INTERSECTION BEARS SOUTH 33 DEGREES 40' 54" WEST; THENCE ALONG THE NORTHEASTERLY, NORTHERLY, NORTHWESTERLY AND NORTHERLY LINE OF SAID PARCEL 1, ARTICLE II, THROUGH THE FOLLOWING COURSES AND DISTANCES: NORTHWESTERLY ALONG A CURVE CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 1300.00 FEET, THROUGH AN ANGLE OF 9 DEGREES 36' 54", A DISTANCE OF 218.16 FEET TO A LINE TANGENT THERETO; THENCE NORTH 65 DEGREES 56' WEST, TANGENT TO SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE LEFT; THENCE WESTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1300.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 394.04 FEET; THENCE NORTH 83 DEGREES 18' WEST, TANGENT TO SAID CURVE, 646.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT; THENCE WESTERLY ALONG A CURVE CONCAVE TO THE NORTH AND HAVING A RADIUS OF 700.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 2.34 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT EAST THEREFROM, MEASURED AT RIGHT ANGLES THERETO, A RADIAL LINE FROM SAID POINT BEARS NORTH 6 DEGREES 53' 29" EAST; THENCE NORTHERLY, NORTHWESTERLY AND SOUTHWESTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 1 DEGREE 38' 25" EAST 1144.77 FEET; NORTH 13 DEGREES 35' 40" WEST 729.87 FEET; NORTH 27 DEGREES 46' WEST 400.76 FEET; NORTH 45 DEGREES 20' 28" WEST 482.58 FEET; SOUTH 74 DEGREES 07' WEST 449.53 FEET; SOUTH 51 DEGREES 48' WEST 237.37 FEET; SOUTH 20 DEGREES 06' 15" WEST 319.00 FEET TO A POINT IN A LINE PARALLEL WITH THE NORTHWESTERLY LINE OF TRACT NO. 772, AS SHOWN ON A MAP RECORDED IN BOOK 23, PAGES 5 AND 6 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND 250 FEET DISTANT WEST THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE SOUTHWESTERLY AND WESTERLY, PARALLEL WITH THE NORTHWESTERLY AND NORTHERLY LINE OF SAID TRACT NO. 772, AND 250.00 FEET DISTANT WESTERLY AND NORTHWESTERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: SOUTH 29 DEGREES 06' WEST 258.16 FEET; SOUTH 42 DEGREES 06' WEST 131.37 FEET; SOUTH 72 DEGREES 45' WEST 158.65 FEET; NORTH 88 DEGREES 25' WEST 16.51 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER AND 250.00 FEET DISTANT NORTHERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER AND 250.00 FEET DISTANT NORTHERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 66 DEGREES 42' 20" WEST 620.94 FEET; NORTH 78 DEGREES 02' WEST 504.69 FEET TO A POINT IN A LINE PARALLEL WITH THE NORTHERLY LINE OF BLOCK C, EL MORO TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 75 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND 250.00 FEET DISTANT NORTHERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY, PARALLEL WITH THE SAID NORTHERLY LINE OF BLOCK C, EL MORO TRACT, AND 250.00 FEET DISTANT NORTHERLY THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 60 DEGREES 52' 34" WEST 120.39 FEET; NORTH 64 DEGREES 06' 50" WEST 216.59 FEET TO A POINT IN THE EASTERLY LINE OF THE EASEMENT FOR THE PURPOSE OF MAINTAINING A RIVER CHANNEL OVER A STRIP OF LAND 300 FEET WIDE, IN FAVOR OF NEWBERT PROTECTION DISTRICT, AS DESCRIBED IN THE INTERLOCUTORY DECREE OF PARTITION DATED JULY 19, 1929, A CERTIFIED COPY OF WHICH

WAS RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS, ORANGE COUNTY, SAID POINT BEING THE MOST NORTHWESTERLY CORNER OF SAID PARCEL 1, ARTICLE II; THENCE SOUTH 13 DEGREES 25' WEST ALONG SAID EASTERLY LINE OF THE RIVER CHANNEL, 256.04 FEET TO THE MOST SOUTHWESTERLY CORNER OF SAID PARCEL 1, ARTICLE II; THENCE NORTH 64 DEGREES 06' 50" WEST ALONG THE NORTHERLY LINE OF SAID BLOCK C OF EL MORO TRACT, 16.02 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY LINE OF THE 100-FOOT RIGHT OF WAY OF CALIFORNIA STATE HIGHWAY; THENCE NORTH 54 DEGREES 02' WEST ALONG SAID HIGHWAY RIGHT OF WAY LINE, 145.48 FEET TO THE CENTER LINE OF SAID 300-FOOT RIVER CHANNEL EASEMENT; THENCE NORTH 13 DEGREES 25' EAST ALONG SAID CENTER LINE, 390.57 FEET TO THE NORTHEAST CORNER OF LAND DESCRIBED IN DEED DATED DECEMBER 30, 1929 FROM JOSEPH BANNING JR. AND OTHERS, TO JAMES H. MACKLIN, RECORDED JANUARY 29, 1930 IN BOOK 356, PAGE 31 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE NORTH 74 DEGREES 17' WEST 289.47 FEET TO A POINT IN THE SOUTHERLY EXTENSION OF THE WESTERLY BOUNDARY LINE OF SAID RANCHO SANTIAGO DE SANTA ANA, WHICH POINT IS ALSO THE NORTHWEST CORNER OF SAID LAND DESCRIBED IN SAID DEED RECORDED IN BOOK 356, PAGE 31 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE NORTH 15 DEGREES 43' EAST ALONG THE SAID SOUTHERLY EXTENSION OF THE WESTERLY BOUNDARY LINE OF RANCHO SANTIAGO DE SANTA ANA, 119.00 FEET TO THE POINT OF BEGINNING.

EXCEPT ANY PORTION OR PORTIONS OF SAID ABOVE DESCRIBED LAND WHICH IS OR ARE NOT INCLUDED EITHER WITHIN THE EXTERIOR BOUNDARIES OF THE RANCHO SANTIAGO DE SANTA ANA, OR WITHIN THE EXTERIOR BOUNDARY LINES OF GOVERNMENT LOT 1, SECTION 19; GOVERNMENT LOT 1, SECTION 20; AND GOVERNMENT LOT 1, SECTION 29, ALL IN TOWNSHIP 6 SOUTH, RANGE 10 WEST, SAN BERNARDINO BASE AND MERIDIAN.

