

31682

FIRST AMENDMENT TO REAL ESTATE EXCHANGE AGREEMENT AND ASSIGNMENT

THIS FIRST AMENDMENT TO REAL ESTATE EXCHANGE AGREEMENT AND ASSIGNMENT (this "**First Amendment**") is made as of June 1, 2010, by and among LCW Partners, LLC, a Delaware limited liability company ("**LCW**"), LCW Yard, LLC, a Delaware limited liability company ("LCW Yard"), and the City of Long Beach, a municipal corporation (the "**City**"). (LCW and the City are sometimes collectively referred to herein as the "**Parties**" and individually as a "**Party**.")

Recitals

A. The City and LCW are parties to that certain Real Estate Exchange Agreement dated as of April 28, 2010 (the "**Original Exchange Agreement**").

B. The City and LCW wish to amend the Original Exchange Agreement to, among other things, modify the property that will constitute the City Property.

C. In addition, LCW wishes to assign its rights to purchase the City Property to its wholly owned subsidiary, LCW Yard, LLC, a Delaware limited liability company.

NOW, THEREFORE, for and in consideration of the mutual agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Defined Terms.** Except where provided herein to the contrary, all capitalized terms in this First Amendment shall have the meanings ascribed to such terms in the Original Exchange Agreement.

2. **City Property.**

(a) In lieu of the property described as the "City Property" in the Original Exchange Agreement, the "City Property" shall consist of the following: Assessor's Parcel Map Numbers 7271-017-900, 7271-007-902, 7271-008-900, 7271-011-900, 7271-012-900, and a portion of 7271-012-901 (as depicted in Exhibit B-1 attached to this First Amendment). Exhibit B and Exhibit B-1 to the Original Exchange Agreement are hereby deleted, and the Legal Description and the depiction of the City Property shall be as set forth in "Exhibit B – First Amendment" and "Exhibit B-1 – First Amendment," respectively, attached to this First Amendment.

(b) The following is hereby added as Section 8(k) to the Original Exchange Agreement:

"(k) The City staff shall promptly after the Effective Date commence the steps required to either effect a lot line adjustment or issue a certificate of compliance with respect to the property depicted in Exhibit B-1 to the First Amendment. If the City has not caused this lot line adjustment to be completed prior to the Close of Escrow, then the City agrees to direct staff to diligently pursue the completion of the lot line adjustment after the Close of Escrow in an expeditious manner."

3. **Assignment to LCW Yard.** In accordance with Section 22(b) of the Original Exchange Agreement, LCW hereby assigns to LCW Yard all of LCW's rights to purchase the

City Property, including all escrow instructions executed pursuant thereto. By its execution hereof, LCW Yard hereby agrees to assume all obligations of LCW with respect to the City Property. All documents attached as exhibits to the Original Exchange Agreement concerning the City Property which identify LCW Partners, LLC, as a party thereto, shall, at Closing, be modified to name "LCW Yard, LLC," in lieu of "LCW Partners, LLC."

4. **Indemnification Regarding Coastal Action Title Matter.** There are recorded against the LCW Property four Notice of Violation of the Coastal Act, which were recorded as Instrument Nos. 20071748753, 20071748754, 20071748755 and 20071748756, all of Official Records, Los Angeles County, California. LCW agrees to indemnify, defend and hold the City harmless from all losses, claims and liabilities that may arise by reason of the violations claimed in such Notices of Violation. The City agrees to provide to LCW after Closing, from time to time, following reasonable written notice to the City, such access to the affected property so as to allow LCW to cure any matters.

5. **Modification to the Leaseback Lease.**

(a) Section 9 of the Original Exchange Agreement is amended and restated to read in full as follows:

9 **"City's Lease-Back of the City Property.** At the Closing, the Parties shall enter into a lease agreement (the **"Leaseback Lease"**), pursuant to which the City shall lease back approximately 2.3 acres of the City Property, as depicted in Exhibit A to the Leaseback Lease, but without payment of any minimum rent (though the City shall remain liable for all insurance, taxes, and operating costs and maintenance expenses). The term of the Leaseback Lease shall be a period of 6 months. There shall be no options to extend the term of the Leaseback Lease.

(b) The form of Leaseback Lease attached as Exhibit J to the Original Exchange Agreement is hereby deleted, and is hereby replaced with the form of Leaseback Lease attached as "Exhibit J – First Amendment" to this First Amendment.

6. **Environmental Reports and Disclosures Concerning the LCW Property.** Exhibit F-2 to the Original Exchange Agreement, "Environmental Reports and Disclosures Concerning the LCW Property," is hereby replaced with the attached Exhibit F-2.

7. **LCW Property Environmental Indemnity.** The "Environmental Indemnity and Access Agreement [Oil and Gas Property]" attached as Exhibit K-2 to the Original Agreement, is deemed deleted, and is deemed replaced with the Environmental Indemnity and Access Agreement [Oil and Gas Property], attached to this First Amendment as Exhibit K-2.

8. **Miscellaneous.**

(a) This First Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same instrument. Facsimile or digital images (such as PDFs) of signature pages may be used with the same force and effect as original signatures.

(b) This First Amendment contains the entire agreement of the Parties with respect to the subject matter hereof, and no prior or contemporaneous agreement, understanding, or representation pertaining to any such matter shall be effective for any

purpose. No provision of this First Amendment may be amended except by an express agreement in writing signed by all of the Parties or their respective successors in interest. Except as specifically set forth herein, the Original Exchange Agreement shall remain in full force and effect. Other than as expressly set forth in this First Amendment, nothing in this First Amendment is intended to be, nor should it be construed as, waiving, modifying, or in any way affecting any of the Parties' respective rights, duties and obligations under the Original Exchange Agreement. This First Amendment shall be binding upon and inure to the benefit of the Parties hereto and to their respective heirs, representatives, successors and assigns.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the date set forth above.

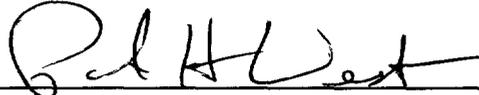
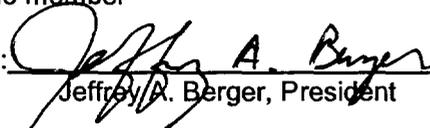
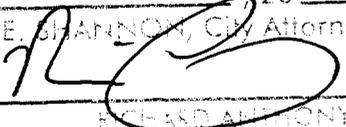
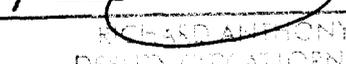
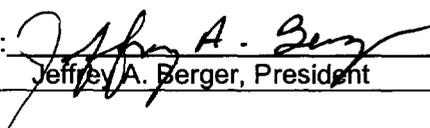
<p>The City:</p> <p>City of Long Beach, a municipal corporation</p> <p>By: <u></u> City Manager</p>	<p>LCW:</p> <p>LCW Partners, LLC, a Delaware limited liability company</p> <p>By: LCW Holdings, LLC, a Delaware limited liability company, its sole member</p> <p>By: <u></u> Jeffrey A. Berger, President</p>
<p>APPROVED AS TO FORM</p> <p>6-3 20 10</p> <p><u></u> ROBERT E. SHANNON, City Attorney</p> <p>By: <u></u> RICHARD ANTHONY DEPUTY CITY ATTORNEY</p>	<p>LCW Yard:</p> <p>LCW Yard, LLC, a Delaware limited liability company</p> <p>By: LCW Partners, LLC, a Delaware limited liability company its sole member</p> <p>By: LCW Holdings, LLC, a Delaware limited liability company, its sole member</p> <p>By: <u></u> Jeffrey A. Berger, President</p>

EXHIBIT "B"

Legal Description
(Land to be Conveyed to LCW)

Parcel 1

Lots 36 to 48 inclusive in Block 8 of the Town of Seabright, in the City of Long Beach, County of Los Angeles, State of California, as per map recorded in Book 23 Page 43, et seq., and in Book 55 Page 2, both of miscellaneous records in the office of the county recorder of Los Angeles County, California.

Together with that portion of Anaheim Street, vacated by City of Long Beach Resolution No. C-5722, which would pass by operation of law with a conveyance of the above described land.

Together with that certain alley vacated by the City of Long Beach Resolution No. C-13298 recorded November 2, 1951 as Instrument No. 2108 of official records of said county.

Except that portion of said Lot 36 described as follows:

Beginning at the southwest corner of said Lot 36; thence east along the south line of said Lot, 0.38 feet, thence northerly 182.26 feet to a point in the north line of said Lot 36, distant thereon 1.22 feet east from the northwest corner thereof; thence west along the north line of said Lot, 1.22 feet to the northwest corner thereof; thence south along the west line of said Lot 36, 182.24 feet, more or less, to the point of beginning.

Also excepting therefrom all oil, gas and other hydrocarbons located more than 100 feet below the surface of said land, without, however, the right to enter said land within 100 feet of the surface thereof, as reserved in deeds recorded April 4, 1951 as Instrument No. 1417, October 24, 1951 as Instrument No. 363, and October 1, 1973 as Instrument No. 197, all of official records.

Parcel 2

Lots 1 to 13 inclusive the Delta tract, in the City of Long Beach, County of Los Angeles, State of California, as per map recorded in Book 10 Page 143 of maps, in the office of the county recorder of Los Angeles county, California.

Except that portion of said Lot 13 described as follows:

Beginning at the northwest corner of said lot; thence easterly along the north line of said Lot, a distance of 1.99 feet; thence southerly 150 feet to a point in the south line of said Lot, distant 1.29 feet easterly along said south line from the southwest corner of said Lot; thence westerly along said south line, 1.29 feet to the southwest corner; thence northerly along the west line of said Lot 150 feet to the point of beginning.

Also excepting title to all structures and improvements located upon said Lots 9, 10, 11, 12 and 13, together with the right to remove the same, as reserved by Dorian H. Fickling and Melba L. Fickling in Deed recorded October 24, 1951 as Instrument No. 363 of official records.

Also excepting therefrom all oil, gas and other hydrocarbons located more than 100 feet below the surface of said land, without, however, the right to enter said land within 100 feet of the surface thereof, as reserved in deeds recorded October 24, 1951 as Instrument No. 363, and October 1, 1973 as Instrument No. 197, both of official records.

Parcel 3

Blocks 9 through 11 of the Town of Seabright in the City of Long Beach, County of Los Angeles, State of California, as per map recorded in Book 23 Page 43 et seq. and in Book 55 Page 2, both of miscellaneous records, in the office of the county recorder of said county, together with that alley vacated in said block 10 by Resolution No. C-922 of the city of Long Beach, on June 5, 1923, on file in the office of the city clerk of said city:

Except those portions of said blocks lying westerly of the easterly right-of-way of the Los Angeles County Flood Control District Channel.

Together with those certain streets and alleys located within said blocks, vacated by the city of Long Beach Resolution No. 07-0133 on October 2, 2007, recorded December 28, 2007 as Instrument No. 20072857194 of official records of said county.

Parcel 4

Those portions of 14th Street (formerly Chicago Avenue), Cowles Street (formerly Kansas Avenue), 15th Street (formerly California Avenue) and 16th Street (formerly Pacific Avenue) as shown on the map of the Town of Seabright, in the City of Long Beach, County of Los Angeles, State of California, as per map recorded in Book 23 Page 43 et seq. And in Book 55 Page 2, both of miscellaneous records, in the office of the county recorder of said county, lying westerly of the westerly line of San Francisco Avenue (formerly Frisco Street) and lying easterly of the easterly right-of-way of the Los Angeles County Flood Control District Channel.

Parcel 5

Those portions of Lots 7 and 8 of Sunset Villa Tract no. 1, in the City of Long Beach, County of Los Angeles, State of California, as per map recorded in Book 10 Page 11 of maps, in the office of the county recorder of the County of Los Angeles, lying southerly of the southerly line of Pacific Coast Highway, 100 feet in width, as established by Final Order of Condemnation recorded in Book 15501 Page 148 of official records, in the office of said county recorder; and that easterly portion of lot 6, said tract, lying easterly of the Los Angeles County Flood Control Channel, as described in deed recorded in Book 6890 Page 239 of deeds, with a frontage of 13.01 feet on said established southerly line of Pacific Coast Highway and 13.58 feet on alley in rear of said Lot 6; and that portion of Lot 9, said tract, beginning at a point on the westerly line of said Lot 9, lying 20.02 feet southerly along said westerly line from the southerly line of Pacific Coast Highway, 100 feet in width; thence northerly along said westerly line to said southerly line of Pacific Coast Highway; thence easterly along said southerly line of Pacific Coast Highway, 20.02 feet to the point of cusp of a tangent curve concave southeasterly and having a radius of 20 feet; thence southwesterly along said curve, an arc distance of 31.44 feet to the point of beginning.

Except all oil, gas, minerals and hydrocarbon substances (without right of surface entry) as reserved by aaron eaton, also known as a. L. Eaton and elsie eaton, husband and wife, in deed recorded April 21, 1947 in Book 24408 Page 182 of official records of said county.

Together with that portion of that certain east-west alley, 15 feet wide, vacated by City of Long Beach Resolution No. C-25238, recorded March 3, 1993 as Instrument No. 93-406100 of official records, which would pass by operation of law with a conveyance of the above described land.

Parcel 6

An easement for light and air over and upon that portion of the westerly five feet of Lot 9 in said Sunset Villa Tract no. 1 lying southerly of that portion of said Lot 9 described in Parcel 5.

Parcel 7

Lots 36 to 48 inclusive in Block 12 of the Town of Seabright, in the City of Long Beach, County of Los Angeles, State of California, as per map recorded in Book 23 Page 43, et seq., and in Book 55 Page 2, both of miscellaneous records in the office of the county recorder of Los Angeles County, California.

Together with that certain alley located within said Block 12 vacated by the city of Long Beach Resolution No. 07-0133 on October 2, 2007, recorded December 28, 2007 as Instrument No. 20072857194 of official records of said county

Except that portion of said Lot 36 lying westerly of the easterly right-of-way of the Los Angeles County Flood Control District Channel.

EXHIBIT "B-1"

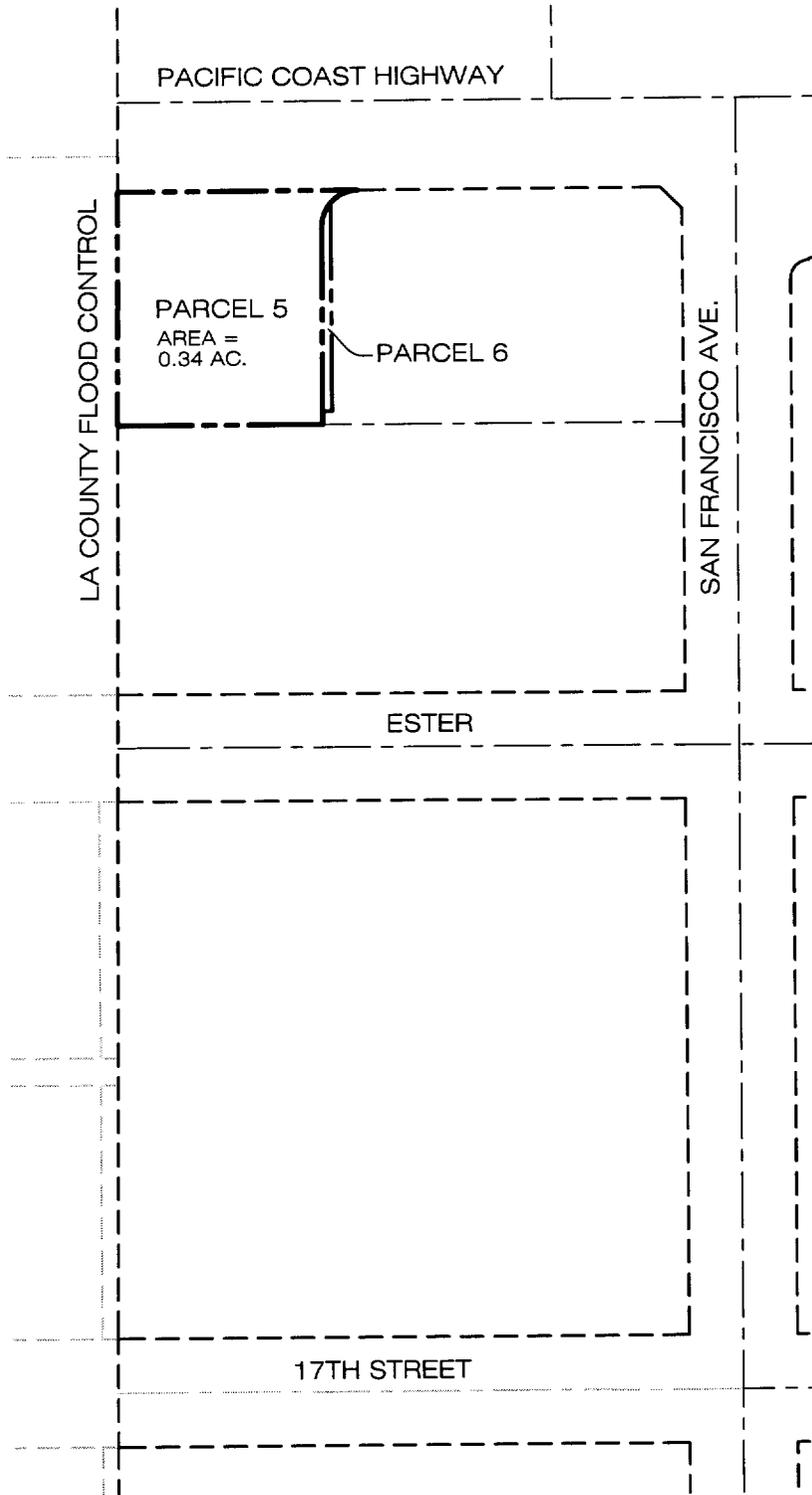


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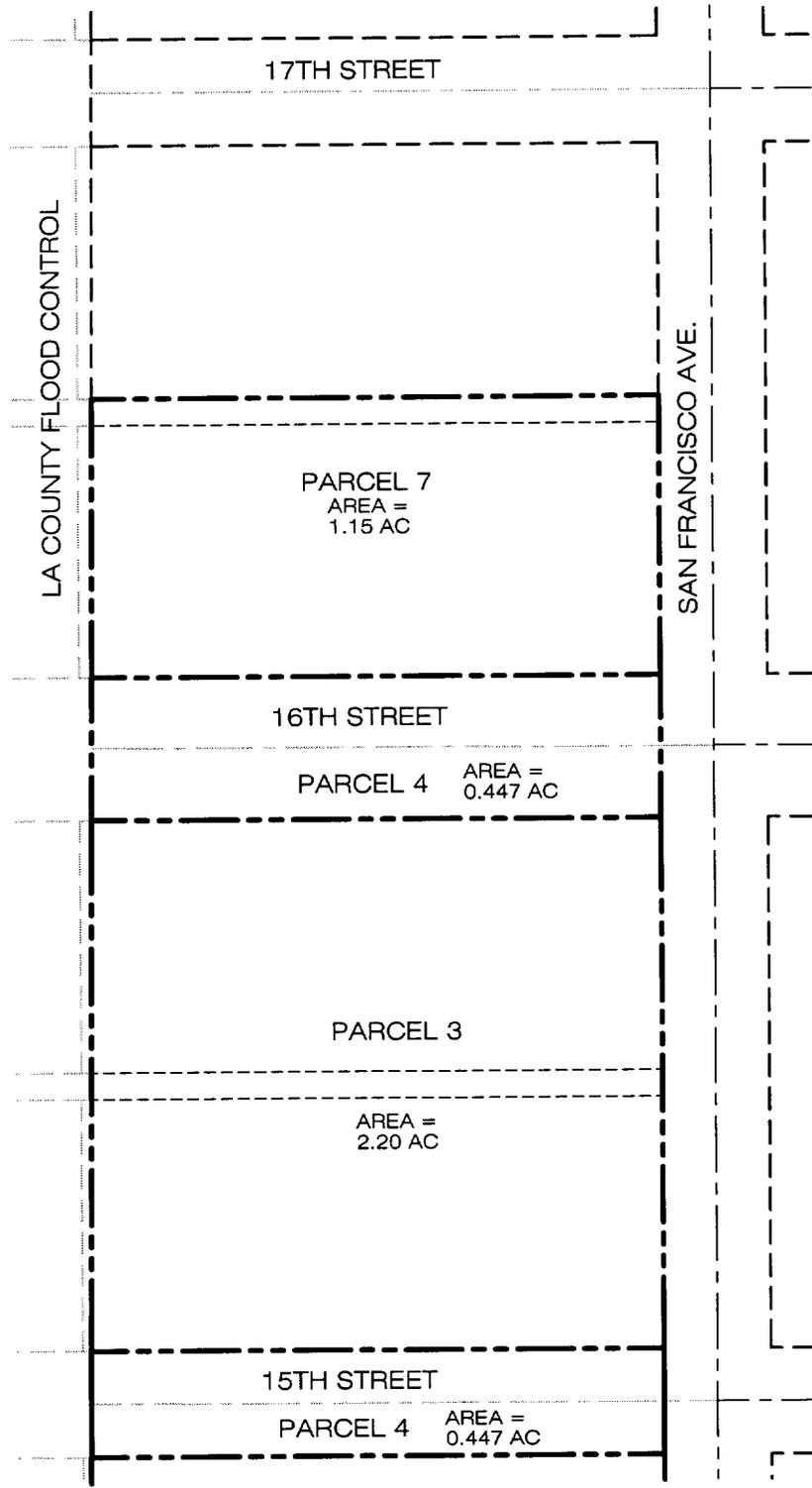