ALSO EXCEPTING THEREFROM, THAT PORTION OF SAID LAND INCLUDED WITHIN A STRIP OF LAND 180 FEET WIDE, DESCRIBED AS PARCEL D3-122.1 IN THE FINAL ORDER OF CONDEMNATION RENDERED JANUARY 26, 1962 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, IN THE ACTION ENTITLED "ORANGE COUNTY FLOOD CONTROL DISTRICT VS. CITY OF NEWPORT BEACH AND OTHERS" (CASE NO. 77399), A CERTIFIED COPY OF WHICH DECREE RECORDED JANUARY 20, 1962, BOOK 5993, PAGE 441, OFFICIAL RECORDS, ORANGE COUNTY, CALIFORNIA.

ALSO EXCEPTING THEREFROM THOSE PORTIONS DESCRIBED AS PARCELS 100, 103, 106 AND 108 IN THE NOTICE OF LIS PENDENS, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA CASE NO. CV 91-3991-IH, A CERTIFIED OF WHICH WAS RECORDED AUGUST 23, 1991 AS INSTRUMENT NO. 91-455338 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, WHICH INCLUDES A DECLARATION OF TAKING.

ALSO EXCEPTING THEREFROM, THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, IN OR UNDER, OR PRODUCIBLE FROM SAID LAND AT ANY DEPTH OR DEPTHS 6200 FEET OR MORE BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL, BORE, OPERATE AND REMOVE FROM BENEATH THE SURFACE OF SAID LAND, AT ANY LEVEL OR LEVELS 500 FEET OR MORE BELOW THE SURFACE OF SAID LAND, FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SAID RESERVED SUBSTANCES, AS RESERVED IN THE DEED AND AGREEMENT FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS, ORANGE COUNTY, SUBJECT TO CERTAIN LIMITATIONS AND CONTINGENCIES CONTAINED IN SAID DEED.

PARCEL 3:

A STRIP OF LAND 250 FEET WIDE, DESCRIBED AS FOLLOWS:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHERLY LINE OF BLOCK C OF EL MORO TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 75 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND THE EASTERLY LINE OF THE EASEMENT FOR THE PURPOSE OF MAINTAINING A RIVER CHANNEL OVER A STRIP OF LAND 300 FEET WIDE, IN FAVOR OF NEWBERT PROTECTION DISTRICT, AS DESCRIBED IN THE INTERLOCUTORY DECREE OF PARTITION DATED JULY 19, 1929, A CERTIFIED COPY OF WHICH WAS RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS; THENCE SOUTH 64 DEGREES 06' 50" EAST, ALONG THE NORTHERLY LINE OF SAID EL MORO TRACT, 154.24 FEET; THENCE CONTINUING ALONG THE LAST MENTIONED NORTHERLY LINE, SOUTH 60 DEGREES 52' 34" EAST 151.04 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF SUMMIT STREET, 30.00 FEET IN WIDTH, AS SHOWN ON THE MAP OF SAID EL MORO TRACT, SAID POINT BEING IN THE CENTER LINE OF THE SANTA ANA RIVER, AS SHOWN ON A MAP FILED IN AND ANNEXED TO THE COMPLAINT IN CASE OF J. B. BANNING JR. VS. SMITH AND OTHERS, CASE NO. 22797 OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR ORANGE COUNTY, A COPY OF THE JUDGMENT OF SAID CASE NO. 22797 HAVING BEEN RECORDED JULY 19, 1929 IN BOOK 297, PAGE 76 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE SOUTH 78 DEGREES 02' EAST ALONG THE SAID CENTER LINE OF THE SANTA ANA RIVER, 517.61 FEET; THENCE CONTINUING ALONG THE SAID CENTER LINE OF THE SANTA ANA RIVER, SOUTH 66 DEGREES 42' 20" EAST 644.09 FEET TO A POINT IN THE NORTHERLY LINE OF TRACT NO. 772, AS SHOWN ON A MAP RECORDED IN BOOK 23, PAGES 5 AND 6 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA; THENCE EASTERLY AND NORTHEASTERLY ALONG THE NORTHERLY AND NORTHWESTERLY LINE OF SAID TRACT NO.772, THE FOLLOWING COURSES AND DISTANCES: SOUTH 88 DEGREES 25' EAST 105.91 FEET; NORTH 72 DEGREES 45' EAST 268.62 FEET; NORTH 42 DEGREES 06' EAST 228.36 FEET; NORTH 29 DEGREES 06' EAST 306.31 FEET TO A POINT IN THE SAID CENTER LINE OF THE SANTA ANA RIVER; THENCE ALONG THE SAID CENTER LINE OF THE SANTA ANA RIVER, THE FOLLOWING COURSES AND DISTANCES: NORTH 20 DEGREES 06' 15" EAST 267.71 FEET; NORTH 51 DEGREES 48' EAST 117.09 FEET; NORTH 74 DEGREES 07' EAST 254.30 FEET; SOUTH 45 DEGREES 20' 28" EAST 298.02 FEET; SOUTH 27 DEGREES 46' EAST 331.04 FEET; SOUTH 13 DEGREES 35' 40" EAST 665.36 FEET; SOUTH 1 DEGREE 38' 25" WEST 1205.19 FEET; SOUTH 10 DEGREES 47' 30" EAST 116.85 FEET TO A POINT IN THE NORTHERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY, AS DESCRIBED IN DEED RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS, ORANGE COUNTY, A RADIAL LINE FROM SAID POINT BEARS NORTH 19 DEGREES 20' 43" EAST; THENCE ALONG THE NORTHERLY AND NORTHEASTERLY LINE OF SAID CALIFORNIA STATE HIGHWAY, THE FOLLOWING COURSES AND DISTANCES: EASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 950.00 FEET, A DISTANCE OF 209.67 FEET; SOUTH 83 DEGREES 18' EAST, TANGENT TO SAID CURVE, 646.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1050.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 318.26 FEET; SOUTH 65 DEGREES 56' EAST, TANGENT TO SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1050.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 216.09 FEET; SOUTH 54 DEGREES 08' 30" EAST 387.05 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 950.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 264.46 FEET; SOUTH 70 DEGREES 05' 30" EAST, TANGENT TO SAID CURVE, 527.80 FEET TO THE SOUTHEASTERLY BOUNDARY LINE OF LOT D OF THE BANNING TRACT, AS SHOWN ON THE MAP ATTACHED TO THE REPORT OF THE REFEREES FILED APRIL 14, 1980 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE

OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, CALIFORNIA; THENCE LEAVING SAID CALIFORNIA STATE HIGHWAY, NORTH 39 DEGREES 43' 45" EAST, ALONG THE SOUTHEASTERLY BOUNDARY LINE OF SAID LOT D OF BANNING TRACT, 265.74 FEET TO A POINT, BEING 250.00 FEET NORTH, MEASURED AT RIGHT ANGLES FROM THE NORTHEASTERLY LINE OF SAID 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY; THENCE NORTH 70 DEGREES 05' 30" WEST, PARALLEL WITH THE NORTHEASTERLY LINE OF SAID STATE HIGHWAY, 49.03 FEET TO A POINT IN THE SOUTHEASTERLY LINE OF THAT CERTAIN 2.7827-ACRE PARCEL OF LAND AS DESCRIBED IN DEED FROM FARMERS AND MERCHANTS NATIONAL BANK OF LOS ANGELES, TRUSTEE FOR ANNE O. BANNING AND OTHERS, TO A.E.S. CHAFFEY AND OTHERS, RECORDED MARCH 14, 1958 IN BOOK 4228, PAGE 191 OF OFFICIAL RECORDS, ORANGE COUNTY, A RADIAL LINE FROM SAID POINT BEARS NORTH 26 DEGREES 10' 42" WEST; THENCE ALONG THE BOUNDARY LINE OF THE LAST MENTIONED PARCEL OF LAND, THE FOLLOWING COURSES AND DISTANCES: SOUTHWESTERLY ALONG A CURVE CONCAVE TO THE NORTHWEST AND HAVING A RADIUS OF 373.48 FEET, A DISTANCE OF 176.40 FEET TO THE MOST SOUTHERLY CORNER OF SAID PARCEL OF LAND, NORTH 5 DEGREES 44' 28" WEST 104.32 FEET TO A POINT IN A LINE PARALLEL WITH THE NORTHEASTERLY LINE OF SAID STATE HIGHWAY, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE NORTHWESTERLY, PARALLEL WITH THE SAID NORTHEASTERLY AND NORTHERLY LINE OF SAID STATE HIGHWAY, AND 250 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 70 DEGREES 05' 30" WEST 376.41 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, NORTHWESTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST AND HAVING A RADIUS OF 700.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 194.87 FEET; NORTH 54 DEGREES 08' 30" WEST, TANGENT TO SAID CURVE, 387.05 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, NORTHWESTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1300.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 267.55 FEET; NORTH 65 DEGREES 56' WEST, TANGENT TO THE SAID CURVE, 667.15 FEET TO THE BEGINNING OF A CURVE TO THE LEFT, WESTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 1300.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 394.04 FEET; THENCE NORTH 83 DEGREES 18' WEST, TANGENT TO SAID CURVE, 646.66 FEET TO THE BEGINNING OF A CURVE TO THE RIGHT, WESTERLY ALONG A CURVE CONCAVE TO THE NORTH AND HAVING A RADIUS OF 700.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, A DISTANCE OF 2.34 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, A RADIAL LINE FROM SAID POINT BEARS NORTH 6 DEGREES 53' 29" EAST; THENCE NORTHERLY, NORTHWESTERLY AND SOUTHWESTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 1 DEGREE 38' 25" EAST 1144.77 FEET; NORTH 13 DEGREES 35' 40" WEST 729.87 FEET; NORTH 27 DEGREES 46' WEST 400.76 FEET; NORTH 45 DEGREES 20' 28" WEST 482.58 FEET; SOUTH 74 DEGREES 07' WEST 449.53 FEET; SOUTH 51 DEGREES 48' WEST 237.37 FEET; SOUTH 20 DEGREES 06' 15" WEST 319.00 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID NORTHWESTERLY LINE OF TRACT NO. 772, AND 250 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE SOUTHWESTERLY AND WESTERLY, PARALLEL WITH NORTHWESTERLY AND NORTHERLY LINE OF SAID TRACT NO. 772, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: SOUTH 29 DEGREES 06 WEST 258.16 FEET; SOUTH 42 DEGREES 06' WEST 131.37 FEET; SOUTH 72 DEGREES 45' WEST 158.65 FEET; NORTH 88 DEGREES 25' WEST 16.51 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY, PARALLEL WITH THE SAID CENTER LINE OF THE SANTA ANA RIVER, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES

THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 66 DEGREES 42' 20" WEST 620.94 FEET; NORTH 78 DEGREES 02' WEST 504.69 FEET TO A POINT IN A LINE PARALLEL WITH THE SAID NORTHERLY LINE OF BLOCK C, EL MORO TRACT, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO; THENCE WESTERLY, PARALLEL WITH THE SAID NORTHERLY LINE OF BLOCK C, EL MORO TRACT, AND 250.00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: NORTH 60 DEGREES 52' 34" WEST 120.39 FEET, AND NORTH 64 DEGREES 06' 50" WEST 216.59 FEET TO A POINT IN THE EASTERLY LINE OF SAID EASEMENT 300.00 FEET WIDE, FOR PURPOSE OF MAINTAINING THE SANTA ANA RIVER CHANNEL; THENCE SOUTH 13 DEGREES 25' WEST ALONG SAID EASTERLY LINE OF THE RIVER CHANNEL, 256.04 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ANY PORTION THEREOF LYING GENERALLY SOUTHERLY OF THE AGREED BOUNDARY LINE DESCRIBED IN EXHIBIT "E" ATTACHED TO THAT CERTAIN SETTLEMENT AND BOUNDARY LINE AGREEMENT, STATE AND CITY DEEDS AND CORPORATION DEED REGARDING CERTAIN LANDS IN THE COUNTY OF ORANGE, CALIFORNIA, BLA. NO. 260 RECORDED AUGUST 30, 1989 AS INSTRUMENT NO. 89-466419 OF SAID OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM, THE PORTION OR PORTIONS OF SAID LAND WHICH IS OR ARE NOT INCLUDED EITHER WITHIN THE EXTERIOR BOUNDARIES OF THE RANCHO SANTIAGO DE SANTA ANA, THE PATENT FOR WHICH WAS RECORDED JUNE 28, 1884 IN BOOK 3, PAGE 387 OF PATENTS, RECORDS OF LOS ANGELES COUNTY, CALIFORNIA, AND AS ESTABLISHED BY SAID HEREINABOVE DESCRIBED SETTLEMENT AND BOUNDARY LINE AGREEMENT, OR WITHIN THE EXTERIOR BOUNDARIES OF LOT 1 OF SECTION 19, TOWNSHIP 6 SOUTH, RANGE 10 WEST; LOT 1 OF SECTION 20, TOWNSHIP 6 SOUTH, RANGE 10 WEST; AND LOT 1 OF SECTION 29, TOWNSHIP 6 SOUTH, RANGE 10 WEST, SAN BERNARDINO BASE AND MERIDIAN, THE PATENT FOR WHICH LOTS WAS RECORDED APRIL 19, 1893 IN BOOK 1, PAGE 66 OF PATENTS, RECORDS OF ORANGE COUNTY, CALIFORNIA, OR WITHIN ACCRETIONS OF SAID RANCHO OR SAID LOTS.

ALSO EXCEPTING THEREFROM, THAT PORTION INCLUDED WITHIN THE PARCEL OF LAND DESCRIBED AS PARCEL D3-122.1 IN THE FINAL ORDER OF CONDEMNATION RENDERED JANUARY 26, 1962 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF ORANGE, IN THE ACTION ENTITLED "ORANGE COUNTY FLOOD CONTROL DISTRICT VS. CITY OF NEWPORT BEACH AND OTHERS" (CASE NO. 77399), A CERTIFIED COPY OF WHICH FINAL ORDER WAS RECORDED JANUARY 30, 1962 IN BOOK 5993, PAGE 441 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, THE PORTION INCLUDED WITHIN THE LAND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA RECORDED FEBRUARY 14, 1966 IN BOOK 7839, PAGE 739 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM THAT PORTION DESCRIBED AS PARCEL 73170-1 IN THAT CERTAIN FINAL DECREE OF CONDEMNATION, SUPERIOR COURT CASE NO. 667539, A CERTIFIED COPY OF WHICH WAS RECORDED JANUARY 14, 1994 AS INSTRUMENT NO. 94-0032786 OF SAID OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THOSE PORTIONS DESCRIBED AS PARCELS 100, 103, 106 AND 108 IN THE NOTICE OF LIS PENDENS, UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA CASE NO. CV 91-3991-IH, A CERTIFIED OF WHICH WAS RECORDED AUGUST 23, 1991 AS INSTRUMENT NO. 91-455338 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, WHICH INCLUDES A DECLARATION OF TAKING.

ALSO EXCEPTING THEREFROM THOSE PORTIONS CONVEYED TO ORANGE COUNTY SANITATION DISTRICT, A COUNTY SANITATION DISTRICT ORGANIZED AND EXISTING PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 4700 ET SEQ. AS DISCLOSED BY ON DOCUMENT RECORDED AUGUST 30, 2006 AS INSTRUMENT NO. 20060000582598 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM, AN UNDIVIDED 30% INTEREST IN AND TO THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS, AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED FROM SAID LAND LOCATED BELOW A DEPTH OF 6200 FEET, BUT WITHOUT THE RIGHT TO USE THE SURFACE OF SAID LAND DOWN TO A DEPTH OF 500 FEET, AS RESERVED IN THE DEED FROM HANCOCK BANNING JR. AND OTHERS, DATED AUGUST 1, 1958, RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, ORANGE COUNTY, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS, ORANGE COUNTY, AS AMENDED BY THE DEED DATED NOVEMBER 29, 1961 FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, AN UNDIVIDED 70% INTEREST IN AND TO THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS, AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, IN OR UNDER, OR PRODUCIBLE FROM SAID LAND AT ANY DEPTH OR DEPTHS 6200 FEET OR MORE BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL, BORE, OPERATE AND REMOVE FROM BENEATH THE SURFACE OF SAID LAND, AT ANY LEVEL OR LEVELS 500 FEET OR MORE BELOW THE SURFACE OF SAID LAND, FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SAID RESERVED SUBSTANCES, AS RESERVED IN THE DEED AND AGREEMENT FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS, ORANGE COUNTY, SUBJECT TO CERTAIN LIMITATIONS AND CONTINGENCIES CONTAINED IN SAID DEED.

PARCEL 4:

THOSE PORTIONS OF LOTS C AND D OF THE BANNING TRACT, AS SHOWN ON THE MAP ATTACHED TO THE REPORT OF THE REFEREES FILED APRIL 14, 1890 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, BEING ALSO A PORTION OF LOT 1 OF TRACT NO. 463, AS SHOWN ON A MAP RECORDED IN BOOK 32, PAGES 2 AND 3 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, AND A PORTION OF TRACT NO. 2250, AS SHOWN ON A MAP RECORDED IN BOOK 104, PAGES 6 AND 7 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE MOST EASTERLY CORNER OF TRACT NO. 15, AS SHOWN ON A MAP RECORDED IN BOOK 9, PAGE 19 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, WHICH CORNER IS IN THE CENTER LINE OF SUPERIOR AVENUE, FORMERLY NEWPORT AVENUE, AS SAID NEWPORT AVENUE IS SHOWN ON SAID MAP OF TRACT NO. 15, AND ALSO IN THE SOUTHEASTERLY LINE OF SAID LOT D IN THE BANNING TRACT; THENCE NORTH 29 DEGREES 24' 45" WEST ALONG THE NORTHEASTERLY LINE OF SAID TRACT NO. 15, AND ALONG THE SOUTHWESTERLY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, 3691.50 FEET TO A POINT IN THE EASTERLY LINE OF WHITTIER AVENUE, 60 FEET IN WIDTH, AS SHOWN ON SAID MAP OF FIRST ADDITION TO NEWPORT MESA TRACT; THENCE SOUTH 0 DEGREES 36' 01" EAST ALONG THE SOUTHERLY