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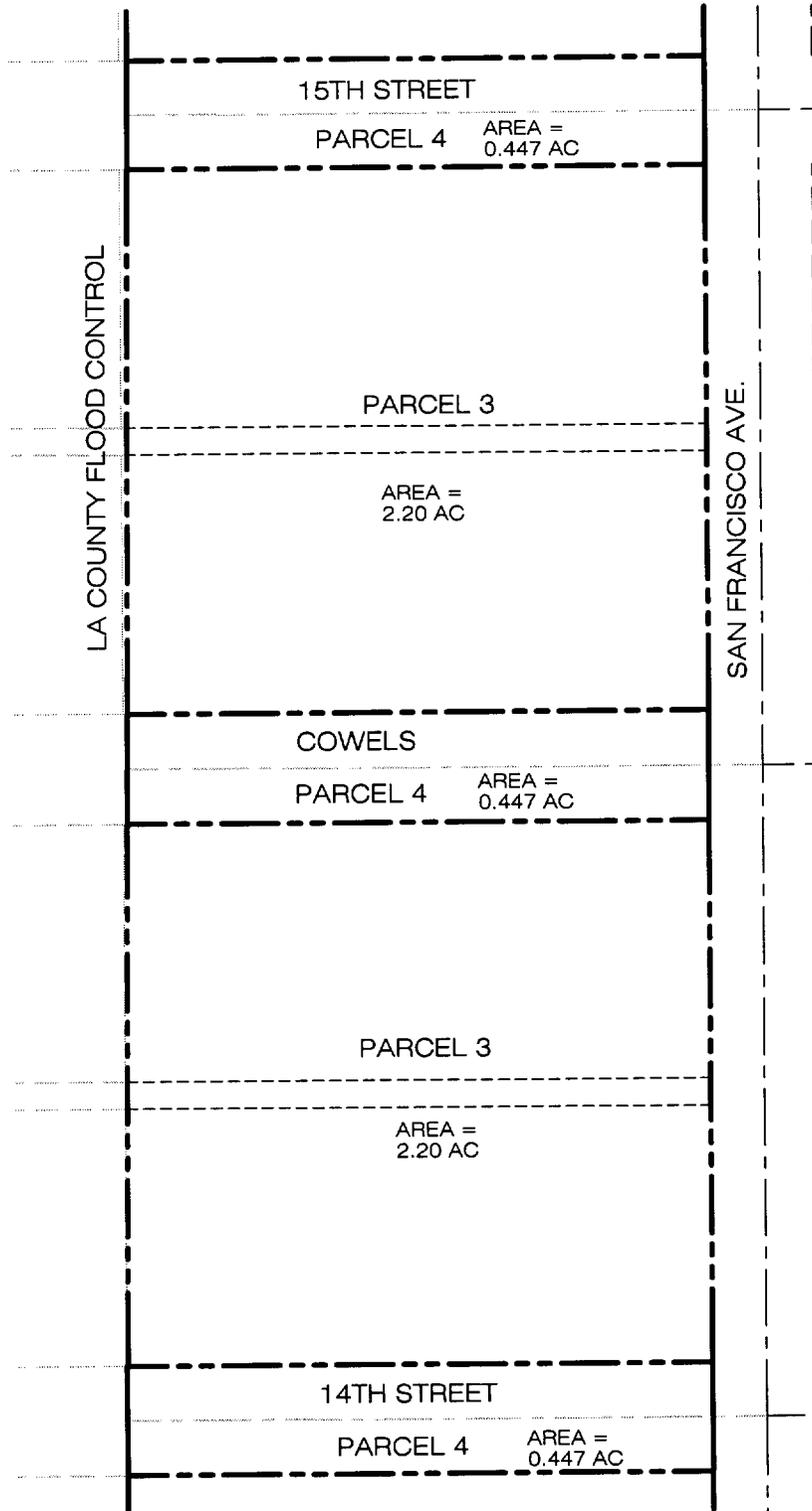


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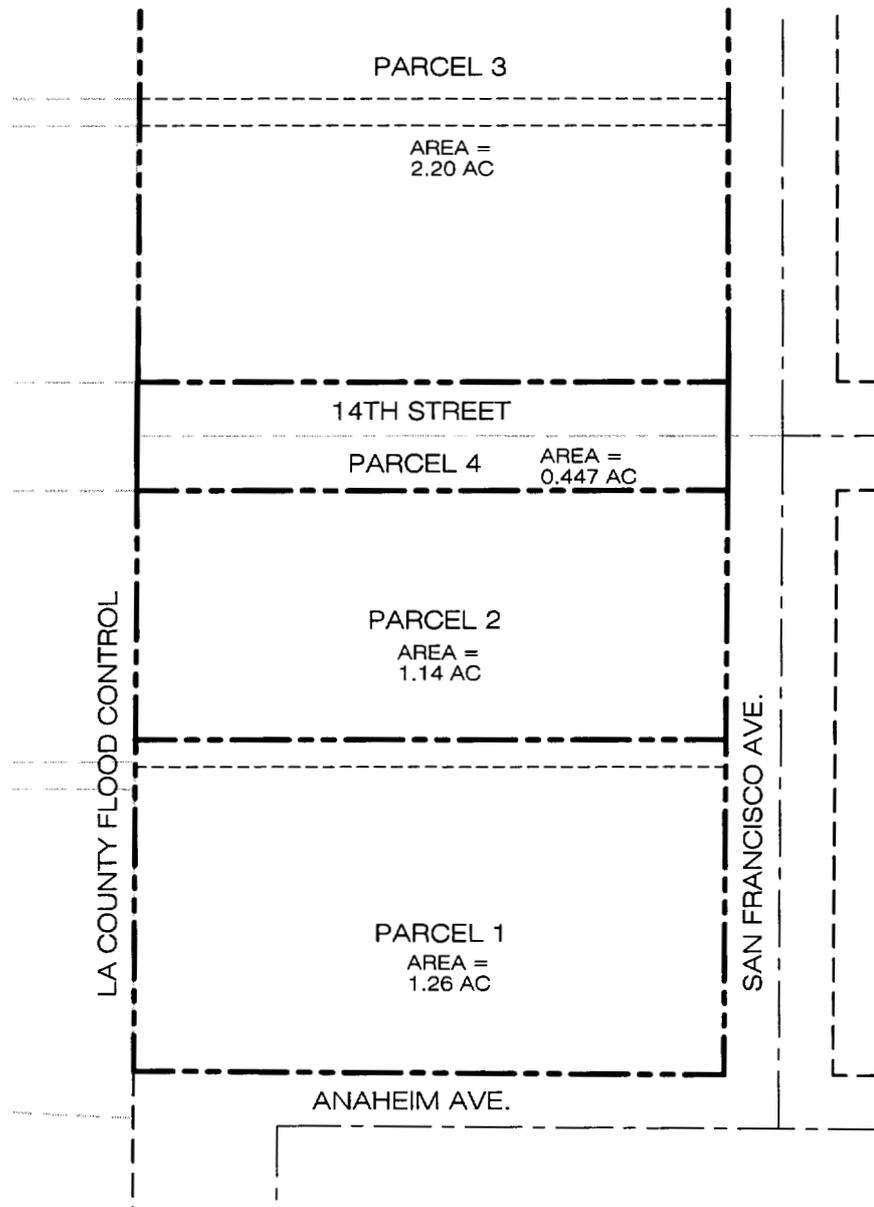


Exhibit F-2

Environmental Reports and Disclosures Concerning the LCW Property

1. Letter dated September 17, 2009 from the United States Environmental Protection Agency to the City of Long Beach, concerning for Reasonable Care Requirements.
2. Simon Environmental Engineering Inc. (Simon-EEI, 1990). Report of Subsurface Environmental Assessment Bixby Ranch Property, Westminster Avenue and Studebaker Road, Long Beach, California. Prepared for Bixby Ranch Company. August 24, 1990.
3. IT Corporation (IT, 1992). "A" Lease Site Investigation, Long Beach, California. Prepared for Bixby Ranch Company. Volume I. September 1992.
4. IT Corporation. "A" Lease Site Investigation, Long Beach, California. Prepared for Bixby Ranch Company. Volume II. September 1992.
5. IT Corporation (IT, 1993). Phase I Environmental Assessment for Real Property-The Marketplace Office Park, Long Beach, California. Prepared for Bixby Ranch Company. October 1993.
6. IT Corporation. Final 1994-1995 Semiannual Groundwater Sampling and Analysis Report Market Place Sanitary Landfill. Prepared for Bixby Ranch Company. January 1996.
7. IT Corporation. Final 1994-1995 Semiannual Groundwater Sampling and Analysis Report Studebaker-Loynes Sanitary Landfill. Prepared for Bixby Ranch Company. February 1996.
8. Ninyo & Moore Geotechnical and Environmental Sciences Consultants. Asbestos and Lead-Based Paint Survey, Bixby "A" Lease, Westminster Avenue and Pacific Coast Highway, Long Beach, California. Prepared for Bixby Ranch Company. July 23, 2003.
9. Ninyo & Moore Geotechnical and Environmental Sciences Consultants (Ninyo & Moore, September 2003). Water Quality Research Report, Bixby "A" Lease, Westminster Avenue and Pacific Coast Highway, Long Beach, California. Prepared for Bixby Ranch Company. September 3, 2003.
10. Ninyo & Moore Geotechnical and Environmental Sciences Consultants. File Review Report, Bixby "A" Lease, Westminster Avenue and Pacific Coast Highway, Long Beach, California. Prepared for Bixby Ranch Company. September 22, 2003.
11. Ninyo & Moore Geotechnical and Environmental Sciences Consultants (Ninyo & Moore, October 2003). Phase II Environmental Site Assessment, Bixby "A" Lease, Westminster Avenue and Pacific Coast Highway, Long Beach, California. Prepared for Bixby Ranch Company. October 30, 2003.

Exhibit J [Leaseback Lease]

LEASE

1. **Parties.** This Lease, dated as of June 3, 2010, for reference purposes only, is made by and between LCW Yard, LLC, a Delaware limited liability company (herein called "**Landlord**") and the City of Long Beach, a municipal corporation (herein called "**Tenant**").

2. **Premises.** Landlord hereby leases to Tenant and Tenant leases from Landlord for the term, at the rental, and upon all of the conditions set forth herein, a portion of that certain real property situated in the City of Long Beach, County of Los Angeles, State of California, approximately comprised of the northerly 2.2 acres of the property located at 901 West Anaheim Long Beach, California, which is depicted in the crosshatched area in Exhibit A, attached hereto. A portion of the real property, including the land relating thereto and all improvements thereon, is herein called the "**Premises.**" The Premises are part of a larger property owned by Landlord (the "**Property**") which is described in Exhibit B, attached hereto.

3. **Term.**

3.1 **Term.** The term of this Lease shall be for approximately 6 months, commencing on _____, 2010 (the "**Commencement Date**") and ending on December __, 2010 (the "**Termination Date**") (unless sooner terminated pursuant to any provisions hereof), which Termination Date is the last day of the calendar month that is 6 months after the Commencement Date; provided, however, if the Commencement Date is the first day of a month, then the Termination Date shall be the last day of the 6th month immediately following the Commencement Date (unless the term is sooner terminated pursuant to any provisions hereof).

3.2 **Delivery of Possession.** As of the Commencement Date, Tenant is in possession of the Premises; therefore, Tenant shall continue in occupancy of the Premises on the Commencement Date.

3.3 **Early Termination.** Tenant shall have the right, at any time, upon at least 7 day's advance written notice to Landlord, to terminate this Lease on any date selected by Tenant set forth in such notice that is prior to the scheduled Termination Date. If any sums are due from Tenant to Landlord as of the date of termination of this Lease, Tenant's obligation to pay or reimburse Landlord for the sums due shall survive such termination of this Lease.

4. **Rent.**

4.1 **Base Rent.**

(a) Landlord hereby waives Tenant's obligation (the "**Rent Abatement**") to pay monthly base rent for the six month Term of this Lease (the "**Excused Rent Period**"). However, Tenant shall pay all other sums and charges payable under the Lease during the Excused Rent Period, including, without limitation, the sums due pursuant to Paragraphs 10.1, 36 and 37.

(b) Either Landlord or Tenant may elect to have the area of the Premises remeasured by a licensed civil engineer to confirm such area. If the area of the Premises shall be re-determined, then the amount of base rent and other charges shall be adjusted in

proportion to the change in the area of the Premises. In the event of any such redetermination, Landlord and Tenant shall promptly execute an amendment to this Lease reflecting any such redetermination and such resulting base rent adjustment; provided, however, the failure of the parties, whether timely or at all, to execute any such amendment shall not affect the validity of such redetermination.

4.2 **Miscellaneous.** All rent and all other sums due under the terms of this Lease (a) shall be paid by Tenant without notice (except as expressly herein required), demand, offset or deduction, and (b) are hereby deemed to be rent. Rent and all other changes hereunder shall be payable in lawful money of the United States to Landlord at the address stated herein or to such other persons or at such other places as Landlord may designate in writing.

5. **Security Deposit.** [intentionally omitted]

6. **Use.**

6.1 **Use.** The Premises shall be used and occupied only for the storage and repair of trucks, heavy and light equipment, materials, supplies, and other items generally used in construction, maintenance and repair of public assets, and for no other purpose whatsoever.

6.2 **Compliance with Law.** At Tenant's expense, Tenant shall comply promptly with all applicable statutes, ordinances, rules, regulations, orders, covenants and restrictions of record, and requirements (including requirements of insurance companies) in effect during the term or any part of the term hereof, regulating the Premises and Tenant's use of the Premises ("**Applicable Requirements**"). Landlord makes no warranties or representations concerning the condition of the Premises and whether the Premises comply with any Applicable Requirements, and Landlord shall have no obligation to construct any improvements whatsoever thereto, and Tenant shall be solely responsible, at Tenant's sole cost, to perform any corrective work to the Premises required by Applicable Requirements. Tenant accepts the Premises in its "AS IS" condition. At Tenant's sole cost and expense, Tenant shall diligently seek to obtain any and all licenses and permits (including, without limitation, its building permit, its certificate of occupancy, and any required sign variance) that may be required for Tenant to conduct its business within the Premises; it being further agreed that Tenant's obtaining any such licenses and permits, whether timely or at all, shall not be a condition to the effectiveness of this Lease or Tenant's obligations hereunder. Landlord shall, at no out of pocket cost to Landlord, use its commercially reasonable efforts to cooperate with Tenant in Tenant's efforts to obtain all such licenses and permits. Landlord shall have no obligation to ensure that the Premises meets all applicable government codes, including but not limited to, requirements related to the Americans With Disabilities Act and similar California statutes and regulations, and, further, Landlord shall have no obligation to construct any improvements in order to comply with same, and Tenant shall bear all liability (if any) with respect to the Premises' compliance (or non-compliance) with all Applicable Requirements, including, without limitation, the Americans With Disabilities Act and similar California statutes and regulations. Tenant shall not use or permit the use of the Premises in any manner that will tend to create waste or a nuisance.

6.3 **Condition of Premises.** Tenant is currently in occupancy of the Premises, and, therefore, Tenant accepts the Premises in their current "as-is" condition, with all faults, subject to all applicable zoning, municipal, county and state laws, ordinances and regulations governing and regulating the use of the Premises, and any covenants or restrictions of record, and Tenant accepts this Lease subject thereto and to all matters disclosed thereby and by any exhibits attached hereto. Tenant acknowledges that neither Landlord nor Landlord's agent has made

any representation or warranty as to the present or future suitability of the Premises for the conduct of Tenant's business. Tenant represents and acknowledges: (i) that Tenant has independently inspected the Premises; and (ii) that Tenant is satisfied with all conditions thereof as the same relate to suitability for Tenant's intended use. Therefore, to the fullest extent permitted by law, Tenant hereby waives all obligations of Landlord (if any) to notify or advise Tenant of any condition of the Premises, whether relating to the zoning, physical integrity, access, visibility, appearance, security, or other quality thereof, that would make the Premises unsuitable for Tenant's intended use, including (without limitation) the disclosure obligations described in *Moradzadeh v. Antonio* (5 Cal. App. 4th 1289, 7 Cal. Rptr. 2d 475) or contained in any successor or similar legal decision, statute, or regulation.