PROLONGATION OF THE SAID EASTERLY LINE OF WHITTIER AVENUE, SAID PROLONGATION BEING THE EASTERLY LINE OF PARCEL 1 AS DESCRIBED IN DEED EXECUTED BY HANCOCK BANNING JR. AND OTHERS, DATED AUGUST 1, 1958, RECORDED AUGUST 29, 1958 IN BOOK 4400, PAGE 532 OF OFFICIAL RECORDS, ORANGE COUNTY, AND RE-RECORDED OCTOBER 6, 1958 IN BOOK 4437, PAGE 228 OF OFFICIAL RECORDS, ORANGE COUNTY, 3465.51 FEET, MORE OR LESS, TO AN INTERSECTION WITH A LINE ON A CURVE CONCAVE TO THE SOUTHWEST, 250.00 FEET NORTHEASTERLY OF AND PARALLEL WITH THE NORTHEASTERLY LINE OF THE 100-FOOT RIGHT OF WAY OF THE CALIFORNIA STATE HIGHWAY, AS DESCRIBED IN DEED RECORDED APRIL 20, 1936 IN BOOK 822, PAGE 48 OF OFFICIAL RECORDS, ORANGE COUNTY, A RADIAL LINE FROM SAID POINT OF INTERSECTION BEARS SOUTH 33 DEGREES 40' 54" WEST; THENCE SOUTHEASTERLY, PARALLEL WITH THE NORTHEASTERLY LINE OF SAID STATE HIGHWAY, AND 250,00 FEET DISTANT THEREFROM, MEASURED AT RIGHT ANGLES THERETO, THE FOLLOWING COURSES AND DISTANCES: THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 1300.00 FEET, 49.39 FEET; THENCE SOUTH 54 DEGREES 08' 30" EAST, TANGENT TO SAID CURVE, 387.05 FEET TO BEGINNING OF CURVE TO THE LEFT; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 700.00 FEET, AND TANGENT TO THE LAST MENTIONED COURSE, 194.87 FEET; THENCE SOUTH 70 DEGREES 05' 30" EAST, TANGENT TO SAID CURVE, 376.41 FEET TO A POINT IN THE WESTERLY LINE OF THAT CERTAIN 2.7827-ACRE PARCEL OF LAND AS DESCRIBED IN DEED FROM THE FARMERS AND MERCHANTS NATIONAL BANK OF LOS ANGELES, TRUSTEE FOR ANNE O. BANNING AND OTHERS, TO A. E. S. CHAFFEY AND OTHERS, RECORDED MARCH 14, 1958 IN BOOK 4228, PAGE 191 OF OFFICIAL RECORDS, ORANGE COUNTY; THENCE ALONG THE WESTERLY, NORTHERLY AND NORTHEASTERLY BOUNDARY LINE OF SAID 2.7827-ACRE PARCEL, THE FOLLOWING COURSES AND DISTANCES: NORTH 5 DEGREES 44' 28" WEST 160.43 FEET TO THE MOST WESTERLY CORNER OF SAID 2.7827-ACRE PARCEL, FROM WHICH A RADIAL LINE BEARS NORTH 20 DEGREES 20' 15" WEST; THENCE NORTHEASTERLY ALONG A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 450.00 FEET, 235.10 FEET; THENCE NORTH 39 DEGREES 43' 45" EAST, TANGENT TO THE LAST MENTIONED CURVE, 75.42 FEET TO THE MOST NORTHERLY CORNER OF SAID 2.7827-ACRE PARCEL, FROM WHICH A RADIAL LINE BEARS SOUTH 29 DEGREES 30' 33" WEST; THENCE SOUTHEASTERLY ALONG A CURVE CONCAVE TO THE SOUTHWEST AND HAVING A RADIUS OF 730.00 FEET, A DISTANCE OF 130.21 FEET; THENCE SOUTH 50 DEGREES 16' 15" EAST, TANGENT TO THE LAST MENTIONED CURVE, 122.00 FEET TO A POINT IN THE NORTHWESTERLY LINE OF SUPERIOR AVENUE, 60 FEET IN WIDTH, FORMERLY NEWPORT AVENUE, AS SAID NEWPORT AVENUE IS SHOWN ON SAID MAP OF TRACT NO. 15, WHICH POINT BEARS NORTH 39 DEGREES 43' 45" EAST 35.24 FEET FROM THE MOST EASTERLY CORNER OF LOT 1 IN BLOCK 1 OF SAID TRACT NO. 15; THENCE SOUTH 50 DEGREES 16' 15" EAST 30.00 FEET TO THE CENTER LINE OF SAID SUPERIOR AVENUE; THENCE ALONG THE CENTER LINE OF SAID SUPERIOR AVENUE, NORTH 39 DEGREES 43' 45" EAST 705.55 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM, THAT PORTION INCLUDED WITHIN THE FOLLOWING DESCRIBED LAND: THAT PORTION OF BLOCK C OF THE BANNING TRACT, AS SHOWN ON A MAP ATTACHED TO THE REPORT OF THE REFEREES FILED APRIL 14, 1890 IN CASE NO. 6385 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES, AND THAT PORTION OF LOTS 1111 AND 1112 AND PORTION OF SIXTEENTH STREET AND WHITTIER AVENUE ADJOINING, AS SHOWN ON THE MAP OF NEWPORT MESA TRACT RECORDED IN BOOK 5, PAGE 1 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF SAID SIXTEENTH STREET WITH THE SOUTHWESTERLY BOUNDARY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT, AS SHOWN ON A MAP RECORDED IN BOOK 8, PAGE 61 OF MISCELLANEOUS MAPS, RECORDS OF

ORANGE COUNTY, CALIFORNIA; THENCE SOUTH 89 DEGREES 21' 50" WEST 16.50 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 500.00 FEET; THENCE WESTERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 28 DEGREES 48' 33", A DISTANCE OF 251.41 FEET TO A LINE TANGENT; THENCE SOUTH 60 DEGREES 33' 17" WEST ALONG SAID LINE TANGENT, A DISTANCE OF 404.60 FEET; THENCE NORTH 29 DEGREES 26' 43" WEST 804.50 FEET; THENCE NORTH 60 DEGREES 33' 17" EAST 300.00 FEET; THENCE SOUTH 88 DEGREES 48' 26" EAST 316.57 FEET TO A POINT IN A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 50.00 FEET, A RADIAL LINE FROM SAID POINT BEARS NORTH 89 DEGREES 21' 50" EAST; THENCE NORTHERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 44 DEGREES 24' 55", A DISTANCE OF 38.76 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 90.00 FEET; THENCE NORTHERLY ALONG SAID CURVE, THROUGH AN ANGLE OF 44 DEGREES 24' 55", A DISTANCE OF 69.77 FEET TO A LINE TANGENT; THENCE NORTH 0 DEGREES 38' 10" WEST ALONG SAID LINE TANGENT, A DISTANCE OF 11.11 FEET TO THE SAID SOUTHWESTERLY BOUNDARY LINE OF FIRST ADDITION TO NEWPORT MESA TRACT; THENCE SOUTH 29 DEGREES 26' 43" EAST ALONG SAID SOUTHWESTERLY BOUNDARY LINE, A DISTANCE OF 789.32 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM, THAT PORTION INCLUDED WITHIN THE FOLLOWING: THAT PORTION OF LOT 1 AND ALL OF LOT 2 OF TRACT NO. 463 AS SHOWN ON A MAP RECORDED IN BOOK 32, PAGES 2 AND 3 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE CENTER LINE OF FIFTEENTH STREET WITH THE CENTER LINE OF MONROVIA AVENUE, AS SHOWN ON A MAP RECORDED IN BOOK 65, PAGES 31 THROUGH 36 INCLUSIVE OF RECORD OF SURVEYS IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, CALIFORNIA; THENCE SOUTH 0 DEGREES 37' 24" EAST, ALONG THE CENTER LINE OF SAID MONROVIA AVENUE, 440.93 FEET TO THE NORTHEASTERLY LINE OF SAID TRACT NO. 463; THENCE NORTH 29 DEGREES 26' 43" WEST ALONG SAID NORTHEASTERLY LINE, 272.61 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE SOUTH 29 DEGREES 26' 43" EAST ALONG SAID NORTHEASTERLY LINE, 1288.43 FEET TO THE CENTER LINE OF SUPERIOR AVENUE; THENCE SOUTH 39 DEGREES 41' 15" WEST, ALONG SAID CENTER LINE OF SUPERIOR AVENUE, 705.55 FEET; THENCE NORTH 50 DEGREES 18' 45" WEST, ALONG THE NORTHEASTERLY LINE OF THE LAND DESCRIBED IN A DEED TO A. E. S. CHAFFEY AND OTHERS, RECORDED IN BOOK 4228, PAGE 191 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY, AND THE SOUTHEASTERLY PROLONGATION THEREOF, 152.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 730.00 FEET; THENCE NORTHWESTERLY 130.21 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 10 DEGREES 13' 12" TO A POINT IN THE NORTHEASTERLY LINE OF PARCEL 1, AS DESCRIBED IN A DEED RECORDED IN BOOK 7839, PAGE 739 OF OFFICIAL RECORDS OF SAID ORANGE COUNTY; THENCE ALONG SAID NORTHEASTERLY LINE, NORTH 63 DEGREES 11' 16" WEST 1160.70 FEET TO A POINT IN A LINE PARALLEL WITH AND DISTANT 100.00 FEET EASTERLY, AS MEASURED AT RIGHT ANGLES FROM THE WESTERLY LINE OF THE LAND DESCRIBED IN ANNEXATION NO. 54 TO THE CITY OF NEWPORT BEACH, DECEMBER 30, 1963; THENCE ALONG SAID PARALLEL LINE, NORTH 0 DEGREES 38' 10" WEST 734.93 FEET TO A LINE THAT BEARS SOUTH 77 DEGREES 45' 00" WEST FROM THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID PARALLEL LINE, NORTH 77 DEGREES 45' 00" EAST 1110.58 FEET TO THE TRUE POINT OF BEGINNING OF THIS DESCRIPTION.

ALSO EXCEPTING THEREFROM, THAT PORTION INCLUDED WITHIN THE LAND DESCRIBED IN THE DEED TO THE STATE OF CALIFORNIA, RECORDED FEBRUARY 14, 1966 IN BOOK 7839, PAGE 739 OF OFFICIAL RECORDS, ORANGE COUNTY.

ALSO EXCEPTING THEREFROM, ANY PORTION INCLUDED WITHIN WHITTIER AVENUE AND SIXTEENTH STREET, AS SHOWN ON THE MAP OF NEWPORT MESA TRACT RECORDED IN BOOK 5, PAGE 1 OF MISCELLANEOUS MAPS, RECORDS OF ORANGE COUNTY, CALIFORNIA.

ALSO EXCEPTING THEREFROM THAT PORTION INCLUDED IN THE LAND DESCRIBED IN THE DEED TO THE CITY OF NEWPORT BEACH, RECORDED JUNE 6, 1995 AS INSTRUMENT NO. 95-0237652 OF OFFICIAL RECORDS.