6.4 Hazardous Material.

(a) **Covenants of Tenant.** Tenant shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Premises or the Property, by Tenant, its agents, employees, contractors or invitees, without the prior consent of Landlord (which Landlord shall not unreasonably withhold as long as Tenant demonstrates to Landlord's reasonable satisfaction that such Hazardous Material is necessary or useful to Tenant's business, and will be used, kept, and stored in a manner that complies strictly with all Applicable Requirements) nor shall Tenant use any Hazardous Materials in violation of any law; provided, however, Landlord's consent shall not be required for customary cleaning products. If Tenant breaches the obligations stated in the preceding sentence, or if the presence of Hazardous Material on the Premises or the Property caused or permitted by Tenant during the term of this Lease (including any hold over period) results in contamination of the Premises or the Property, or if contamination of the Premises or the Property by Hazardous Material otherwise occurs during the term of this Lease (including any hold over period) for any reason other than Landlord's gross negligence or intentional misconduct ("**Contamination Event**"), then Tenant shall indemnify, defend and hold Landlord and its affiliates, and mortgagees, and their respective employees, agents, successors and assigns harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities or losses (including, without limitation, diminution in value of any real property, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises or the Property, damages arising from any adverse impact on marketing of the Premises or the Property, and sums paid in settlement of claims, attorneys' fees, consultants' fees and experts' fees) which arise during or after the term as a result of such Contamination Event. This indemnification by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision because of Hazardous Material present or suspected to be present in the Premises or any part thereof, including, without limitation, in the soil or ground water on or under the or the Property or any part thereof which is caused by Tenant, its agents, employees or contractors during the term of this Lease (including any hold over period). Without limiting the foregoing, upon a Contamination Event, Tenant shall promptly take all actions at its sole expense as are necessary to return the same to the condition existing prior to the introduction of any such Hazardous Material; provided that Landlord's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse long-term or short-term effect. Notwithstanding the foregoing, however, nothing contained in this Lease, including this Paragraph 6.4, is intended to supersede or diminish the obligations of Tenant arising under that certain "Environmental Indemnity and Access Agreement [S.F. Yard Property]" dated as of June 3, 2010, between the City of Long Beach and LCW Yard, LLC, concerning the Property, and in

the event of any conflict between the terms hereof and the terms of such agreement, then the terms of such agreement shall prevail.

(b) **Definition.** As used herein, the term "**Hazardous Material**" means any substance, material, or waste, the use, transport, storage, and/or disposal of which is or becomes regulated by any federal, state, or local governmental authority with jurisdiction over the Property. The term "**Hazardous Material**" also includes, without limitation: (i) any material or substance which is defined, listed, or designated as a "hazardous waste," "extremely hazardous waste," "restricted hazardous waste," "hazardous substance," or "hazardous material," or as "toxic," "dangerous," "hazardous," or "extremely hazardous" by or under any federal, state, or local law, regulation, or order applicable to the Property now or hereafter promulgated; (ii) petroleum, its component parts, and substances manufactured from the same; and (iii) asbestos.

7. **Maintenance, Repairs and Alterations.**

7.1 **Tenant's Obligations.** Tenant shall keep in good order, condition and repair the Premises, including the improvements thereon, and every part thereof, structural and non-structural.

7.2 **Surrender.** Subject to Paragraph 7.5(a), Tenant shall surrender the Premises to Landlord in the same condition as when received, ordinary wear and tear excepted, clean and free of debris, on the last day of the term hereof, or on any sooner termination. Tenant shall repair any damage to the Premises caused by the installation or, subject to Paragraph 7.5(d), removal of Tenant's trade fixtures, furnishings and equipment. Notwithstanding anything to the contrary otherwise stated in this Lease, Tenant shall leave the air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing and fencing, if any, on the Premises in "as is" condition.

7.3 **Landlord's Rights.** If Tenant fails to perform Tenant's obligations under this Paragraph 7, or under any other paragraph of this Lease, then Landlord may at its option (but shall not be required to) enter upon the Premises after 10 days' prior written notice to Tenant (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Tenant's behalf, and put the same in good order, condition and repair, and the cost thereof together with interest thereon at the lesser of twelve percent (12%) per annum and the maximum rate then allowable by law shall become due and payable as additional rental to Landlord together with Tenant's next rental installment.

7.4 [intentionally omitted]

7.5 **Alterations and Additions.**

(a) Tenant shall not, without Landlord's prior written consent, in Landlord's sole and absolute discretion, make any alterations, improvements, additions, or Utility Installations in, on or about the Premises, including, without limitation, its initial tenant improvements, (collectively, "**Alterations**"), except for any Alteration that satisfies all of the following conditions: (i) the Alteration does not affect the structural integrity of the Premises, (ii) the Alteration does not affect the roof, (iii) the Alteration does not affect any of the plumbing, electrical, lighting, fire, sprinkler, HVAC, or other systems of the Premises, (iv) the Alteration's estimated cost does not exceed \$2,500, (v) if Tenant were not a governmental entity, the Alteration would not require a building permit, and (vi) the Alteration's estimated cost, when

aggregated with the estimated cost of all other Alterations performed during the term, does not exceed \$10,000. Landlord's consent shall nonetheless still be required for any Alteration, even if the same otherwise satisfies all of the immediately preceding such conditions, if (A) it would be a breach under the terms and conditions of any document evidencing or securing any indebtedness secured, in whole or in part, by the Premises for any such Alteration to be performed without the applicable lender's written consent first having been obtained, (B) such Alteration shall affect the exterior of the Premises or (C) such Alteration may, in Landlord's good faith determination, diminish the value of the Premises. As used in this Paragraph 7.5 the term "Utility Installation" shall mean carpeting, window coverings, air lines, power panels, electrical distribution systems, lighting fixtures, space heaters, air conditioning, plumbing, and fencing. By written notice given to Tenant at any time prior to the date occurring 30 days after the end of the term hereof, Landlord may require Tenant to remove any or all of its Alterations and repair any damage caused by such removal, and/or to restore the Premises to its prior condition, failing any of which Tenant shall be liable to Landlord for any damages, including, without limitation, any diminution in value, Landlord may thereby suffer. Tenant shall complete any such work, to Landlord's reasonable satisfaction, by the later of the end of the term hereof or the date occurring 30 days after such notice.

(b) Any Alterations that Tenant shall desire to make, and regardless of whether such work requires the consent of Landlord, shall be presented to Landlord in written form, with detailed proposed plans. If Landlord gives its consent or if Landlord's consent is not required, then Landlord's consent, if given, or the fact of Landlord's consent not being required, as applicable, shall be deemed conditioned upon Tenant acquiring all requisite approvals and/or permits to perform such work from appropriate governmental agencies, the furnishing of a copy thereof to Landlord prior to the commencement of the work, and the compliance by Tenant of all conditions of said approvals and/or permits in a prompt and expeditious manner. Tenant shall give Landlord at least 20 days advance notice of the commencement of any Alterations, whether or not Landlord's consent is required for such work, in order to permit Landlord to post a notice of non-responsibility in, on or upon the Premises before the commencement of such work. No consent of Landlord to any proposed Alteration shall constitute any representation or warranty by Landlord regarding such proposed Alteration, including, without limitation, its fitness for any particular purpose or use.

(c) Tenant shall pay, when due, all claims for labor materials furnished or alleged to have been furnished to or for Tenant at or for use in the Premises, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises, and Landlord shall have the right, and be given adequate opportunity in writing by Tenant, to post notices of non-responsibility in or on the Premises as provided by law. If Tenant shall, in good faith, contest the validity of any such lien, claim or demand, then Tenant shall, at its sole expense defend itself and Landlord against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof against Landlord or the Premises, upon the condition that if Landlord shall require, Tenant shall furnish to Landlord a surety bond satisfactory to Landlord in an amount equal to such contested lien claim or demand indemnifying Landlord against liability for the same and holding the Premises free from the effect of such lien or claim.

(d) Unless Landlord requires their removal as set forth in Paragraph 7.5(a) or unless Tenant removes them if and as permitted under the Lease, all Alterations (whether or not such Alteration constitute trade fixtures of Tenant) made on the Premises shall become the property of Landlord and remain upon and be surrendered with the Premises at the expiration of the term. Notwithstanding the provisions of this Paragraph 7.5(d), Tenant's furniture, fixtures

and equipment, other than any that constitute trade fixtures of Tenant or that are so affixed to the Premises that they cannot be removed without material damage to the Premises, shall remain the property of Tenant and may be removed by Tenant subject to the provisions of Paragraph 7.2.

(e) Notwithstanding anything to the contrary contained in this Lease, however, any personal property, equipment, furniture, inventory, trade dress elements and trade fixtures installed in or on the Premises by Tenant, in each such instance subject to the terms and conditions of this Lease ("**Tenant's Property**") shall be and remain the property of Tenant during the term of this Lease. From time to time, some or all of Tenant's Property may be financed or owned by someone other than Tenant. Landlord agrees that Tenant's Property is not, and shall not become, Landlord's property no matter how the same is affixed to the Premises.

8. Insurance Indemnity.

8.1 [intentionally omitted]

8.2 **Liability Insurance.** Tenant shall, at Tenant's expense obtain and keep in force during the term of this Lease either a policy of commercial general liability insurance, or a program of self-insurance, in an amount not less than Three Million Dollars (\$3,000,000) per occurrence and Three Million Dollars (\$3,000,000) aggregate, insuring Tenant and, as an additional insured, Landlord, against any liability arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. If the City maintains a program of self-insurance, then the self-insurance program shall not be suspended, voided, changed, or canceled by Tenant except after thirty (30) days prior written notice to Landlord, and shall be primary and not contributing to any other insurance maintained by Landlord. In the event such self-insurance is suspended, voided, changed or canceled, then Tenant shall, prior to the effective date of such suspension, voidance, change or cancellation, obtain such replacement insurance as may be required by Landlord in its discretion. The policy shall insure performance by Tenant of the indemnity provisions of Paragraph 8. The limits of said insurance shall not, however, limit the liability of Tenant hereunder. If Tenant is self-insuring, then Tenant shall provide to Landlord an annual letter from the Tenant's risk manager summarizing the self-insurance program then in effect. If Tenant does not self-insure, then Tenant shall provide Landlord with a certificate of insurance and an endorsement evidencing such insurance and further evidencing that Landlord has been added as an additional insured under the policy of insurance.

8.3 **Property Insurance.** Neither party shall be required to carry property insurance. If any party elects, in its sole discretion, to carry property insurance, then the proceeds thereof shall be the sole property of the insured, and the insured shall not have any duty whatsoever, to use such proceeds to rebuild the improvements comprising the Premises.

8.4 **Insurance Policies.** Insurance required hereunder shall be in companies holding a "General Policyholders Rating" of at least B plus, or such other rating as may be required by a lender having a lien on the Premises, as set forth in the most current issue of "Best's Insurance Guide." Tenant shall deliver to Landlord copies of policies of such insurance policies or certificates evidencing the existence and amounts of such insurance in accordance with the terms of this Paragraph 8. No such policy shall be cancelable or subject to material reduction of coverage or other modification except after 30 days' prior written notice to Landlord. Tenant shall, at least 30 days prior to the expiration of such policies, furnish Landlord with certificates

evidencing renewal or "binders" thereof, or Landlord may order such insurance and charge the cost thereof to Tenant, which amount shall be payable by Tenant upon demand. Tenant shall not do or permit to be done anything which shall invalidate the insurance policies referred to in Paragraph 8.2. Any insurance carried by Landlord, from time to time, shall be secondary and non-contributory to any insurance carried by Tenant, from time to time.

8.5 Waiver of Subrogation. Tenant and Landlord each hereby release and relieve the other, and waive their entire right of recovery against the other, for loss or damage to Tenant's property from any cause whatsoever, including, without limitation, losses caused by any peril that is customarily covered by All Risk Coverage insurance, whether due to the negligence of Landlord or Tenant or their agents, employees, contractors and/or invitees to the extent that this waiver will not invalidate such insurance. Tenant and Landlord shall, upon obtaining the policies of insurance (or upon receiving an endorsement with respect to any joint powers authority that insures Tenant and Landlord) give notice to the insurance carrier or carriers, or the joint powers authority, that the foregoing mutual waiver of subrogation is contained in this Lease, and Tenant shall provide to Landlord written confirmation from the joint powers authority that accepts such waiver of the right of subrogation.

8.6 Indemnity.

(a) Tenant shall indemnify, defend and hold harmless Landlord from and against any and all claims, costs, demands and liabilities arising from Tenant's use of the Premises, or from the conduct of Tenant's business, or from any activity, work or things done, permitted or suffered by Tenant, its agents, employees or contractors, in or about the Premises (including the use, storage, disposal, and transport of Hazardous Materials), and shall further indemnify, defend and hold harmless Landlord from and against any and all claims, costs, demands and liabilities (i) arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the terms of this Lease, or (ii) arising from any negligence or intentional act or omission of Tenant, or any of Tenant's agents, contractors, invitees or employees, and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim, demand or liability or any action or proceeding brought thereon. Furthermore, if any action or proceeding is brought against Landlord by reason of any such claim, demand or liability, then Tenant, upon notice from Landlord, shall defend the same at Tenant's expense by counsel reasonably satisfactory to Landlord. As a material part of the consideration to Landlord, Tenant hereby assumes all risk of damage to property or injury to persons, in, upon or about the Premises arising from any cause, other than the willful misconduct of Landlord, its agents, employees or contractors or the continued breach of this Lease by Landlord after the expiration of any applicable notice and cure period, and Tenant hereby waives all claims in respect thereof against Landlord.

(b) Subject to the waivers and releases set forth in Paragraph 8, including, without limitation, Paragraphs 8.5 and 8.7, Landlord shall indemnify and hold harmless Tenant from and against any and all claims, demands or liabilities arising from the willful misconduct of Landlord, its agents, employees, or contractors or the breach of this Lease by Landlord, and from and against all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. Furthermore, if any action or proceeding is brought against Tenant by reason of any such claim, demand or liability, then Landlord, upon notice from Tenant, shall defend the same at Landlord's expense by counsel reasonably satisfactory to Tenant.

8.7 Exemption of Landlord from Liability. Tenant hereby agrees that Landlord shall not be liable for (i) injury to Tenant's business or any loss of income therefrom or for damage to the goods, wares, merchandise or other property of Tenant or Tenant's employees, invitees, or any other person in or about the Premises or (ii) injury to the person of Tenant, Tenant's employees, agents, invitees or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, except, in each case, as a result of Landlord's (or Landlord's agents' or employees') willful misconduct or as a result of the continued failure of Landlord to satisfy its obligations under this Lease, whether the said damage or injury results from conditions arising upon the Premises, or from other sources or places, and regardless of the cause of such damage or injury, and whether the means of repairing the same is inaccessible to Tenant.

9. Damage or Destruction.

9.1 Damage. If, at any time during the term of this Lease, there is damage due to any casualty, then Tenant may elect to terminate this Lease. Such election shall be made, if at all, by Tenant providing written notice to Landlord of such election within 30 days after the date of the casualty. The effective date of termination shall be no later than 60 days after the date such notice is actually or deemed delivered pursuant to Paragraph 23; provided, however, in no event shall the effective date of termination exceed the Termination Date. Pending the effectiveness of any such termination, Tenant shall take all actions reasonably necessary to bring any improvements so damaged into a condition that (i) is in compliance with any Applicable Requirements, (ii) does not constitute a nuisance and (iii) is not unsafe (such as, for example, boarding up entrances and removing any debris that may constitute a hazard or an attractive nuisance). Tenant shall not have any right whatsoever to reimbursement from Landlord for any amounts so expended.

9.2 No Abatement of Rent. If any damage to the Premises occurs for any reason whatsoever, the rent (including base rent) payable hereunder shall not abate (even following the casualty and during any period of repair or restoration), and the rent and other charges payable hereunder (including base rent, if any) shall in all events continue without abatement. In that regard, if Tenant has elected to terminate this Lease in accordance with Paragraph 9.1, then rent (including base rent, if any) shall continue to be due and payable, without abatement, until the termination date of this Lease or the effective date of termination set forth in the applicable notice to Tenant. Tenant shall have no claim against Landlord for any damage suffered by reason of any such damage, destruction, repair or restoration.

9.3 Waiver. Landlord and Tenant waive the provisions of any statutes which relate to termination of leases when leased property is destroyed, and they agree that such event shall be governed by the terms of this Lease.

10. Real Property Taxes.

10.1 Payment of Taxes. Tenant shall pay the real property tax, as defined in Paragraph 10.2, applicable to the Premises during the term of this Lease. All such payments shall be made at least 30 days prior to the delinquency date of such payment. Tenant shall promptly furnish Landlord with satisfactory evidence that such taxes have been paid. Notwithstanding the foregoing, if taxes for the Premises are not separately assessed, then Tenant's share of the taxes for the Premises shall be due and payable as set forth in Paragraph

10.3. If any such taxes paid by Tenant shall cover any period of time prior to or after the expiration of the term hereof, then Tenant's share of such taxes shall be equitably prorated to cover only the period of time within the tax fiscal year during which this Lease shall be in effect, and Landlord shall reimburse Tenant to the extent required. If Tenant shall fail to pay any such taxes, then Landlord shall have the right to pay the same, in which case Tenant shall repay such amount to Landlord with Tenant's next rent installment together with interest at the lesser of 10% per annum and the maximum rate then allowable by law. Tenant's obligation to pay such real property taxes shall be considered "rent."

10.2 **Definition of "Real Property Tax."** As used in this Lease, the term "real property tax" shall include any form of real estate tax or assessment, general, special, ordinary or extraordinary, and any license fee, commercial rental tax, possessory interest tax, improvement bond or bonds, levy or tax (other than inheritance, personal income or estate taxes) imposed by any authority having the direct or indirect power to tax, including any city, state or federal government, or any school, agricultural, sanitary, fire, street, drainage or other improvement district thereof, against any legal or equitable interest of Landlord in the Premises or in the real property of which the Premises are a part, against Landlord's right to rent or other income therefrom, or against Landlord's business of leasing the Premises or the real property of which the Premises are a part. The term "real property tax" shall also include any tax, fee, levy, assessment or charge (i) in substitution of, partially or totally, any tax, fee, levy, assessment or charge hereinabove included within the definition of "real property tax," or (ii) the nature of which was hereinbefore included within the definition of "real property tax," or (iii) which is imposed for a service or right not charged prior to July 1, 1978, or, if previously charged, has been increased since July 1, 1978, or (iv) which is imposed as a result of a transfer, either partial or total, of Landlord's interest in the Premises or which is added to a tax or charge hereinbefore included within the definition of "real property tax" by reason of such transfer, or (v) which is imposed by reason of this transaction, any modifications or changes hereto, or any transfers hereof or (vi) any gross receipts tax, business license fee or like charge imposed by any municipal or other governmental authority upon or by reason of Landlord's receipt of the rents hereunder (any such tax, license fee or charge, the "**Rental Tax**").