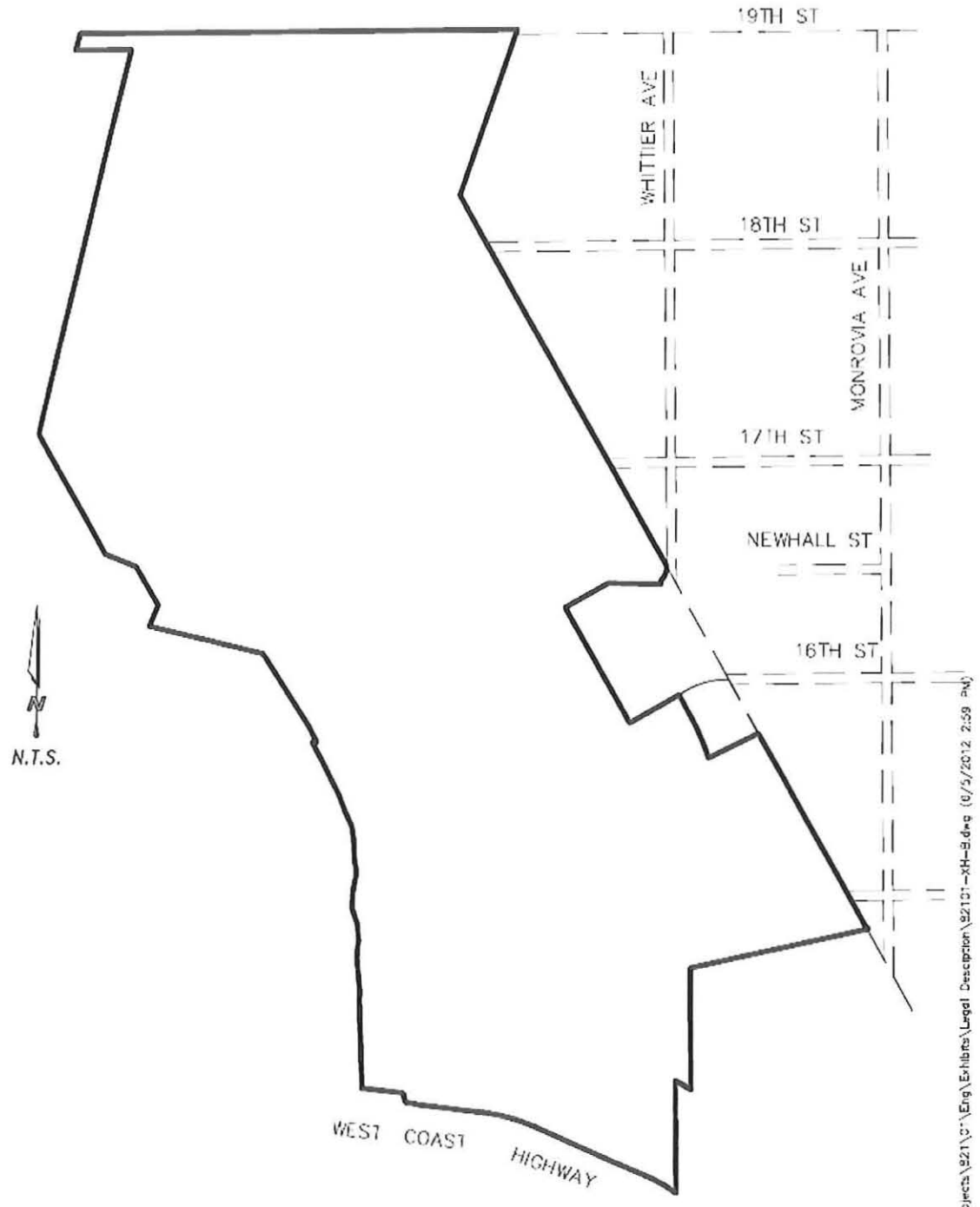
ALSO EXCEPTING THEREFROM, THE TITLE AND EXCLUSIVE RIGHT TO ALL OF THE MINERALS, INCLUDING, BUT NOT LIMITED TO, ALL PETROLEUM, OIL, NATURAL GAS AND OTHER HYDROCARBON SUBSTANCES AND PRODUCTS DERIVED THEREFROM, IN OR UNDER, OR PRODUCIBLE FROM SAID LAND, AT ANY DEPTH OR DEPTHS 6200 FEET OR MORE BELOW THE SURFACE OF SAID LAND, TOGETHER WITH THE FREE AND UNLIMITED RIGHT TO MINE, DRILL, BORE, OPERATE AND REMOVE FROM BENEATH THE SURFACE OF SAID LAND AT ANY LEVEL OR LEVELS 500 FEET OR MORE BELOW THE SURFACE OF SAID LAND, FOR THE PURPOSE OF DEVELOPMENT OR REMOVAL OF SAID RESERVED SUBSTANCES, AS RESERVED IN THE DEED AND AGREEMENT FROM HANCOCK BANNING JR. AND OTHERS, RECORDED DECEMBER 27, 1961 IN BOOK 5957, PAGE 665 OF OFFICIAL RECORDS, ORANGE COUNTY, SUBJECT TO CERTAIN LIMITATIONS AND CONTINGENCIES CONTAINED IN SAID DEED.

ALSO EXCEPTING THEREFROM ALL THE MINERALS, INCLUDING WITHOUT LIMITATION ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN, ON OR UNDER THE HEREINAFTER DESCRIBED LAND LYING 500 VERTICAL FEET BELOW THE SURFACE OF SAID LAND WAS QUITCLAIM TO ARMSTRONG PETROLEUM CORPORATION, A CALIFORNIA CORPORATION BY AN INSTRUMENT RECORDED MAY 5, 1997 AS INSTRUMENT NO. 19970206789 OF OFFICIAL RECORDS.

APN: 114-170-24, 114-170-43, 114-170-49, 114-170-50, 114-170-52, 114-170-56, 114-170-72, 114-170-73, 114-170-75, 114-170-77, 114-170-79, 114-170-83 and 424-041-04