10.3 **Joint Assessment.** If the Premises are not separately assessed, Tenant's liability for the real property tax shall be the sum of (i) the product of the Real Property Taxes attributable to the assessed value of the improvements set forth in the applicable tax bill(s) times a fraction, the numerator of which is the assessed value of all improvements on the Premises and the denominator of which is the assessed value of all improvements on the Property set forth in the applicable tax bills, plus, (ii) the product of the Real Property Taxes attributable to the assessed value of the land set forth in the applicable tax bill(s) times a fraction, the numerator of which is the assessed value of the land comprising the Premises and the denominator of which is the assessed value of all land comprising the Property set forth in the applicable tax bills, plus (iii) the product of the Real Property Taxes attributable to any matters other than land or improvements set forth in the applicable tax bill(s) times a fraction, the numerator of which is the assessed value of the land comprising the Premises and the denominator of which is the assessed value of all land comprising the Property set forth in the applicable tax bills, provided, however, (A) in the event any improvements or alterations to the Premises result in a disproportionate increase in real property tax, then Tenant shall pay the entire amount of such increase, and (B) if there are any tenants besides Tenant in the Premises, then Landlord may elect, in Landlord's sole discretion and from time to time, to charge to Tenant all of any Rental Tax attributable to this Lease and none of the Rental Tax attributable to any other lease at the Premises. The computation of any such increase referred to in the preceding clause (i) shall be determined by Landlord from the respective valuations

assigned in the assessor's work sheets or such other information as may be reasonably available. Landlord's reasonable determination thereof, in good faith, shall be conclusive. Landlord shall provide Tenant, from time to time upon Tenant's request, with a copy of the then current real estate tax bill for the Premises.

10.4 **Personal Property Taxes.**

(a) Tenant shall pay prior to delinquency all taxes assessed against and levied upon trade fixtures, furnishings, equipment and all other personal property of Tenant contained in the Premises or elsewhere. When possible, Tenant shall cause said trade fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Landlord.

(b) If any of Tenant's said personal property shall be assessed with Landlord's real property, Tenant shall pay Landlord the taxes attributable to Tenant within 30 days after receipt of a written statement setting forth the taxes applicable to Tenant's property.

10.5 Proposition 13 Protection. Notwithstanding any other provision of this Lease to the contrary, in the event that the Property is sold or otherwise is the subject of more than one transfer during the term, which causes the Property to be reassessed as a "change in ownership" (as defined in California Revenue and Taxation Code Section 62) for real property tax purposes, then from the date of the *second* such transfer through the remainder of the term, Tenant shall be liable for real property taxes only in the amount that would have been incurred had no such event occurred. Thus, the first time during the term that the Property is transferred and is deemed a "change in ownership" that causes a reassessment, Tenant shall continue to be liable for all real property taxes, as provided above. Moreover, any transfer that is excluded from the definition of a "change in ownership" under the California Revenue and Taxation Code (including, without limitation, Sections 62 through and including 69.5) shall not be deemed a "sale" or "transfer" under this section.

11. Utilities. Tenant shall pay for all water, gas, heat, light, power, telephone and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered to Tenant, (a) Tenant shall pay a reasonable proportion to be determined by Landlord of all charges jointly metered with other premises and (b) Landlord may, in its sole discretion and at any time, elect to separately meter any or all such services supplied to the Premises and charge all of the costs of doing so to Tenant. If Tenant's use of the Premises changes, from time to time, then Landlord reserves the right, from time to time, to change Tenant's percentage for jointly metered water charges and/or any other jointly metered utility services to such other percentage(s) as Landlord, in good faith deems appropriate.

12. **Assignment and Subletting.**

12.1 **No Transfers.**

(a) Tenant may not, directly or indirectly, (i) sell, assign, or transfer the whole or any part of its interest under this Lease, (ii) sublet the whole or any part of the Premises, or (iii) allow the occupancy of the whole or any part of the Premises by another by license, concession, joint venture, management agreement, or otherwise, without in each case obtaining the prior written consent of Landlord, which consent may be granted or withheld in Landlord's sole and absolute discretion.

(b) Any transfer, subletting or assignment to which Landlord has consented must be by an instrument in writing, satisfactory to Landlord, and any assignee, sublessee, transferee, licensee, concessionaire or mortgagee shall agree for the benefit of Landlord to be bound by, assume and perform all the terms, covenants and conditions of this Lease.

(c) Upon the occurrence of a default (as provided in Paragraph 13), if the Premises (or any part thereof) have been sublet, then Landlord, in addition to any other remedies herein provided or provided by law, may at its option collect directly from such sublessee all rents becoming due to Tenant under such sublease and apply such rent against any sums due to Landlord from Tenant hereunder, and no such collection shall be construed to constitute a novation or release of Tenant from the further performance of Tenant's obligations under this Lease. If a permitted sublease terminates by reason of a termination of the Lease, Landlord may, in its sole discretion, elect, by delivering written notice to such subtenant, to assume the obligations of Tenant under such sublease, in which event such subtenant shall recognize Landlord as the sublandlord under the Sublease as if Landlord were Tenant under such sublease (an "**Assumption**"). If there shall be an Assumption, then Landlord shall not be liable to subtenant for (a) the return of any security deposit that may have been previously posted by such subtenant under such sublease or (b) any default of Tenant under such sublease, including, without limitation, any default that may be in the nature of a continuing default commencing prior to the Assumption and continuing thereafter.

(d) Any assignment or transfer of Tenant's interest under this Lease, and any proposed subletting or occupancy of the Premises, not in compliance with this Paragraph 12 shall be void and shall constitute a material incurable default under this Lease.

12.2 Landlord's Additional Rights re Assignment. Tenant shall in no event assign less than its entire interest in this Lease. If Tenant desires to assign all (but not less than all) of its interest in this Lease, Tenant shall give not less than 90 days' prior written notice thereof to Landlord setting forth the name of the proposed assignee, the terms of the assignment, and any other relevant particulars of the proposed assignment. In addition to Landlord's right of approval pursuant to Paragraph 12.1, Landlord shall have the option, if any assignment is proposed, to cancel this Lease as of the proposed effective date of the assignment set forth in Tenant's notice. The option shall be exercised, if at all, by Landlord giving Tenant written notice thereof within 60 days following Landlord's receipt of Tenant's written request. Upon any such cancellation, Tenant shall pay to Landlord all amounts, as estimated by Landlord, payable by Tenant to such termination date with respect to any obligations, costs or charges which are the responsibility of Tenant under this Lease. Further, upon any such cancellation, Landlord and Tenant shall have no further obligations or liabilities to each other under this Lease, except with respect to obligations or liabilities which have accrued as of such cancellation date (in the same manner as if such cancellation date were the date originally fixed for the expiration of the term). Without limitation, Landlord may lease the Premises to the proposed assignee, without liability to Tenant. Landlord's failure to exercise said cancellation right as herein provided shall not be construed as Landlord's consent to the proposed assignment.

12.3 No Release of Tenant. Regardless of Landlord's consent, no subletting or assignment shall release Tenant of Tenant's obligation or alter the primary liability of Tenant to pay the rent and to perform all other obligations to be performed by Tenant hereunder. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent assignment or subletting. If any assignee of Tenant or any successor of Tenant defaults in the performance of any of the terms hereof, then Landlord may

proceed directly against Tenant without the necessity of exhausting remedies against said assignee. Landlord may consent to subsequent assignments or subletting of this Lease or amendments or modifications to this Lease with assignees of Tenant without notifying Tenant or any successor of Tenant and without obtaining its or their consent thereto, and such action shall not relieve Tenant of liability under the Lease. In this regard, Tenant waives any rights or defenses of a surety, including without limitation any set forth in California Civil Code Sections 2809, 2810, 2814, 2815, 2819, 2825, 2839, 2845 through 2850, 2899 and 3433, in Article 3 of the California Commercial Code and in any other relevant statutes now or hereafter enacted.

12.4 Attorneys' Fees. If Tenant shall assign or sublet the Premises or request the consent of Landlord to any assignment or subletting, or if Tenant shall request the consent of Landlord for any act Tenant proposes to do, then Tenant shall pay Landlord's reasonable attorneys' fees and expenses incurred in connection therewith; provided, however, if Tenant requests Landlord's consent to an assignment where (i) such request does not involve Landlord being requested to do anything not provided for in this Lease, (ii) all information required to be provided is provided in a timely and complete manner and (iii) there is no excessive negotiation of Landlord's standard form of consent, then Landlord shall not charge Tenant more than \$4,000 for its attorneys' fees and expenses, which sum shall increase at the time of and in proportion to any increase, from time to time, in monthly base rent. Landlord may request a deposit from Tenant toward the payment of such reasonable attorneys' fees and expenses, and such deposit shall apply against (but not limit) the amount payable by Tenant for such attorneys' fees and expenses.

13. Defaults; Remedies.

13.1 Defaults. The occurrence of any one or more of the following events shall constitute a material default and breach of this Lease by Tenant:

(a) Except in the event of casualty, damage or loss during which Tenant cannot operate its business, the vacating or abandonment of the Premises for a period of 30 days, whether consecutively or in the aggregate, by Tenant.

(b) The failure by Tenant to make any payment of rent or any other payment required to be made by Tenant hereunder, as and when due, where such failure shall continue for a period of 10 days after written notice thereof from Landlord to Tenant. If Landlord serves Tenant with a Notice to Pay Rent or Quit pursuant to applicable Unlawful Detainer statutes, then such Notice to Pay Rent or Quit shall also constitute the notice required by this subparagraph.

(c) The failure by Tenant to deliver any of an estoppel certificate pursuant to Paragraph 16.2, or documentation pursuant to Paragraph 29.1, where such failure shall continue for a period of three (3) business days after written notice thereof from Landlord to Tenant.

(d) [Intentionally Omitted.]

(e) The failure by Tenant to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Tenant, other than described in Subparagraphs 13.1(a), 13.1(b), 13.1(c), and 13.1(d) above, where such failure shall continue for a period of 20 days after written notice hereof from Landlord to Tenant; provided, however, that if the nature of Tenant's default is such that more than 20 days are reasonably required for its cure, then Tenant shall not be deemed to be in default if Tenant

commenced such cure within said 20 day period and thereafter diligently prosecutes such cure to completion but in no event longer than 90 days .

(f) (i) Tenant or any guarantor makes any general arrangement or assignment for the benefit of creditors; (ii) Tenant or any guarantor becomes a "debtor" as defined in 11 U.S.C. Section 101 or any successor statute thereto (unless, in the case of a petition filed against Tenant or said guarantor, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's or said guarantor's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant or said guarantor within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's or said guarantor's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within 30 days. Notwithstanding the foregoing, if any provision of this Paragraph 13.1(f) is contrary to any applicable law, then such provision shall be of no force or effect.

(g) The discovery by Landlord that any financial statement given to Landlord by Tenant, any assignee of Tenant, any subtenant of Tenant, any successor in interest of Tenant or any guarantor of Tenant's obligation hereunder was materially false.

(h) Any transaction following which, in Landlord's good faith determination, (i) Tenant would have a negative net worth, (ii) Tenant would be insolvent, (iii) Tenant or all or substantially all of Tenant's assets would be liable, or potentially could become liable, for the indebtedness of another in excess, as applicable, of Tenant's ability to pay or the value of such assets of Tenant, or (iv) Tenant or all or substantially all of Tenant's assets would be liable, or potentially could become liable, jointly and severally with one or more other parties for indebtedness in excess of Tenant's ability to pay or the value of such assets of Tenant.

(i) [intentionally omitted]

(j) [intentionally omitted]

13.2 Remedies. If Tenant defaults hereunder and fails to cure such default within any applicable notice and cure period, then, in addition to any other rights or remedies Landlord may have under any law, Landlord shall have the right, at Landlord's option, without further notice or demand of any kind to do the following:

(a) Terminate this Lease and Tenant's right to possession thereof, and Tenant shall have no further claim to the Premises under this Lease. To the extent waivable, Tenant hereby waives the protection available under the California Code of Civil Procedure §§ 1174 and 1179 and any related sections presently existing or hereinafter enacted; or

(b) Continue this Lease in full force and effect, reenter and occupy the Premises for the account of Tenant and collect any unpaid rental or other charges which have or may thereafter become due and payable. The purpose of this Paragraph 13.2(b) is to give Landlord the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations); it being agreed that the restrictions imposed by this Lease on Tenant's right to sublet or assign are reasonable; or

(c) Reenter the Premises under the provisions of Subparagraph 13.2(b) above and thereafter elect to terminate this Lease and Tenant's right to possession of the Premises.

Should Landlord reenter the Premises under the provisions of Subparagraphs 13.2(b) or 13.2(c) above, Landlord shall not be deemed to have terminated this Lease or the obligation of Tenant to pay any rental or other charges thereafter accruing, unless Landlord notifies Tenant in writing of Landlord's election to terminate this Lease. If Landlord reenters or retakes possession of the Premises, then Landlord shall have the right, but not the obligation to remove all or any part of the personal property in the Premises and to place such property in storage at a public warehouse at the expense and risk of Tenant.

Should Landlord elect to terminate this Lease under the provisions of Subparagraph 13.2(a) or 13.2(c) above, Landlord may recover as damages from Tenant the following:

(i) The worth at the time of award of any unpaid rental which had been earned at the time of termination; plus

(ii) The worth at the time of the award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(iii) The worth at the time of the award of the amount by which the unpaid rental for the balance of the term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; plus

(iv) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including but not limited to any costs or expenses including attorneys' fees, incurred by Landlord in (a) retaking possession of the Premises, (b) maintaining the Premises after Tenant's default, (c) preparing the Premises for reletting to a new lessee including any repairs or alterations, and (d) reletting the Premises including, but not limited to, brokers' commissions, regardless of whether the new lease term extends beyond the remainder of this Lease term.

"The worth at the time of the award," as used in (1) and (2) above, is to be computed by allowing interest at the maximum rate permitted by law. "The worth at the time of award," as used in (3) above, is to be computed by discounting the amount at a rate equal to the sum of the discount rate of the Federal Reserve Bank situated nearest to the location of the Premises at the time of the award plus one percent (1%) per annum. Acceptance of rental by Landlord subsequent to any breach hereof shall not be deemed a waiver of any preceding breach other than the failure to pay the particular rental so accepted, regardless of Landlord's knowledge of any breach at the time of such acceptance of rental. Landlord shall not be deemed to have waived any term, covenant or condition unless Landlord gives Tenant written notice of such waiver.

13.3 Default by Landlord. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within 30 days after written notice by Tenant to Landlord and to the holder of any mortgage or deed of trust covering the Premises whose names and addresses shall have theretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of

Landlord's obligation is such that more than 30 days are required for performance, then Landlord shall not be in default if Landlord commences performance within such 30 day period and thereafter diligently prosecutes the same to completion but in no event longer than 90 days.

13.4 Late Charges. Tenant hereby acknowledges that late payment by Tenant to Landlord of rent and other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed on Landlord by the terms of any mortgage or trust deed covering the Premises. Accordingly, if any installment of rent or any other sum due from Tenant shall not be received by Landlord or Landlord's designee within 10 days after such amount shall be due, then, without any requirement for notice to Tenant, Tenant shall pay to Landlord a late charge equal to ten percent (10%) of such overdue amount. The parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Landlord will incur by reason of late payment by Tenant. Acceptance of such late charge by Landlord shall neither constitute a waiver of Tenant's default with respect to such overdue amount, nor prevent Landlord from exercising any of the other rights and remedies granted hereunder. If a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of rent, then rent shall automatically become due and payable quarterly in advance, rather than monthly, notwithstanding Paragraph 4 or any other provision of this Lease to the contrary.

13.5 Impounds. If a late charge is payable hereunder, whether or not collected, for three (3) consecutive installments of rent or for three (3) consecutive installments of other monetary obligations of Tenant under the terms of this Lease, then Tenant shall pay to Landlord, if Landlord shall so request, in addition to any other payments required under this Lease, a monthly advance installment (as estimated by Landlord) payable at the same time as the monthly rents for real property tax and insurance expenses on the Premises which are payable by Tenant under the terms of this Lease. Such fund shall be established to insure payment when due, before delinquency, of any or all such real property taxes and insurance premiums. If the amounts paid to Landlord by Tenant under the provisions of this paragraph are insufficient to discharge the obligations of Tenant to pay such real property taxes and insurance premiums as the same become due, then Tenant shall pay to Landlord, upon Landlord's demand, such additional sums necessary to pay such obligations. All moneys paid to Landlord under this paragraph may be intermingled with other moneys of Landlord and shall not bear interest for the benefit of Tenant. If Tenant defaults in the performance of Tenant's obligations under this Lease, then any balance remaining from funds paid to Landlord under the provisions of this paragraph may, at the option of Landlord, be applied to the payment of any monetary default of Tenant in lieu of being applied to the payment of real property tax and insurance premiums.

14. Condemnation. If the Premises or any portion thereof are taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), then this Lease shall terminate as to the part so taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than twenty-five percent (25%) of the Premises is taken by condemnation, then Tenant may, at Tenant's option to be exercised in writing within 10 days after Landlord shall have given Tenant written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession), terminate this Lease as of the date the condemning authority takes such possession. If Tenant does not terminate this Lease in accordance with the foregoing, then this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the rent shall be reduced in the proportion that the floor area of the

Premises taken bears to the total floor area of the Premises prior to such taking. Any award for the taking of all or any part of the Premises under the power of eminent domain or any payment made under threat of the exercise of such power shall be the property of Landlord, whether such award shall be made as compensation for diminution in value of the leasehold or for the taking of the fee or as severance damages. If this Lease is not terminated by reason of such condemnation, then Landlord shall, to the extent of severance damages received by Landlord in connection with such condemnation, repair any damage to the Premises caused by such condemnation except to the extent that Tenant has been reimbursed therefor by the condemning authority. Tenant shall pay any amount in excess of such severance damages required to complete such repair. Landlord and Tenant each waives the provisions of California Code of Civil Procedure 1265.130.

15. **No Brokers.** Tenant and Landlord each hereby represents and warrants to the other that the representing party knows of no other real estate broker or agent who is entitled to, or who shall claim, a commission or other compensation in connection with this Lease.

16. **Estoppel Certificate.**

16.1 At any time upon not less than 30 days' prior written notice from Landlord, any of Landlord's lenders or Tenant, the other party shall execute, acknowledge and deliver to the requesting party a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not any uncured defaults on the part of any party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by the requesting party and by others with whom the requesting party may be dealing, including, but not limited to, any prospective ground lessor, purchaser or encumbrancer of the Premises.

16.2 Tenant's failure to deliver such statement in accordance with this Paragraph 16 shall, at Landlord's option, be a material breach of this Lease or shall be conclusive upon Tenant that (i) this Lease is in full force and effect, without modification except as may be represented by Landlord, (ii) there are no uncured defaults in Landlord's performance, (iii) not more than one (1) month's rent has been paid in advance, and (iv) the security deposit (if any) has not been increased from the numerical amount stated in Paragraph 5.

17. **Landlord's Liability.** The term "Landlord" as used herein shall mean only the owner or owners at the time in question of the fee title or a lessee's interest in a ground lease of the Premises, and if any transfer of such title or interest occurs, then Landlord herein named (and, in case of any subsequent transfers, then each grantor thereof) shall be relieved from and after the date of such transfer of all liability relating to Landlord's obligations thereafter to be performed, provided that any funds in the hands of Landlord (or the then grantor at the time of such transfer) in which Tenant has an interest shall be delivered to the grantee. The obligations contained in this Lease to be performed by Landlord shall, subject as aforesaid, be binding on Landlord's successors and assigns only during their respective periods of ownership. Notwithstanding anything in this Lease to the contrary, Landlord shall have no personal liability under any provision of this Lease, Tenant hereby agreeing to look solely to Landlord's estate in the Premises for recourse and/or recovery for any claim, damage, liability, or other amount arising under, relating to, or in connection with Tenant's occupancy of and/or tenancy in the Premises.

18. **Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof. If any provision of this Lease is determined to be invalid, then it shall be revised so that it is most like the provision determined to be invalid but so as to be enforceable.

19. **Interest on Past-due Obligations.** Except as expressly herein provided, any amount due to Landlord not paid when due shall bear interest at the lesser of twelve percent (12%) per annum and the maximum rate then allowable by law from the date due. Payment of such interest shall not excuse or cure any default by Tenant under this Lease.

20. **Time of Essence.** Time is of the essence in each and every term hereof.

21. [intentionally omitted]

22. **Incorporation of Prior Agreements; Amendments.** This Lease contains all agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective. This Lease may be modified only by a writing signed by the parties in interest at the time of the modification. This Lease shall be construed neutrally and not against the drafter. Except as otherwise stated in this Lease, Tenant hereby acknowledges that neither Landlord nor any employees or agents of Landlord has made any oral or written warranties or representations to Tenant relative to the condition or use by Tenant of said Premises, and Tenant acknowledges that Tenant assumes all responsibility regarding the Occupational Safety Health Act, the legal use and adaptability of the Premises, and the compliance thereof with all applicable laws and regulations, including, without limitation, the Americans with Disabilities Act, in effect during the term of this Lease except as otherwise specifically stated in this Lease.

23. **Notices.** Any notice, consent, approval, etc., required or permitted to be given hereunder shall only be in writing and may be given by: (i) personal delivery; (ii) a nationally recognized overnight courier, such as Federal Express or other similar delivery service; (iii) certified mail, return receipt requested; or (iv) facsimile with an original given promptly thereafter in any one of the manners set forth in (i) through (iii) above, and shall be deemed sufficiently given if addressed to Tenant or to Landlord at the address noted below the signature of the respective parties, as the case may be, and shall be deemed given (A) upon receipt in the case of personal delivery, (B) one business day after delivery to such a courier or service if sent pursuant to clause (ii) and (C) three business days after deposit in the mail if sent pursuant to clause (iii) and (D) upon receipt if sent pursuant to clause (iv). Either party may by notice to the other specify a different address for notice purposes except that upon Tenant's taking possession of the Premises, the Premises shall constitute Tenant's address for notice purposes. A copy of all notices required or permitted to be given to Landlord hereunder shall be concurrently transmitted to Resch Polster & Berger LLP, at 9200 Sunset Boulevard, Ninth Floor, Los Angeles, California 90069-3604, Attention: Real Estate Notices (JAR/DG) (and also given by facsimile to 310/552-3209), and to American Capital Strategies, Ltd., 5425 Wisconsin Avenue, Suite 600 Chevy Chase, MD 20815, Attn: Andrew Flesch, Fax: 301.968.9684 and to other such party or parties at such addresses as Landlord may from time to time hereafter designate by notice to Tenant. A copy of all notices required or permitted to be given to Tenant hereunder shall be concurrently transmitted to Long Beach City Attorney's Office, 333 W. Ocean Boulevard, 11th Floor, Long Beach, California 90802-4664 Attention: Richard F. Anthony (and also given by facsimile to (562) 436-1579), and to other such party or parties at such addresses as Tenant may from time to time hereafter designate by notice to Landlord.

24. **Waiver.** No waiver by either party of any provision hereof shall be deemed a waiver of any other provision hereof or of any subsequent breach by the other party of the same or any other provision. A party's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of such party's consent to or approval of any concurrent or subsequent act by the other party. The acceptance of rent hereunder by Landlord shall not be a waiver of any preceding breach by Tenant of any provision hereof other than the failure of Tenant to pay the particular rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of acceptance of such rent.

25. **Recording.** Tenant shall, but only upon request of Landlord, execute, acknowledge and deliver to Landlord a "short form" memorandum of this Lease for recording purposes. Otherwise, neither this Lease nor any memorandum of this Lease shall be recorded.

26. **Holding Over.** If for any reason Landlord and Tenant agree, each in their sole and absolute discretion, that Tenant may remain at the Premises after the Termination Date, then such extension shall be only on a month to month basis, and such agreement for extension shall be valid only if in writing, signed by both Landlord and Tenant, and such occupancy shall be upon all the provisions of this Lease pertaining to the obligations of Tenant, except that Tenant shall pay rent as follows: (A) base rent of 15 cents per square foot of the ground area of the Premises per month, which shall be paid monthly, in advance, on the first day of each calendar month (prorated on a per diem basis for any partial calendar months) plus (B) one hundred fifty percent (150%) of the rents and other sums otherwise due under Paragraphs 10.1, 36 and 37. The foregoing provisions are in addition to and do not affect Landlord's right of re-entry or any other rights or remedies of Landlord hereunder or as otherwise provided at law or in equity, or both. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all losses, costs, damages and liabilities (including attorneys' fees and costs, and court costs) arising out of or in connection with any delay by Tenant in surrendering and vacating the Premises, including, without limitation, any claims made by any succeeding tenant based on any delay and any liabilities arising out of or in connection with these claims, and Landlord's damages should any such succeeding tenant cancel its lease based upon such holding over by Tenant. Nothing in this Paragraph 26 shall be deemed to permit Tenant to retain possession of the Premises after the Termination Date or the sooner termination of the term. No action, verbal agreement or acquiescence by conduct by either party shall, in any case, ever result in an extension being longer than an extension for one month.

27. **Cumulative Remedies.** No submittal of this Lease to Tenant or any representative of Tenant by or on behalf of Landlord shall grant to Tenant any option or other right to enter into this Lease with Landlord or otherwise to lease the Premises. Instead, and subject to Paragraph 35, this Lease shall not be binding upon the parties unless and until Landlord and Tenant, each in their respective sole discretion, have executed and delivered to the other a copy of this Lease. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

28. **Binding Effect; Choice of Law.** Subject to any provisions hereof restricting assignment or subletting by Tenant and subject to the provisions of Paragraph 17, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State of California.

29. **Subordination.**

29.1 This Lease, at Landlord's option, shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation or security now or hereafter placed upon the real property of which the Premises are a part and to any and all advances made on the security thereof (each, a "**Landlord Mortgage**") and to all renewals, modifications, consolidations, replacements and extensions thereof, including, without limitation, that certain deed of trust in favor of American Capital Strategies, Ltd. The provisions of this paragraph shall be self-operative, and no further instrument shall be required to effect such subordination. Notwithstanding such subordination, Tenant's right to quiet possession of the Premises shall not be disturbed if Tenant is not in default and so long as Tenant shall pay the rent and observe and perform all of the provisions of this Lease, unless this Lease is otherwise terminated pursuant to its terms. If any mortgagee, trustee or ground lessor (each, a "**Landlord Mortgagee**") shall elect to subordinate the lien of its Landlord Mortgage to this Lease, and shall give written notice thereof to Tenant, then this Lease shall be deemed prior to such Landlord Mortgage, whether this Lease is dated prior or subsequent to the date of said Landlord Mortgage or the date of recording thereof.

29.2 Tenant agrees to execute any documents required to effectuate an attornment, a subordination, or to make this Lease prior to the lien of any Landlord Mortgage. Tenant's failure to execute such documents within 30 days after written demand shall constitute a material default by Tenant hereunder, or, at Landlord's option, Landlord shall execute such documents on behalf of Tenant as Tenant's attorney-in-fact. Tenant does hereby make, constitute and irrevocably appoint Landlord as Tenant's attorney-in-fact and in Tenant's name, place and stead, to execute such documents in accordance with this Paragraph.

29.3 Tenant shall not seek to enforce any remedy it may have for any default on the part of Landlord without first giving written notice by certified mail, return receipt requested, specifying the default in reasonable detail to any Landlord's Mortgagee whose address has been previously given to Tenant, and affording such Landlord's Mortgagee a reasonable opportunity to perform Landlord's obligations under the Lease. Notwithstanding any such attornment or subordination of a Landlord Mortgage to the Lease, Landlord's Mortgagee shall not be liable for any acts of any previous landlord that are not continuing and shall not be obligated to install or pay for any Tenant improvements, relocation payments or advance payments of Rent made more than one (1) month in advance.

30. **Attorneys' Fees.** If Landlord or Tenant brings an action to enforce the terms hereof or to declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to its reasonable attorneys' fees and expenses to be paid by the losing party as fixed by the court.

31. **Landlord's Access.** Landlord and Landlord's agents and lenders shall have the right to enter the Premises at reasonable times and, if Tenant's business at the Premises is not generally open to the public, upon reasonable notice to Tenant (except in the case of an emergency, in which event Landlord, its agents and lenders may enter at any time without notice) for the purpose of inspecting the same, showing the same to prospective purchasers, lenders, or lessees, and making such alterations, repairs, improvements or additions to the Premises as Landlord may deem necessary or desirable, all without rebate of rent or liability to Tenant. At any time, Landlord may place any ordinary "For Sale" and "For Lease" signs on or about the Premises, all without rebate of rent or liability to Tenant.

32. **Auctions.** Tenant shall not conduct, nor permit to be conducted, either voluntarily or involuntarily, any auction upon the Premises without first having obtained Landlord's prior written consent.

33. **Signs and Awnings.** Tenant shall not place any sign or awning upon the Premises without (i) Landlord's prior written consent, which consent shall not be unreasonably withheld and (ii) all applicable municipal or other governmental approvals having been first obtained; it being agreed, without limitation, that it would be reasonable for Landlord to withhold its consent to any proposed exterior signage or awning of Tenant that (a) would account for more than Tenant's proportionate share, i.e., the percentage set forth in Paragraph 36, of the total exterior signage or awnings allowed by law for the entire Property or (b) would not be considered an Alteration and, without limitation, would not be consistent with any already existing exterior signage or awnings at the Property. Any sign or awning placed upon the Premises shall be consistent with other signs or awnings placed on the Property. Landlord may require that Tenant remove any or all of said signs or awnings at the expiration of the term, and restore the locations of the signs and awnings to their condition prior to such signs or awnings having been affixed. Tenant shall be solely responsible for all costs associated with any such signs or awnings, including but not limited to any costs associated with said signs or awnings' removal and restoration of the Premises in connection therewith.

34. **Merger.** The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, or a termination by Landlord, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to Landlord of any or all of such subtenancies.

35. **Guarantor.** [intentionally omitted]

36. **Multiple Tenant Property.** The Premises are part of a larger property. Therefore, Tenant agrees that it will conduct its business so as not to interfere with the operations of any other occupant of the Property. Without limiting the generality of the foregoing, Tenant will abide by, keep and observe all reasonable rules and regulations which Landlord may make from time to time for the management, safety, care, and cleanliness of the Premises and grounds, the parking of vehicles and the preservation of good order therein as well as for the convenience of other occupants and tenants of the Property. The violations of any such rules and regulations shall be deemed a material breach of this Lease by Tenant. In addition, if any maintenance, repairs or alterations are **required** which affect the Property generally, then Tenant shall pay its pro rata share thereof equal to 19.5% (being the quotient of the area comprising the Premises divided by the area of the entire Property), provided, however, that Tenant shall be solely responsible for (a) any such maintenance or repair occasioned by Tenant's own negligence (except if and to the extent of any insurance proceeds actually paid under any insurance policy carried by the insuring party) or willful misconduct or (b) any capital expenditures or other legal compliance work required as a result of Tenant's performing any Alterations.

37. **Triple Net.** Except for Landlord's express obligations under this Lease, this Lease shall be a "triple net" lease, which means that Tenant shall pay each and every cost customarily associated with or relating to the ownership, management, maintenance, and operation of the Premises. The parties intend by this provision that Landlord shall not bear any expenses associated with the Premises, all of which shall be paid by Tenant as they fall due, including the costs of management, maintenance, and operation of the Property and its components, the costs of insurance policies obtained pursuant to this Lease (and associated deductible amounts), and personal and real property taxes relating to the Property. Where there is a cost

or expense to be borne by Tenant pursuant to this Lease which is not separately billed or itemized as to the Premises (either to Landlord or Tenant), Tenant's prorated share or reasonable allocation thereof shall be deemed to be 19.5% (being the quotient of the area comprising the Premises divided by the area of the entire Property), except if (a) a different percentage is set forth in this Lease in which case such percentage shall be utilized or (b) Landlord, from time to time, shall reasonably determine, as to any such item, that another percentage more properly reflects Tenant's share of such item. Landlord may, but need not, require Tenant, from time to time, to pay a monthly estimate to Landlord for the costs to be paid by Tenant pursuant to this paragraph. If and at such time or times as Landlord may do so, then Landlord will periodically, but no less frequently than annually, reconcile any such monthly estimated payments and any other payments that Tenant may have made with respect to any such costs to Tenant's actual share of such costs, following which Tenant or Landlord, as applicable, shall promptly make any equalizing payment to the other as may be necessary to implement such reconciliation. Alternatively, Landlord, from time to time, may elect to bill Tenant for its prorated share of any item(s) of expense as incurred or paid by Landlord, and Tenant shall promptly pay its share thereof to Landlord.

38. **Security Measures.** Tenant hereby acknowledges that the rent payable to Landlord hereunder does not include the cost of guard services or other security measures, and that Landlord shall have no obligation whatsoever to provide same. Tenant assumes all responsibility for the protection of Tenant's property and property under Tenant's control, and for the protection of Tenant and its principals, employees, agents and invitees from any acts of third parties.

39. **Easements.** Landlord reserves to itself the rights, from time to time, to grant such easements, rights and dedications that Landlord deems necessary or desirable, and to cause the recordation of Parcel Maps and restrictions, so long as such easements, rights, dedications, Maps and restrictions do not unreasonably interfere with Tenant's use of the Premises as permitted by this Lease. Tenant, solely in its capacity as Tenant and not in its capacity as a local government, shall sign any of the aforementioned documents upon request of Landlord, and failure to do so shall constitute a material breach of this Lease.

40. **Force Majeure.** Each of Landlord and Tenant shall be excused from whatever obligation or covenant applicable to such party under this Lease, if, after using all commercially reasonable efforts, such party is not actually capable of performing or observing such obligation or covenant, or causing to such obligation or covenant to be performed or observed, as a direct result of: (a) the inability to fulfill, or delay in fulfilling, any of its obligations under this Lease by reason of war, civil disobedience, strike, other labor trouble, governmental preemption of priorities or other controls in connection with a national or other public emergency, or shortages of fuel, supplies or labor resulting therefrom, or any other cause, whether similar or dissimilar to the above, beyond its reasonable control; or (b) any failure or defect in the supply, quantity or character of electricity or water furnished to the Premises, by reason of any requirement, act or omission of the public utility or others furnishing the Project, or any part thereof, with electricity or water, or for any other reason, whether similar or dissimilar to the above, beyond Landlord's or Tenant's reasonable control. If this Lease specifies a time period for performance of an obligation, then, unless the relevant provision explicitly provides otherwise, that time period shall be extended by the period of any delay in such performance caused by any of the events of force majeure described above, whether or not such provision makes explicit reference to this Paragraph 40. Notwithstanding the foregoing, in no event shall the time for payment of rents or payment of other financial obligations be extended or delayed.

41. **Performance Under Protest.** If a dispute arises at any time as to any amount or sum of money to be paid by one party to the other under the provisions hereof, then the party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest," such payment shall not be regarded as a voluntary payment, and there shall survive the right on the part of said party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said party to pay such sum or any part thereof, then said party shall be entitled to recover such sum or so much thereof as it was not legally required to pay under the provisions of this Lease.

42. **Authority.** If Tenant is a corporation, trust, partnership or other entity, then each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said entity, and that such execution is binding upon all parties holding a possessory interest in the Premises. If Tenant is a corporation, trust partnership or other entity, then Tenant shall, within 10 days after execution of this Lease, deliver to Landlord evidence of such authority satisfactory to Landlord.

43. **Conflict.** Any conflict between the printed provisions of this Lease and the typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

44. **Consent.** Wherever the consent or approval of Landlord is required or permitted hereunder it may be given or withheld in Landlord's reasonable discretion unless specified otherwise.

45. **Definition of Terms.** The terms "including," "include," and other words of similar import are deemed to be descriptive only (unless specified otherwise), and shall not be limiting in any manner whatsoever. The term "hazardous material" means any substance defined as a toxic or hazardous substance or material by any applicable federal, state, or local law, regulation, or order.

46. **Waiver of Jury Trial.** If and to the extent permitted by law, Landlord and Tenant each hereby waives any right to a trial by jury arising out of or in connection with this Lease. Tenant acknowledges and agrees that it has read and understood, and has had the opportunity to have its own legal counsel explain to it, the meaning of this provision.

47. **Compliance with Historic Designation Requirements.** If the Premises should at any time be deemed to be subject to any historic preservation or other ordinances, statutes, or other legal requirements, including, without limitation, specific to any area in which the Premises are located, then Tenant shall comply with all terms and conditions of same, including, without limitation, any terms and conditions concerning the appearance, maintenance or improvements of the façade, signage or other exterior portions of the Premises.

48. **Survival of Obligations.** All obligations of Tenant which either (a) by their nature arise on or after the expiration or earlier termination of this Lease, or (b) have not been satisfied on or before the expiration or earlier termination of this Lease, shall survive any expiration or earlier termination of this Lease.

49. **Artwork.** To ensure compliance with California laws regarding rights of artists, Tenant will not (i) alter or modify any piece of artwork which is currently installed within the Premises without obtaining (a) Landlord's express written consent, which Landlord may withhold in its sole discretion, and (b) the artist's express written waiver of his/her rights under California laws in a

form acceptable to Landlord or (ii) install any artwork of any nature in the Premises which cannot be removed without damage or destruction to the artwork.