EXHIBIT B

DEPICTION OF PROPERTY



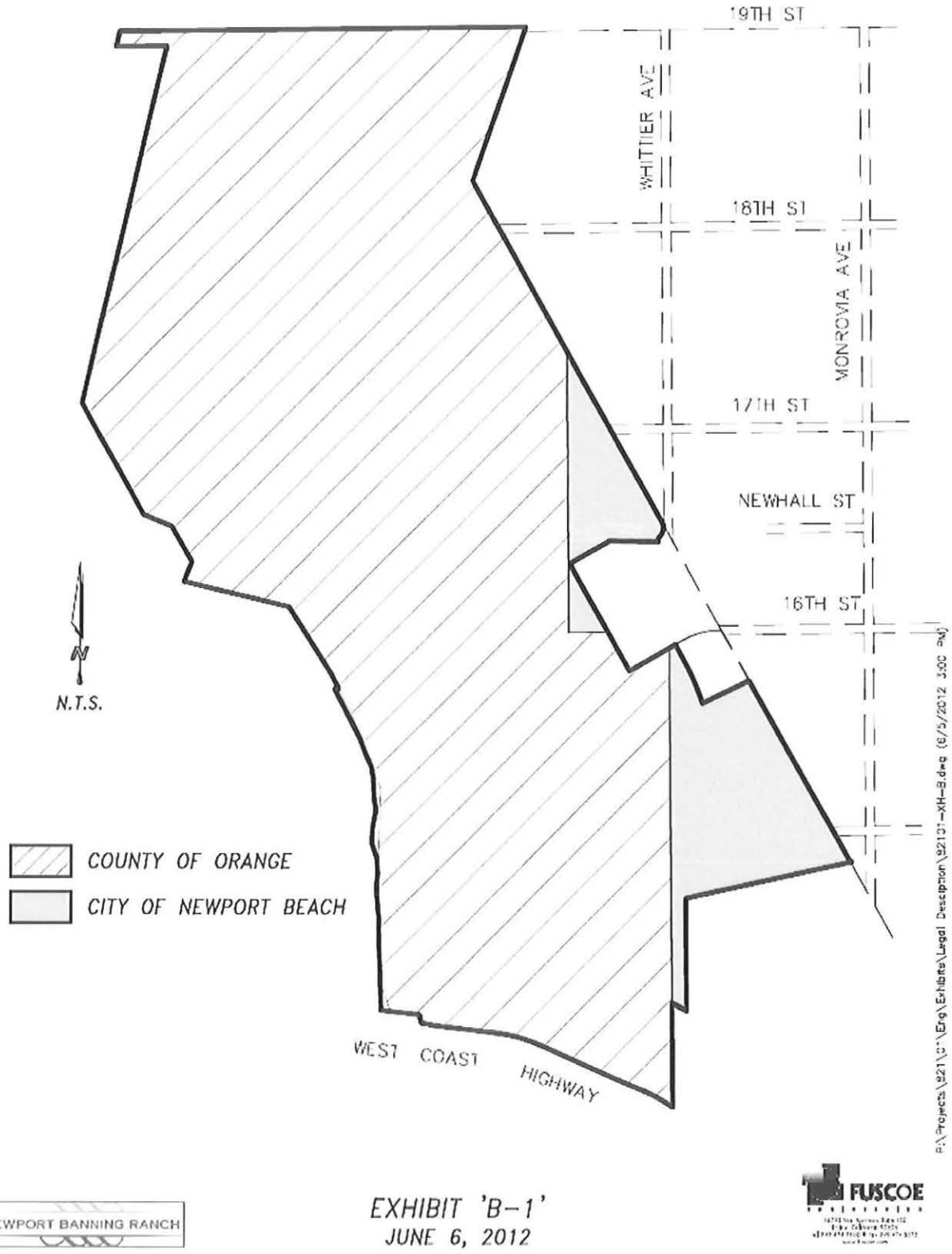
SITE MAP
EXHIBIT 'B'
JUNE 6, 2012

NEWPORT BANNING RANCH

FUSCOE ENGINEERING

EXHIBIT B-1

DEPICTION OF COUNTY PROPERTY



NEWPORT BANNING RANCH

EXHIBIT 'B-1'
JUNE 6, 2012

FUSCOE Engineering

TABLE OF CONTENTS

Page

1. Definitions 4

2. General Provisions 10
   - 2.1 Plan Consistency, Zoning Implementation 10
   - 2.2 Binding Effect of Agreement 10
   - 2.3 Landowner Representations and Warranties Regarding Ownership of the Property and Related Matters Pertaining to this Agreement 10
   - 2.4 Term 10
   - 2.5 12

3. Public Benefits 13
   - 3.1 Public Benefit Fee 13
   - 3.2 Renegotiation of Public Benefit Fee if Development Plan Is Not Approved by California Coastal Commission 14
   - 3.3 Park Land Dedication and Improvements in Excess of Landowner's Quimby Act Requirement; City Option to Develop North and Central Community Parks; Possible Increase or Decrease in Public Benefit Fee 15

4. Development of Project 21
   - 4.1 Applicable Regulations; Landowner's Vested Rights and City's Reservation of Discretion With Respect to Subsequent Development Approvals 21
   - 4.2 No Conflicting Enactments 22
   - 4.3 Reservations of Authority 23
   - 4.4 Tentative Subdivision Maps 25
   - 4.5 Responsibility for Processing Application for Coastal Development Permit; Costs 26
   - 4.6 Public Financing 26

5. Amendment or Cancellation of Agreement 27

6. Enforcement 27

7. Annual Review of Landowner's Compliance With Agreement 27
   - 7.1 General 27
   - 7.2 Landowner Obligation to Demonstrate Good Faith Compliance 27
   - 7.3 Procedure 27
   - 7.4 Annual Review a Non-Exclusive Means for Determining and Requiring Cure of Landowner's Default 28

8. Events of Default 28
   - 8.1 General Provisions; Notice of Default and Cure Period; Judicial Reference for Resolution of Certain Disputes 28
   - 8.2 Default by Landowner 29

Page

8.3 City's Option to Terminate Agreement 30
8.4 Default by City 30
8.5 Waiver 30
8.6 Specific Performance Remedy 30
8.7 Monetary Damages 31
8.8 Additional City Remedy for Landowner's Default 31
8.9 No Personal Liability of City Officials, Employees, or Agents or Landowner Members, Managers, Employees, or Agents 31
8.10 Recovery of Legal Expenses by Prevailing Party in Any Action 31

9. Force Majeure 31

10. Indemnity Obligations of Landowner 32
10.1 Indemnity Arising From Acts or Omission of Landowner 32
10.2 Third Party Litigation 32

11. Assignment 33

12. Mortgagee Rights 35
12.1 Encumbrances on Property 35
12.2 Mortgagee Protection 35
12.3 Mortgagee Not Obligated 35
12.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure 35

13. Miscellaneous Terms 36
13.1 Notices 36
13.2 Project as Private Undertaking 37
13.3 Cooperation 37
13.4 Estoppel Certificates 37
13.5 Rules of Construction 37
13.6 Time Is of the Essence 37
13.7 Waiver 38
13.8 Counterparts 38
13.9 Entire Agreement 38
13.10 Severability 38
13.11 Construction 38
13.12 Successors and Assigns; Constructive Notice and Acceptance 39
13.13 No Third Party Beneficiaries 39
13.14 Applicable Law and Venue 39
13.15 Section Headings 39
13.16 Incorporation of Recitals and Exhibits 39
13.17 Recordation 40