LANDLORD AND TENANT HAVE CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN AND, BY EXECUTION OF THIS LEASE, SHOW THEIR INFORMED AND VOLUNTARY CONSENT THERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALY REASONABLE AND EFFECT THE INTENT AND PURPOSE OF LANDLORD AND TENANT WITH RESPECT TO THE PREMISES.

IF THIS LEASE HAS BEEN FILLED IN IT HAS BEEN PREPARED FOR SUBMISSION TO YOUR ATTORNEY FOR HIS APPROVAL. NO REPRESENTATION OR RECOMMENDATION IS MADE BY LANDLORD OR BY THE REAL ESTATE BROKER OR ITS AGENTS OR EMPLOYEES AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX

CONSEQUENCES OF THIS LEASE OR THE TRANSACTION RELATING THERETO. THE PARTIES SHALL RELY SOLELY UPON THE ADVICE OF THEIR OWN LEGAL COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

The parties hereto have executed this Lease as of the date set forth above.

LANDLORD:

LCW Yard, LLC,
a Delaware limited liability company

Address: 2101 Rosecrans Ave, Suite 3280
El Segundo, CA 90245
Attention: Jeff Berger
Facsimile 310-640-6866

Copy to: 3626 Long Beach Boulevard
Long Beach, CA 90807
Attention: Tom Dean
Fax (562) 427-0368

By: LCW Partners, LLC,
a Delaware limited liability company
its sole member

By: LCW Holdings, LLC,
a Delaware limited liability company,
its sole member

By: _____
Jeffrey A. Berger, President

TENANT:

City of Long Beach

Address: 333 West Ocean Boulevard
Long Beach, California 90802
Attention: City Manager
Fax: _____

By _____
Its: City Manager

Exhibit A

[Site Plan for the Premises]

[See Attached]

Exhibit B

Legal Description of Entire Property Owned by Landlord

A - site Pkern
 Exhibit B-1 - City Property

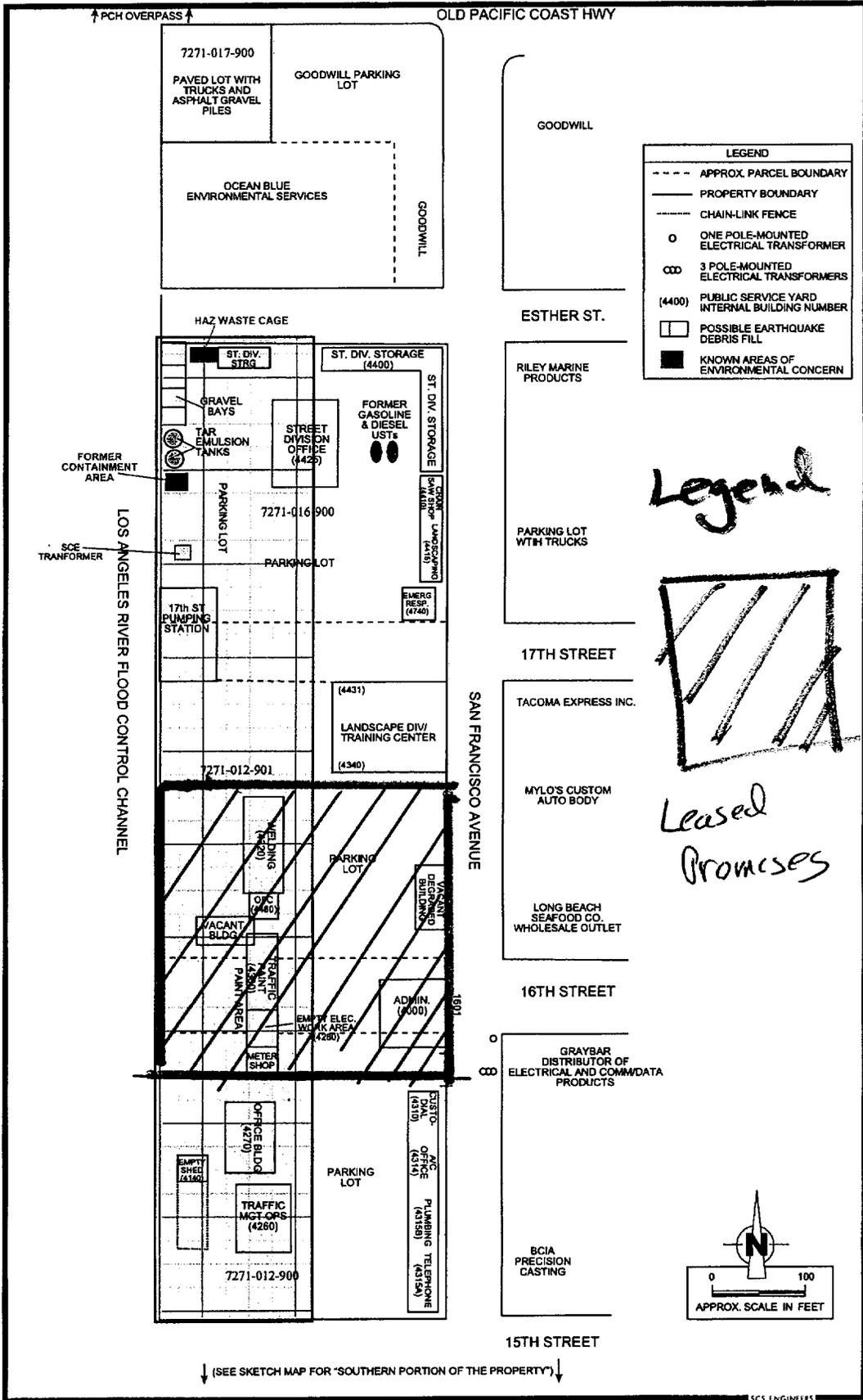


Figure 2. Sketch Map of Site, Northern Portion of the Property.

**ENVIRONMENTAL INDEMNITY AND ACCESS AGREEMENT
[Oil and Gas Property]**

THIS ENVIRONMENTAL INDEMNITY AND ACCESS AGREEMENT ("**Agreement**") is made and entered into as of June 3, 2010 (the "**Effective Date**") between the City of Long Beach ("**City**"), LCW Partners, LLC, a Delaware limited liability company ("**LCW Partners**") and LCW Oil Operations, LLC, a Delaware limited liability company ("**LCW Oil**") (LCW Partners and LCW Oil, collectively and, where applicable, jointly and severally, "**LCW**").

RECITALS

A. City and LCW Partners have entered into a transaction whereby the City is conveying fee title to certain real property to LCW Partners in exchange for LCW Partners' conveyance to the City of fee title (oil and mineral rights excepted) to that certain real property comprised in part of approximately 33.8-acres and described in the attached Exhibit "A" (the "**Property**"). As part of LCW Partners' disclosures to the City, LCW Partners has provided documentation, listed in Exhibit "B", revealing that environmental contamination may exist in soil and/or groundwater or at, on or beneath the Property resulting from historic Oil and Gas Operations (defined below) conducted on the Property prior to the Effective Date, and by reason of a landfill on a portion of the property operated by a predecessor in interest to LCW. LCW acknowledges that it has no documentation with respect to possible environmental contamination of property containing fill material previously transported to the northwest corner of the Property, depicted in the attached Exhibit "A-1" (the "**Fill Property**").

B. Prior to the conveyance of the Property to the City, LCW Partners has conveyed to LCW Oil the mineral rights to the Property, including the right to extract same. In addition, concurrently herewith, LCW Oil and the City are entering into that certain Surface Use Release Agreement and Grant of Easements (the "**SURGE Agreement**"), dated as of the Effective Date, pursuant to which LCW Oil shall enjoy certain surface and subsurface easement rights (in some cases exclusive, and in some cases, non-exclusive) to use portions of the Property for oil and gas operations.

C. City and LCW desire to enter into this Agreement to set forth their respective rights and obligations relating to the Historic Oil and Gas Environmental Conditions and Landfill Conditions.

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and LCW hereby covenant and agree that the Recitals above are incorporated into the terms of this Agreement and as follows:

AGREEMENT

1. Definitions.

(a) "**Agency**" or "**Agencies**" means any federal, state or local agency having Jurisdiction over the Property over the reporting, assessment and remediation of contaminated soil and/or groundwater by reason of any Hazardous Substances at, on or under the Property.

(b) "**Environmental Conditions**" shall mean the presence of Hazardous Substances in air, soil, soil vapor, storm water, surface water and/or groundwater at, on, or

under the Property, in such quantities or concentrations as to require assessment, monitoring, and/or remediation required by Agencies with Jurisdiction, or in such quantities or concentrations as to constitute, or be claimed to constitute, a nuisance, trespass, unhealthful exposure, injury, or damage to third parties or the public, arising by reason of any conduct by any party on or at the Property prior to the Effective Date.

(c) **“Environmental Laws”** means any and all present and future federal, state and local laws, statutes, ordinances, regulations, policies and any other requirements of Agencies relating to health, safety, the environment or to any Hazardous Substances (defined below), including without limitation: 15 U.S.C. §2601 et seq. (the Toxic Substances Control Act); 33 U.S. Code §1251 et seq. (the Clean Water Act); 42 U.S. Code §6901 et seq. (the Resource Conservation and Recovery Act); 42 U.S. Code §7401 et seq. (the Clean Air Act); 42 U.S. Code §9601 et seq. (the Comprehensive Environmental Response, Compensation and Liability Act); 49 U.S. Code §1801 et seq. (the Hazardous Materials Transportation Act); 33 U.S.C. §2701 et seq. (the Oil Pollution Act); California Health & Safety Code (H&S Code) §25100 et seq. (Hazardous Waste Control); H&S Code §25300 et seq. (the Hazardous Substance Account Act); H&S Code §25404 et seq. (Unified Hazardous Waste and Hazardous Materials Management Regulatory Program); H&S Code §25531 et seq. (Hazardous Materials Management); H&S Code §25249.5 et seq. (the California Safe Drinking Water and Toxic Enforcement Act); H&S Code §25280 et seq. (Underground Storage of Hazardous Substances); H&S Code §25170.1 et seq. (the California Hazardous Waste Management Act); H&S Code §25501 et seq. (Hazardous Materials Response Plans and Inventory); H&S Code §18901 et seq. (California Building Standards); California Water Code §13000 et seq. (the Porter-Cologne Water Quality Control Act); local fire codes; and the regulations adopted and promulgated pursuant thereto, as well as any future statute relating to the use, release, or disposal of Hazardous Substances, or to the cleanup of air, surface waters, groundwater, soil or other media contaminated with such substances.

(d) **“Hazardous Substance”** means petroleum and petroleum products, and substances (whether solid, liquid, or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos, and asbestos-containing materials (**“ACM”**), polychlorinated biphenyls (**“PCBs”**), lead, lead-based paints, radon, radioactive materials, flammables, and explosives.

(e) **“Historic Oil and Gas Environmental Conditions”** shall mean the presence of Hazardous Substances in air, soil, soil vapor, storm water, surface water and/or groundwater at, on, or under the Property, in such quantities or concentrations as to require assessment, monitoring, and/or remediation required by Agencies with Jurisdiction, or in such quantities or concentrations as to constitute, or be claimed to constitute, a nuisance, trespass, unhealthful exposure, injury, or damage to third parties or the public, arising by reason of Oil and Gas Operations conducted on or at the Property prior to the Effective Date.

(f) **“Indemnification Notice”** is defined in Section 3(c)(i).

(g) **“Indemnified Party”** or **“Indemnified Parties”** shall mean the City and those persons and entities who now or in the future are the City's elected and appointed officials, partners, employees, agents, representatives, departments, redevelopment agency and officers, and the City's assignees or successors in interest as the owner of the Property,

and their members, managers, partners, employees, agents, representatives, departments, directors and officers.

(h) "**Jurisdiction**" means the jurisdiction legally granted to an Agency pursuant to applicable California code or Federal statutes or regulations to compel and supervise remediation of Historic Oil and Gas Environmental Conditions and Landfill Conditions at the Property.

(i) "**Landfill**" means that City Dump and Salvage No. 2 landfill located in the City of Long Beach, California, as further depicted in Exhibit "A-2".

(j) "**Landfill Conditions**" means the presence of Hazardous Substances in air, soil, soil vapor, storm water, surface water and/or groundwater at, on, or under the Property, in such quantities or concentrations as to require assessment, monitoring, and/or remediation required by Agencies with Jurisdiction, or in such quantities or concentrations as to constitute, or be claimed to constitute, a nuisance, trespass, unhealthful exposure, injury, or damage to third parties or the public, arising by reason of the Landfill operated on or at the Property prior to the Effective Date.

(k) "**LCW's Response Deadline**" is defined in Section 3(c)(ii).

(l) "**Liabilities**" is defined in Section 3(a).

(m) "**Notice of Claim**" is defined in Section 3(c)(i).

(n) "**Oil and Gas Operations**" means extracting, operating, maintaining, installing, constructing, repairing, working over, reworking, recompleting, drilling, redrilling, replacing, testing oil, gas, and injection wells and/or any pipelines, utilities, storage facilities and related equipment and installations which are part of and used in conjunction with oil operations, equipment, technologies, and activities prior to the Effective Date.

(o) "**Related Indemnified Parties**" is defined in Section 3(c)(i).

(p) "**Remediation**" means collectively any environmental assessment, investigation, response, monitoring, remediation, and/or other corrective action as directed by any Agency with respect to Historic Oil and Gas Environmental Conditions and Landfill Conditions.

(q) "**Response Actions**" is defined in Section 8.

(r) "**Work Papers**" is defined in Section 3(f).

2. **Insurance.** Pursuant to the requirements of the Real Estate Exchange Agreement entered into between the City and LCW Partners, LCW Partners, at its sole cost and expense, will provide the City with an endorsement to LCW Partners' existing environmental insurance policy ("**Insurance Policy**") covering the Property and will add the City as an additional insured under such policy. The endorsement and policy will be in the form and with the limits of liability attached hereto as Exhibit "C". LCW Partners agrees to maintain such policy in effect for a period of 10 years from the Effective Date or until the City sells the Property to a third party, whichever is earlier. The parties agree to cooperate in terms of seeking coverage provided under the Insurance Policy. In addition, the City shall not take any action whatsoever

at the Property, or otherwise, or fail to take any reasonable action, that may result in any release or discharge, in whole or in part, of the insurer under the Insurance Policy or breach any condition or obligation on the part of the insured under the Insurance Policy that would give rise to a release or discharge, in whole or in part, of the insurer, or otherwise excuse the insurer, in whole or in part, from its obligations under the Insurance Policy, or constitute a waiver of any benefits provided by the Insurance Policy.

3. **Defense and Indemnification.**

(a) Subject to the limitations specified in Section 3(b) below, and provided that any party seeking to assert an Indemnified Claim (defined below) notifies LCW in accordance with Sections 8 and 10 of this Agreement, and except as otherwise expressly limited herein, LCW shall indemnify, protect, and hold the Indemnified Parties harmless from and against any and all actions, claims, causes of action, damages, liabilities, charges, administrative and judicial proceedings, Remediation, and all costs and expenses incurred in connection therewith (collectively, the "**Liabilities**") based on, arising out of, or in connection with:

(i) the presence of any Historic Oil and Gas Environmental Conditions in, on, under, from or affecting the Property;

(ii) the presence of any Environmental Conditions in, on, under from or affecting the Fill Property;

(iii) the presence of the Landfill Conditions in, on, under, from or affecting the Property;

(iv) LCW's conduct of Response Actions on the Property, or

(v) LCW's violation(s) of any Environmental Laws prior to the Effective Date.

(b) Notwithstanding anything provided in this Agreement to the contrary, including, without limitation, the provisions of Section 3(a), LCW shall not be liable for, and shall have no indemnity or defense obligations for:

(i) any consequential, special, or punitive damages, including damages for diminution in value;

(ii) those Liabilities specified in Section 7 of the SURGE Agreement, for which City is responsible or as to which LCW Oil is excused from indemnifying the City pursuant to Section 3 of the SURGE Agreement;

(iii) any Liabilities suffered by LCW or the City due to the City's failure to comply with the terms of this Agreement;

(iv) any Liability arising in connection with or by reason of LCW's Response Actions to the extent arising from or by reason of the negligence or willful misconduct of the Indemnified Parties or their contractors;

(v) any release of Hazardous Substances from the Landfill by reason, directly or indirectly, of construction, improvement, or development of, the Property (including, without limitation, grading and penetrations into the ground or other modifications to the physical condition of the Property); or

(vi) any and all Liabilities arising from or related to Liabilities to the extent caused by the negligence or willful misconduct of the Indemnified Parties or their contractors.

Liabilities set forth in Sections 3(a)(i) through 3(a)(v) above, to the extent not excluded in Sections 3(b)(i) through 3(b)(vi), are hereinafter collectively referred to as "**Indemnified Claims**". Without limiting the generality of the foregoing, the matters set forth in Sections 3(b)(i) through 3(b)(vi) shall be excluded from the definition of "Indemnified Claims." Nothing contained in Section 3(b)(v) shall be construed to prevent the normal public recreational use of the Landfill property so long as such use does not involve construction, development or improvement thereof, and this indemnification shall apply to Liabilities occurring by reason of normal public recreational use of the Landfill property so long as such use does not involve construction, development or improvement of the Landfill property. For purposes of this Agreement, "construction, development or improvement" (and similar words) of the Landfill property includes, without limitation, any grading on the Landfill property or penetrations into the ground, or other modifications to the physical condition of the Landfill property.

(c) In addition to its agreement to protect, indemnify, and hold harmless the Indemnified Parties for the Indemnified Claims specified in Section 3(a) above, LCW shall defend the Indemnified Parties in connection with any claim or demand against the Indemnified Parties arising out of or related to the Indemnified Claims. LCW's indemnity and defense obligation shall be subject to the following provisions:

(i) After receipt by an Indemnified Party of notice of any claim or the commencement of any action ("**Notice of Claim**") for which such Indemnified Party believes it is entitled to indemnification or defense under this Agreement, such Indemnified Party shall deliver written notice ("**Indemnification Notice**") to LCW of the claim promptly, but in no event later than twenty (20) days after the Indemnified Party's actual receipt of the Notice of Claim; provided, however, such failure to notify or delay in notifying LCW shall not relieve LCW from any liability which it may have to any Indemnified Party except to the extent of any actual prejudice to LCW from such failure or delay with respect to that certain Indemnified Party(ies) and those Indemnified Parties which derive their rights solely from their relationship with that certain Indemnified Party only (i.e., agents, representatives, employees, officers, directors, shareholders, partners, trustees, affiliates, beneficiaries, attorneys, successors, representatives, heirs, executors, and assigns of an Indemnified Party) (collectively, "**Related Indemnified Parties**"). The Indemnification Notice shall describe in reasonable detail the facts known to the Indemnified Party giving rise to such indemnification claim. Thereafter, the Indemnified Party shall promptly deliver to LCW after the Indemnified Party's receipt thereof, copies of all notices and documents (including court papers) received by the Indemnified Party relating to the claim (excluding documents protected by attorney-client privilege).

(ii) LCW shall have thirty (30) business days from the receipt of such written notice ("**LCW's Response Deadline**") in which to respond to the Indemnified Parties' request that LCW retain counsel to defend the Indemnified Parties against the claim or demand. LCW's failure to respond by LCW's Response Deadline shall be deemed to be a refusal to retain counsel to defend the Indemnified Parties against the claim or demand.

(iii) If the claim or demand gives rise to a duty to defend under this Agreement, then LCW shall, no later than LCW's Response Deadline, retain counsel at its expense to defend the Indemnified Parties against the claim or demand. As soon as practicable after the selection of counsel, but in no event later than LCW's Response Deadline, LCW shall notify the Indemnified Parties of the identity of the counsel selected. The counsel selected by LCW shall be subject to the Indemnified Parties' reasonable approval. If necessary, as a condition precedent to LCW's obligation to retain counsel for the Indemnified Parties, the Parties agree to and will execute a mutually acceptable conflict waiver letter. However, if an Indemnified Party reasonably determines, based upon written advice of counsel, that a conflict of interest exists that would make it inappropriate for the same counsel to represent both LCW and a particular Indemnified Party, then the Indemnified Party shall be entitled to retain its own counsel at the reasonable expense of LCW; provided that, LCW shall not be responsible for the fees and expenses of more than one such separate counsel. The Indemnified Parties shall reasonably cooperate with LCW in such defense and make available to LCW all witnesses, pertinent records, materials and information in the Indemnified Parties' possession or control relating thereto as is reasonably requested by or on behalf of LCW except as protected by attorney-client privilege. Similarly, in the event an Indemnified Party is, directly or indirectly, conducting the defense against any such Indemnified Claim, LCW shall cooperate with the Indemnified Party in such defense and make available to the Indemnified Party, at LCW's expense, all such witnesses, records, materials and information in LCW's possession or control relating thereto as is reasonably requested by the Indemnified Party except as protected by attorney-client privilege.

(d) If a claim(s) or demand(s) gives rise to a duty to defend under this Agreement and LCW fails to retain counsel for the Indemnified Parties by LCW's Response Deadline, then the Indemnified Parties may retain counsel to defend themselves against such claims or demands. LCW shall pay all reasonable attorneys' fees and expenses incurred by such counsel in defending the Indemnified Parties against the claim or demand, until LCW engages counsel to undertake such defense.

(e) Notwithstanding any provision set forth in Section 3, any Indemnified Party may take such actions as it deems prudent to defend itself in connection with any Indemnified Claim, provided that such actions shall be at the respective Indemnified Parties' sole cost and expense, except to the extent provided in Section 3(d) above.

(f) The Parties further agree that, within sixty (60) calendar days of receipt by LCW, LCW will forward to the City copies of all non-privileged: (i) correspondence exchanged with Agency(ies) with Jurisdiction over Historic Oil and Gas Environmental Conditions and Landfill Conditions at the Property; (ii) correspondence and documents relating to the defense or settlement of any third-party claim pertaining to or affecting Historic Oil and Gas Environmental Conditions or Landfill Conditions at the Property; and (iii) testing results, draft reports, sampling data, results of assessment, remediation, monitoring, risk assessment data and analyses, and any reports issued in connection with Historic Oil and Gas Environmental Conditions or Landfill Conditions at the Property (collectively "**Work Papers**") in LCW's care, custody, or control. LCW shall forward copies of the Work Papers to the addresses set forth below.

(g) No compromise or settlement of such Indemnified Claim may be effected by either the Indemnified Parties or LCW without the consent of the other (which shall not be unreasonably withheld or delayed). Notwithstanding the foregoing, LCW may pay, settle or compromise an Indemnified Claim without the written consent of the Indemnified Parties so long

as such settlement: (i) includes an unconditional release of the Indemnified Parties from all Liability in respect of such Indemnified Claim, (ii) does not subject the Indemnified Parties to any injunctive relief or other equitable remedy, and (iii) does not include a statement or admission of fault, culpability or failure to act by or on behalf of any Indemnified Party.

4. Term.

(a) This Agreement shall terminate on the twentieth (20th) anniversary of the Effective Date, and thereafter neither City, LCW Partners, nor LCW Oil shall have any further obligations or liability whatsoever under this Agreement.

(b) Notwithstanding anything provided herein to the contrary, in the event the City, or its successors in interest or assigns, constructs, develops, or improves the Property (including, without limitation, any grading on the Property or penetrations into the ground, or other modifications to the physical condition of the Property), where such construction, development, or improvement, directly or indirectly, results in any release of Hazardous Substances from the Landfill that requires any Response Action, then the indemnification obligations in Section 3(a)(iii) shall terminate and be of no further force or effect, it being acknowledged and agreed that LCW shall have no liability whatsoever for any cost, claim, loss, damage, liability, or Response Action resulting from a disturbance of Hazardous Substances comprising the Landfill caused, directly or indirectly, by any such construction, development, or improvement, of the Property, and the City shall indemnify, defend, protect, and hold harmless LCW, its officers, directors, shareholders, owners, partners, agents, employees, parent companies, subsidiaries and affiliates, from any cost, loss, claim damage, liability or Response Action resulting from any construction, development, or improvement, by the City or its successors or assigns, resulting in a release of Hazardous Substances from the Landfill on the Property.

5. Release. Except as provided by Section 4(b), LCW, on behalf of itself and its officers, directors, shareholders, owners, partners, agents, employees, parent companies, subsidiaries and affiliates, hereby releases, acquits and forever discharges the Indemnified Parties from any and all Indemnified Claims. LCW represents and warrants that it has read and fully understands the statutory language of Section 1542 of the Civil Code of the State of California, which reads as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

LCW expressly and specifically waives and relinquishes any and all protections, privileges, rights and benefits under Section 1542 as to the Indemnified Claims.

6. SURGE Agreement; Historic Oil and Gas Environmental Conditions. Notwithstanding anything to the contrary herein, this Agreement shall not in any way absolve LCW Oil of its obligations under the SURGE Agreement. Any conditions identified in the environmental reports listed in Exhibit "B" hereto will be deemed to fall within the definition of "Historic Oil and Gas Environmental Conditions". Notwithstanding any other provision of law, upon tendering any claims hereunder, in the event of a dispute as to whether a condition at the Property falls within the definition of "Historic Oil and Gas Environmental Conditions" under this Agreement, or "Current Oil and Gas Environmental Conditions" under the SURGE Agreement,

LCW Partners and LCW Oil, and not the City, will have the burden to determine which category such condition falls within and if necessary to apportion or allocate any responsibilities under this Agreement or the SURGE Agreement without material delay, loss or liability to the City.

7. **Assessment, Monitoring and Remediation Activities.** Subject to the limitations of LCW's obligations in Section 3(b), if an Agency with Jurisdiction orders Remediation of Historic Oil and Gas Environmental Conditions or Landfill Conditions, then LCW agrees to assume responsibility for and cause the completion of, as necessary, such Remediation, to the standard applicable to each of the parcels comprising the LCW Property based on the current zoning as of the Effective Date for the applicable parcel (the "**Current Remediation Standard**"), and agrees to obtain and comply with all guidance, directives and approvals from applicable Agencies in furtherance of its obligations, if any. If and to the extent LCW is obligated to undertake any Remediation to a standard higher than the Current Remediation Standard, or if the City requests and LCW agrees to undertake such Remediation to a standard higher than the Current Remediation Standard, then the City shall promptly reimburse LCW for the amount by which the costs and expenses incurred by LCW for Remediation of the Property to such higher standard exceeds the costs that would have been incurred by LCW with respect to such Remediation to the Current Remediation Standard (including, without limitation, any additional costs incurred by LCW had the City not paid for a portion of the cost of the Remediation). Without limiting the generality of the foregoing, LCW shall be responsible for the installation and operation of any methane gas monitoring and extraction systems that may be required by an Agency with Jurisdiction with respect to the Landfill.

8. **Response Actions.**

(a) LCW shall conduct any necessary response actions and activities resulting from its obligations under this Agreement ("**Response Actions**") in compliance with all applicable Environmental Laws. LCW shall commence such Response Actions within twenty (20) business days after receiving notice of same, and shall thereafter diligently prosecute the Response Action to completion; provided, however, LCW's undertaking of the Response Action is conditioned upon LCW first receiving applicable agency approvals and permits to perform any and all Response Actions on the Property (including any and all required consents from the City), if any such approvals, permits and consents are required, and such 20 business day period for commencing the Response Action shall be extended for the amount of time reasonably required for LCW to develop any necessary plans and to secure the necessary permits. LCW shall promptly remove from the Property any wastes or other materials generated as a result of such Response Action activities. Without limiting the generality of the foregoing, LCW and the City shall reasonably cooperate with each other to seek reasonable, cost-effective methods and means of performing Response Actions, if any such actions become necessary. LCW shall have the right to engage any and all consultants, advisors, and contractors reasonably required to effect the Response Action, including determination of all methods and means of performing the Response Actions. LCW shall have the right to control and direct the actions to be taken and costs to be incurred in responding to any and all Indemnified Claims. Except in emergency situations where public, safety or welfare is threatened ("**Emergency Situations**"), Indemnified Parties shall not take any Response Action or incur any costs with respect to Indemnified Claims without the prior written consent of LCW, which consent may not be unreasonably withheld. Notwithstanding the foregoing, if an Indemnified Party takes Response Actions or incurs any costs with respect to an Indemnified Claim where no Emergency Situation exists, without LCW's prior written consent, then LCW shall not be liable for such costs, and LCW's overall liability to such Indemnified Party and Related Indemnified

Parties shall be reduced to the extent LCW is actually prejudiced from the Response Actions taken by such Indemnified Party.

(b) Notwithstanding the provisions set forth in Section 8(a), if LCW fails to commence taking Response Actions or thereafter fails to diligently prosecute the Response Actions to completion, an Indemnified Party may, but shall not be required to, take reasonable Response Actions for the Indemnified Claim to mitigate its damages, and all reasonable costs and expenses incurred by such Indemnified Party in connection therewith or relating thereto shall be reimbursed by LCW upon demand by such Indemnified Party.

(c) The City hereby grants to LCW, and its consultants, contractors, employees and agents, a license to access the Property as necessary to allow LCW to accomplish its obligations under the Agreement. Such a license shall allow LCW to, among other things, bring onto the Property such equipment or machinery as may be reasonably necessary to conduct appropriate Response Actions and to defend any Indemnified Claims. In entering the Property to conduct the Response Actions, LCW accepts the Property conditions as may exist from time to time without any representation or warranty of the City, and without any duty of the City to warn of any conditions. Except to the extent otherwise governed by this Agreement, LCW agrees to assume all risks associated with entry and presence on the Property. Except as otherwise provided in this Agreement, the City shall not be liable for any injury of any kind whatsoever to any person entering upon the Property under this Agreement arising from any cause whatsoever except for injuries caused by the negligence or intentional conduct of the Indemnified Parties.

(d) Prior to commencing any Response Action, LCW shall provide at least three (3) full business day's prior written notice to the City of the date on which LCW proposes to commence the Response Action (except in any situation calling for emergency response action, where this notice requirement is waived),

(e) Notwithstanding anything provided herein to the contrary, LCW's liabilities and obligations hereunder are conditioned upon the City and other Indemnified Parties reasonably cooperating with LCW.

(f) LCW will perform any Response Actions required under this Agreement in a commercially reasonable manner. Further, LCW will interfere as little as reasonably practicable with the City's activities on the Property. LCW agrees that entry upon the Property shall be limited to the extent necessary for the performance of the Response Actions.

(g) The City shall sign any and all consent forms required by such governmental agencies in connection with such permits and approvals.

(h) The City or the City's agent shall be entitled, at its sole option and expense, to have a representative present during the performance of the Response Actions.

(i) LCW shall, during the term of this Agreement and at all times during which access is available to them, require all contractors or subcontractors performing the Response Actions required under this Agreement, and their employees and agents, to maintain insurance with the following coverage:

(i) Workers Compensation with statutory limits;

- (ii) Automobile Liability with \$1,000,000 single limit or equivalent; and,
- (iii) Commercial General Liability, with \$2,000,000 single limit or equivalent.

LCW shall cause the City to be named as an additional insured on each contractor and subcontractor's Commercial General Liability insurance policy.

(j) To the extent that the Response Actions entail air, soil and/or groundwater assessment and/or sampling, the City retains the right, at the City's cost, to have a contractor of its choice present and obtain split samples.

(k) Upon completion of any and all Response Actions, LCW shall cause any tools, equipment, or materials placed on the Property to be removed.

(l) Neither any agent, employee, or representative of LCW nor its contractors may consume, sell, serve, distribute, or give any alcoholic beverages to anyone on or about the Property in connection with performing any Response Actions. If the City learns of any such activities in connection with the Response Actions, the Response Actions shall cease immediately and LCW shall cause the offending individual(s) to be removed from the Property immediately and reimburse all of the City's fees and costs in connection therewith.

(m) If the presence, use, on or off-site disposal or transport of Historic Oil and Gas Environmental Conditions or Landfill Conditions on, to, under, from or about the Property as a result of any necessary Response Actions undertaken by LCW results in any spills or releases of Hazardous Substances, any injury to person, or any injury or damage to the Property, then LCW shall promptly and at its sole cost notify the City, obtain all permits and approvals necessary to remove such Hazardous Substances or otherwise remedy any suspected problem, and remove such Hazardous Substances and remedy any associated problems in accordance with applicable legal requirements and good business practices.

(n) Except as reasonably necessary to implement and complete any necessary Response Actions, LCW shall not cause or permit any Hazardous Substance to be brought upon, kept, or used in or about the Property without the City's prior written consent.

(o) LCW shall not suffer or permit to be enforced against the Property, or any part thereof, any mechanics', materialmen's, contractors', or subcontractors' liens arising from, or any claim for damage arising out of, the Response Actions conducted by LCW. LCW agrees to indemnify the Indemnified Parties, and hold the Property free and harmless from all liability for any and all such liens, claims, demands, together with reasonable attorneys' fees and all costs and expenses incurred in connection with such liens. LCW shall, at its expense, pay and satisfy any adverse judgment that may be rendered thereon before the enforcement thereof. Notwithstanding anything to the contrary contained in this paragraph, in the event of the recordation of such lien, LCW shall have the right, in good faith, to contest the validity of any such lien, claim, or demand, but in such case, upon demand of the Indemnified Parties, LCW shall post a bond as required by law within 30 days after receipt of demand from the Indemnified Parties, in an amount equal to such contested lien, claim, or demand.

9. **Backfill.** If LCW is required to backfill excavations at the Property pursuant to the terms of this Agreement, then LCW may cause the backfilling of such excavations with excess soil, if any, from elsewhere on the Property to the extent allowed by law. If a grading plan exists

that has been approved by LCW, then any such excavations shall not be inconsistent with such grading plan. If backfilling is required, and if no excess soil is available on the Property, then to the extent allowed by law, LCW may import Clean Soil from off-site. For purposes of this Agreement, the term "**Clean Soil**" shall mean soil that LCW's environmental consultant has tested, on a random sampling basis, and which, according to all Parties, meets or surpasses local cleanup criteria.

10. **Notices.** All notices or other communications required or permitted under the Agreement shall be in writing, and shall be personally delivered, sent by recognized overnight mail service or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by facsimile, and shall be effective upon the first business day following receipt at the following addresses:

To City: City of Long Beach
333 W. Ocean Boulevard, 13th Floor
Long Beach, California 90802-4664
Attention: City Manager

with a copy to: Long Beach City Attorney's Office
333 W. Ocean Boulevard, 11th Floor
Long Beach, California 90802-4664
Attention: City Attorney
Fax: 562 436-1579

To LCW: Thomas Dean
3626 Long Beach Boulevard
Long Beach CA 90807
Fax: (562) 427-0368
Email: tom@tomdeanco.com

with a copy to: Jeffrey Berger
2101 Rosecrans Avenue
Suite 3280
El Segundo, CA 90245
Fax: (310) 640-6866
Email: jeff@big62.com

Notice of change of address shall be given by written notice in the manner detailed in this Section. Rejection or other refusal to accept, or the inability to delivery because of changed address of which no notice was given, shall be deemed to constitute receipt of the notice, demand, request or communication sent.

11. **Miscellaneous.**

(a) **Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

(b) **Joint and Several Liability.** The obligations of "LCW" set forth herein shall be joint and several obligations of LCW Partners and LCW Oil.

(c) **Waivers.** No waiver of any breach of any covenant or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No waiver or extension of any breach of any covenant or provision shall be effective unless in writing and signed by the party claimed to have waived the covenant or provision. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

(d) **Professional Fees.** In the event of the bringing of any action or suit by a party hereto against another party hereunder by reason of any breach of any of the covenants, agreements or provisions on the part of the other Party arising out of this Agreement, then in that event the prevailing party shall be entitled to have and recover of and from the other all costs and expenses of the action or suit, including reasonable attorneys' fees, accounting and engineering fees, and any other professional fees resulting therefrom.

(e) **Entire Agreement.** This Agreement represents the final expression of, and contains the entire agreement between, the parties with respect to the subject matter hereof and supersedes all prior understandings with respect thereto. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or as otherwise expressly permitted herein. The parties do not intend to confer any benefit hereunder on any person, firm or corporation other than the parties hereto.

(f) **Time of Essence.** City and LCW hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

(g) **Construction.** Headings at the beginning of each section and subsection are solely for the convenience of the parties and are not a part of the Agreement. Whenever required by the context of this Agreement, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties had prepared this same. Unless otherwise indicated, all references to sections and subsections are to this Agreement. All exhibits referred to in this Agreement are attached and incorporated by this reference. All dates prescribed in this Agreement shall mean any time on or before 5:00 p.m., Los Angeles time on such date. In the event the date on which LCW or City is required to take any action under this terms of this Agreement is not a business day, the action shall be taken on the next succeeding business day. For purposes of this Agreement, the term "business day" shall not include Saturdays, Sundays or legal holidays.

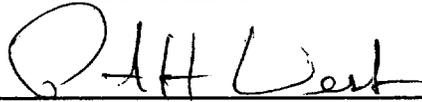
(h) **Governing Law: Choice of Forum.** The parties hereto acknowledge that this Agreement has been negotiated and entered into in the State of California. The parties hereto expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California. Any court action which arises under this Agreement shall be brought in Los Angeles County, California.

(i) **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

(j) **Warranty of Authority.** The individuals executing this Agreement on behalf of each party have the legal power, right and actual authority to bind the party to the terms and conditions hereof.

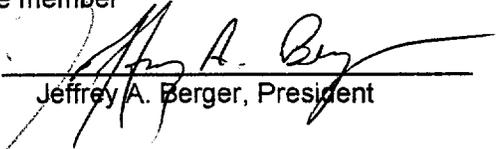
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year written above.

THE CITY OF LONG BEACH

By 
Its City Manager

LCW PARTNERS, LLC,
a Delaware limited liability company

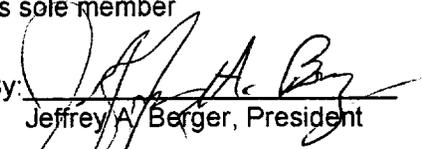
By: LCW Holdings, LLC,
a Delaware limited liability company, its
sole member

By: 
Jeffrey A. Berger, President

LCW OIL OPERATIONS, LLC,
a Delaware limited liability company

By: LCW Partners, LLC,
a Delaware limited liability company, its
sole member

By: LCW Holdings, LLC,
a Delaware limited liability company,
its sole member

By: 
Jeffrey A. Berger, President

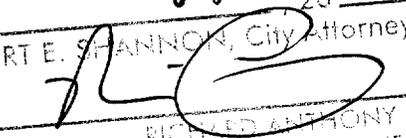
APPROVED AS TO FORM
6-3 20 10
ROBERT E. SHANNON, City Attorney
By 
RICHARD ANTHONY
DEPUTY CITY ATTORNEY

EXHIBIT A
Legal Description of the Property

(aka the "Oil and Gas Property")

Parcel 1 (N/A)

Parcel 2

S'yly Portion

Parcel 3 as shown on the map attached to that certain Certificate of Compliance on communication with Lot Line Adjustment LLA 9906-14 recorded January 25, 2000 as Instrument No. 00-0112748, of Official Records of Los Angeles County, California, more particularly described as follows:

In the City of Long Beach, County of Los Angeles, State of California, being Parcel 3 of Parcel Map No. 19212, as shown on Map filed in Book 260, pages 93 and 94 of Parcel Maps, in the office of the county recorder of said county, modified by MLA 9605-01, filed as instrument number 96-1307894 in the office of the county recorder of said county, and a portion of Parcel 2 of Parcel Map No. 7470, as shown on map filed in Book 121, Pages 36 through 39 of Parcel Maps, in the office of the county recorder of said county, and modified by MLA 9605-01, filed as instrument no. 96-1307893 in the office of the county recorder of said county, said portion being described as follows: Beginning at the northeasterly terminus of that certain course shown on MLA 9605-01, said course bears North 52°11'12" East and has a distance of 264.04 feet; thence South 52°11'12" West a distance of 18.41 feet; thence North 24°05'56" West a distance of 39.06 feet; thence North 52°12'40" East a distance of 205.49 feet to a boundary of said Parcel 3; thence southeasterly along a non-tangent curve, a radial to said curve bears South 55°44'13" West, having a radius of 1293.00 feet, through a central angle of 05°24'34" a distance of 122.07 feet to the easterly most point of said Parcel 2, a radial of said curve bears South 61°08'47" West; thence North 89°54'03" West a distance of 195.66 feet; thence South 00°05'57" West a distance of 46.63 feet to the point of beginning.

Excepting that portion of said Parcel 3 of Parcel Map No. 19212 described as follows: Beginning at the northeasterly terminus of a certain course shown on MLA 9605-01, said course bears North 52°11'12" East and has a distance of 264.04 feet; thence South 52°11'12" West a distance of 18.41 feet to the true point of beginning; thence South 24°05'56" East a distance of 29.81 feet; thence South 52°11'12" West a distance of 239.59 feet; thence North 37°52'23" West a distance of 28.96 feet; thence North 52°11'12" East a distance of 246.69 feet to the true point of beginning.

Parcel 3**30 ac.±**

That portion of the Northwest 1/4 of Fractional Section 11, Township 5 South, Range 12 West, in the Rancho Los Alamitos, in the City of Long Beach, County of Los Angeles, State of California, together with that portion of Westminster Avenue vacated by Resolution No. C-2192 of said City of Long Beach, described as a whole as follows:

Beginning at the intersection of a line parallel with and 57 feet northeasterly measured at right angles from that certain course shown as having a bearing of South 37°43'30" West, in the northeasterly boundary of Lot 1 of Tract No. 26635, as per map recorded in Book 684, page 51, 52, and 53 of Maps, of said county, and its prolongation with the centerline of Second Street as said centerline is shown on said Tract No. 26635; thence easterly along the easterly prolongation of said centerline of Second Street to a line parallel with and 850 feet northeasterly, measured at right angles from the first hereinabove mentioned parallel line; thence along parallel line South 37°43'30" West to a point in the southeasterly line of Westminster Avenue, 100.00 feet wide, as described in part of Parcels 3 through 10, inclusive in deed to the County of Los Angeles, recorded December 3, 1962 as Instrument No. 4500, in Book D-1842, Pages 137 through 145, inclusive, of Official Records of said county, said point being the True Point of Beginning; thence northeasterly along Westminster Avenue to the North South 1/4 centerline of said Section 11; thence southerly along said North South 1/4 centerline to the northwesterly line of that certain 400 foot strip of land described as Parcel 1 in the Deed to the Los Angeles County Flood Control District, recorded in Book 3984, Page 236 of Official Records of said county; thence southwesterly along the boundary line of Parcel Map No. 14983, as per map filed in Book 190, pages 52 and 53 of Parcel Maps, records of said county; thence northwesterly along said last mentioned northeasterly boundary to the True Point of Beginning of this description.



EXHIBIT A-1



Disclaimer

DISCLAIMER OF DATA ACCURACY: The services provided on this web site are intended for informational purposes only and the GIS data used is compiled from various sources and is subject to constant change. While reasonable effort has been made to ensure the accuracy of the data, the information provided herein may be inaccurate or out of date.

EXHIBIT B
Environmental Reports and Disclosures Concerning the LCW Property

1. Letter dated September 17, 2009 from the United States Environmental Protection Agency to the City of Long Beach, concerning for Reasonable Care Requirements.
2. Simon Environmental Engineering Inc. (Simon-EEI, 1990). Report of Subsurface Environmental Assessment Bixby Ranch Property, Westminster Avenue and Studebaker Road, Long Beach, California. Prepared for Bixby Ranch Company. August 24, 1990.
3. IT Corporation (IT, 1992). "A" Lease Site Investigation, Long Beach, California. Prepared for Bixby Ranch Company. Volume I. September 1992.
4. IT Corporation. "A" Lease Site Investigation, Long Beach, California. Prepared for Bixby Ranch Company. Volume II. September 1992.
5. IT Corporation (IT, 1993). Phase I Environmental Assessment for Real Property-The Marketplace Office Park, Long Beach, California. Prepared for Bixby Ranch Company. October 1993.
6. IT Corporation. Final 1994-1995 Semiannual Groundwater Sampling and Analysis Report Market Place Sanitary Landfill. Prepared for Bixby Ranch Company. January 1996.
7. IT Corporation. Final 1994-1995 Semiannual Groundwater Sampling and Analysis Report Studebaker-Loynes Sanitary Landfill. Prepared for Bixby Ranch Company. February 1996.
8. Ninyo & Moore Geotechnical and Environmental Sciences Consultants. Asbestos and Lead-Based Paint Survey, Bixby "A" Lease, Westminster Avenue and Pacific Coast Highway, Long Beach, California. Prepared for Bixby Ranch Company. July 23, 2003.
9. Ninyo & Moore Geotechnical and Environmental Sciences Consultants (Ninyo & Moore, September 2003). Water Quality Research Report, Bixby "A" Lease, Westminster Avenue and Pacific Coast Highway, Long Beach, California. Prepared for Bixby Ranch Company. September 3, 2003.
10. Ninyo & Moore Geotechnical and Environmental Sciences Consultants. File Review Report, Bixby "A" Lease, Westminster Avenue and Pacific Coast Highway, Long Beach, California. Prepared for Bixby Ranch Company. September 22, 2003.
11. Ninyo & Moore Geotechnical and Environmental Sciences Consultants (Ninyo & Moore, October 2003). Phase II Environmental Site Assessment, Bixby "A" Lease, Westminster Avenue and Pacific Coast Highway, Long Beach, California. Prepared for Bixby Ranch Company. October 30, 2003.

EXHIBIT "C"
Insurance Policy & Endorsement

Insurance Provider: American International Specialty Lines Ins Company
Policy No.: PLS 3174707
Coverage: Pollution Legal Liability.
Limits: Each Incident: \$10,000,000; Aggregate Limit: \$20,000,000

Certificate of Insurance is attached.



CERTIFICATE OF LIABILITY INSURANCE

OP ID SN
LCWPA-1

DATE (MM/DD/YYYY)

06/02/10

PRODUCER The Dougherty Company, Inc. P.O. Box 7277 Long Beach CA 90807 Phone: 562-424-1621 Fax: 562-490-0432	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED LCW Partners, LLC 3626 Long Beach Blvd. Long Beach CA 90807	INSURER A: American International Company	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
A		GENERAL LIABILITY				EACH OCCURRENCE	\$
		<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
		<input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR				MED EXP (Any one person)	\$
		<input checked="" type="checkbox"/> Pollution				PERSONAL & ADV INJURY	\$
		GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE	\$
		<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				PRODUCTS - COMP/OP AGG	\$
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	\$
		<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person)	\$
		<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
		<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	\$
		<input type="checkbox"/> HIRED AUTOS					
		<input type="checkbox"/> NON-OWNED AUTOS					
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	\$
		<input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	\$
						AGG	\$
		EXCESS / UMBRELLA LIABILITY				EACH OCCURRENCE	\$
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE	\$
		<input type="checkbox"/> DEDUCTIBLE					\$
		RETENTION \$					\$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS	OTH-ER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N				E.L. EACH ACCIDENT	\$
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	\$
		OTHER				E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Certificate holder named Loss Payee and Additional Insured as respects their interest subject to policy terms, conditions and exclusions. *Except 10 days notice for non payment of premium.

CERTIFICATE HOLDER LONGB-2 City of Long Beach, a California Municipal Corporation 333 W. Ocean Blvd. Long Beach CA 90802	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30*</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>J. Casno</i>
--	--

ACORDTM CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 05/28/10
PRODUCER Edgewood Partners Ins Center Lic#0B29370 (949) 263-0606 19000 MacArthur Blvd, PH Flr Irvine, CA 92612	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED LCW Oil Operations, LLC 2101 Rosecrans Ave. Ste.# 3280 El Segundo, CA 90245	INSURERS AFFORDING COVERAGE INSURER A: St. Paul Fire & Marine Ins.Co. INSURER B: INSURER C: INSURER D: INSURER E:	NAIC #

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	VK08303971	01/01/10	01/01/11	EACH OCCURRENCE \$1,000,000
	<input checked="" type="checkbox"/> DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000				
	<input type="checkbox"/> MED EXP (Any one person) \$5,000				
	<input type="checkbox"/> PERSONAL & ADV INJURY \$1,000,000				
	<input type="checkbox"/> GENERAL AGGREGATE \$2,000,000				
	<input type="checkbox"/> PRODUCTS - COMP/OP AGG \$1,000,000				
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				
<input type="checkbox"/> GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$	
A	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$ 10000	VK08303971	01/01/10	01/01/11	EACH OCCURRENCE \$10,000,000
	<input type="checkbox"/> AGGREGATE \$10,000,000				
	<input type="checkbox"/> DEDUCTIBLE \$				
	<input type="checkbox"/> RETENTION \$				
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$	
OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Certificate holder named additional insured as respects general liability but only if required by written contract with named insured prior to an occurrence and per attached end.# 0G041 0306. Coverage is subject to all policy terms, conditions and exclusions. 10-day notice of cancellation for non-payment of premium.

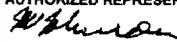
CERTIFICATE HOLDER

City of Long Beach, a California
 Municipal Corporation
 333 West Ocean Boulevard
 Long Beach, CA 90802-4664

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE



IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

CC: 000 D00
OO I: 000 T: 001
* M: 000 T: 000 T: 001
* O C O O 2 VK09303971 8899

**ADDITIONAL PROTECTED PERSONS ENDORSEMENT - OIL OR GAS
NONOPERATING WORKING INTEREST OR ROYALTY INTEREST
OWNER REQUIRED BY WRITTEN CONTRACT FOR INSURANCE -
OIL AND GAS COMMERCIAL GENERAL LIABILITY**

This endorsement changes your Oil And Gas
Commercial General Liability Protection.

How Coverage Is Changed

There are nine changes that are explained
below.

1. The following is added to the Who Is Protected For Injury Or Damage section. This change adds certain protected persons and limits their protection.

Oil or gas nonoperating working interest.

Each of your oil or gas nonoperators that you agree in a written contract for insurance to add as an additional protected person under this agreement is a protected person only for its liability that:

- results from its nonoperating working interest in a well, oil lease, or gas lease you operate; and
- is for covered injury or damage.

In addition, each such oil or gas nonoperator is a protected person only for the lesser of:

- the limits of coverage required by that written contract for insurance; or
- the limits of coverage available under this agreement.

Your oil or gas nonoperator means:

- any owner, including a carried-interest owner; or
- any co-venturer or mining partner; that has a nonoperating working interest in any well, oil lease, or gas lease you operate.

Written contract for insurance means that part of any written contract or agreement in which you agree to purchase or maintain insurance provided by this agreement if such contract or agreement:

- was made before; and
- is in effect when;
the event begins or the offense is committed.

Additional protected person may also be called an additional insured in the written contract for insurance.

Oil or gas royalty interest owner. Each of your oil or gas royalty interest owners that you agree in a written contract for insurance to add as an additional protected person under this agreement is a protected person only for its liability that:

- results from its royalty interest in a well, oil lease, or gas lease you operate; and
- is for covered injury or damage.

In addition, each such oil or gas royalty interest owner is a protected person only for the lesser of:

- the limits of coverage required by that written contract for insurance; or
- the limits of coverage available under this agreement.

Your oil or gas royalty interest owner means any owner of royalty rights in any well, oil lease, or gas lease you operate.

2. The following is added to the Who Is Protected For Pollution Clean-Up Costs section. This change adds certain protected persons and limits their protection.

Oil or gas nonoperating working interest.

Each of your oil or gas nonoperators that you agree in a written contract for insurance to add as an additional protected person under this agreement is a protected person only for its liability that:

- results from its nonoperating working interest in a well, oil lease, or gas lease you operate; and
- is for covered pollution clean-up costs.

In addition, each such oil or gas nonoperator is a protected person only for the lesser of:

- the limits of coverage required by that written contract for insurance; or
- the limits of coverage available under this agreement.

Oil or gas royalty interest owner. Each of your oil or gas royalty interest owners that you agree in a written contract for insurance to add as an additional protected person under this agreement is a protected person only for its liability that:

- results from its royalty interest in a well, oil lease, or gas lease you operate; and
- is for covered pollution clean-up costs.

In addition, each such oil or gas royalty interest owner is a protected person only for the lesser of:

- the limits of coverage required by that written contract for insurance; or
- the limits of coverage available under this agreement.

3. The following is added to the Pollution clean-up costs section of the What This Agreement Covers section, but only for this endorsement. This change broadens coverage.

We'll also pay amounts your oil or gas nonoperator or your oil or gas royalty interest owner is legally required to pay for covered pollution clean-up costs that result from a sudden and accidental pollution incident which:

- begins while this agreement is in effect;
- results from your work or your completed work in the performance of your oil or gas operations, other than such work or completed work that is or was performed at, on, in, or from a waste site; and
- doesn't result from any intentional and willful violation of any governmental law, regulation, or rule by you, your oil or gas nonoperator, your oil or gas royalty interest owner, or anyone acting on your or any such person's or organization's behalf.

4. The following is added to the first paragraph of the Right and duty to defend section, but only for this endorsement. This change broadens coverage.

We'll also have the right and duty to defend your oil or gas nonoperator or your oil or gas royalty interest owner against a claim or suit for pollution clean-up costs covered by this agreement.

5. The following is added to the definition of suit in the Right and duty to defend section, but only for this endorsement. This change broadens coverage.

We'll also consider a suit to include an arbitration proceeding for pollution clean-up costs to which your oil or gas nonoperator or your oil or gas royalty interest owner must submit, or submits with our consent, and any other alternative dispute resolution proceeding for pollution clean-up costs to which any such person or organization submits with our consent.

6. The following is added to what we consider judgment to include in the Right and duty to defend section, but only for this endorsement. This change broadens coverage.

We'll also consider a judgment to include a governmental ruling or order that has imposed liability for pollution clean-up costs on your oil or gas nonoperator or your oil or gas royalty interest owner.

7. The following replaces the fifth paragraph of the Pollution injury or damage exclusion, but only for this endorsement. This change excludes coverage.

Also, we won't apply this exclusion to bodily injury or property damage that results from a sudden and accidental pollution incident which:

- begins while this agreement is in effect;
- takes place at, on, in, or from a protected person's premises or a protected person's work site, other than a waste site;
- doesn't result from pollution work by or for any protected person or others, other than pollution work for which the pollution clean-up costs are covered under the Pollution clean-up costs section of this agreement; and
- doesn't result from any intentional and willful violation of any governmental law, regulation, or rule by you, your oil or gas nonoperator, your oil or gas

* O C O O 2 VK08303971 8901 * M: OO I: 000 T: 001 CC: 000 D00

royalty interest owner, or anyone acting on your or any such person's or organization's behalf.

- 8. The following replaces the third paragraph of the Primary or excess other insurance section, but only for this endorsement. This change limits coverage for certain additional protected persons.

We'll also apply this agreement as excess insurance over the part or parts of any primary or excess other insurance that provides coverage for your oil or gas nonoperator or your oil or gas royalty interest owner. However, if you specifically agree in a written contract for insurance that this insurance must be primary to, or non-contributory with, other insurance issued directly to your oil or gas nonoperator or your oil or gas royalty interest owner, we'll apply this agreement as primary insurance for damages for injury or damage covered by the Additional Protected Persons Endorsement - Oil Or Gas Nonoperating Working Interest Or Royalty Interest Owner Required By Written Contract that are incurred by any such person or

organization, and we won't share those damages with that other insurance. But we'll still apply this agreement as excess insurance over the part or parts of any primary or excess other insurance that provide control of well pollution bodily injury or property damage coverage and apply to those damages.

- 9. The following is added to the When this agreement is excess insurance section, but only for this endorsement. This change broadens coverage.

In addition, we'll defend your oil or gas nonoperator or your oil or gas royalty interest owner against a claim or suit for pollution clean-up costs covered by this agreement if no provider of other insurance will do so. In return, we'll require that we be given all of any such person's or organization's rights against each such provider of other insurance.

Other Terms

All other terms of your policy remain the same.

