

31686

ENVIRONMENTAL INDEMNITY AND ACCESS AGREEMENT [San Francisco Yard 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**") and LCW Yard, LLC, a Delaware limited liability company ("**LCW**").

RECITALS

A. City, LCW, and LCW's parent entity, LCW Partners, LLC, have entered into a transaction whereby the City is conveying fee title to certain real property comprised of approximately 11.3-acres and described in the attached Exhibit "A" (the "**Property**") to LCW in exchange for LCW Partners, LLC's, conveyance to the City of fee title (oil and mineral rights excepted) to certain other real property. As part of the City's disclosures to LCW, the City 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 operations conducted on the Property prior to the Effective Date.

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

NOW, THEREFORE, in consideration of the foregoing and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the 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 that existed at the Property prior to the Effective Date as identified by the environmental reports identified in Exhibit "B" hereto or that the City can prove were located at, on or under the Property prior to the Effective Date.

(b) "**LCW's Intended Use**" shall mean LCW's (and its lessees', successors', and assigns') intended use of the fee interest in the Property as industrial property.

(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 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 operations conducted on or at the Property prior to the Effective Date.

(f) **"Indemnification Notice"** is defined in Section 2(c)(i).

(g) **"Indemnified Party"** or **"Indemnified Parties"** shall mean LCW and its members, managers, partners, employees, agents, representatives, and officers, and LCW's lessees, assignees and other 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 Environmental Conditions at the Property.

(i) **"City's Response Deadline"** is defined in Section 2(c)(ii).

(j) **"Liabilities"** is defined in Section 2(a).

(k) **"Notice of Claim"** is defined in Section 2(c)(i).

(l) **"Related Indemnified Parties"** is defined in Section 2(c)(i).

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

(n) "Response Actions" is defined in Section 6.

(o) "Work Papers" is defined in Section 2(f).

2. Defense and Indemnification.

(a) Subject to the limitations specified in Section 2(b) below, and provided that any party seeking to assert an Indemnified Claim (defined below) notifies the City in accordance with Sections 6 and 8 of this Agreement, and except as expressly limited herein, the City 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 Environmental Conditions in, on, under, from or affecting the Property;

(ii) the City's conduct of Response Actions on the Property, or

(iii) the City's violation(s) of any Environmental Laws at the Property prior to the Effective Date.

(b) Notwithstanding anything provided in this Agreement to the contrary, including, without limitation, the provisions of Section 2(a), the City 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) any Liabilities suffered by the City or LCW due to LCW's failure to comply with the terms of this Agreement;

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

(iv) 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 2(a)(i) through 2(a)(iii) above, to the extent not excluded in Sections 2(b)(i) through 2(b)(iv), are hereinafter collectively referred to as "Indemnified Claims". Without limiting the generality of the foregoing, the matters set forth in Sections 2(b)(i) through 2(b)(iv) shall be excluded from the definition of "Indemnified Claims."

(c) In addition to its agreement to protect, indemnify, and hold harmless the Indemnified Parties for the Indemnified Claims specified in Section 2(a) above, the City 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. The City'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 the City 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 the City shall not relieve the City from any liability which it may have to any Indemnified Party except to the extent of any actual prejudice to the City 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 the City 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) The City shall have thirty (30) business days from the receipt of such written notice ("**City's Response Deadline**") in which to respond to the Indemnified Parties' request that the City retain counsel to defend the Indemnified Parties against the claim or demand. The City's failure to respond by the City'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 the City shall, no later than the City'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 the City's Response Deadline, the City shall notify the Indemnified Parties of the identity of the counsel selected. The counsel selected by the City shall be subject to the Indemnified Parties' reasonable approval. If necessary, as a condition precedent to the City'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 the City and a particular Indemnified Party, then the Indemnified Party shall be entitled to retain its own counsel at the reasonable expense of the City; provided that, the City shall not be responsible for the fees and expenses of more than one such separate counsel. The Indemnified Parties shall reasonably cooperate with the City in such defense and make available to the City 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 the City 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, the City shall cooperate with the Indemnified Party in such defense and make available to the Indemnified Party, at the City's expense, all such witnesses, records, materials and information in the City'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 the City fails to retain counsel for the Indemnified Parties by the City's Response Deadline, then the Indemnified Parties may retain counsel to defend themselves against such claims or demands. The City shall pay all reasonable attorneys' fees and

expenses incurred by such counsel in defending the Indemnified Parties against the claim or demand, until the City engages counsel to undertake such defense.

(e) Notwithstanding any provision set forth in Section 2, 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 2(d) above.

(f) The Parties further agree that, within sixty (60) calendar days of receipt by the City, the City will forward to LCW copies of all non-privileged: (i) correspondence exchanged with Agency(ies) with Jurisdiction over Historic Environmental Conditions at the Property; (ii) correspondence and documents relating to the defense or settlement of any third-party claim pertaining to or affecting Historic Environmental 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 Environmental Conditions at the Property (collectively "**Work Papers**") in the City's care, custody, or control. The City 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 the City without the consent of the other (which shall not be unreasonably withheld or delayed). Notwithstanding the foregoing, the City 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, (iii) does not include a statement or admission of fault, culpability or failure to act by or on behalf of any Indemnified Party, and (iv) does not materially and adversely interfere with LCW's Intended Use.

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

4. **Release.** The City, 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. The City 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."

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

5. **Assessment, Monitoring and Remediation Activities.** Subject to the limitations of the City's obligations in Section 2(b), if an Agency with Jurisdiction orders Remediation of Historic Environmental Conditions, then the City 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 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 the City is obligated to undertake any Remediation to a standard higher than the Current Remediation Standard, or if LCW requests and the City agrees to undertake such Remediation to a standard higher than the Current Remediation Standard, then LCW shall promptly reimburse the City for the amount by which the costs and expenses incurred by the City for Remediation of the Property to such higher standard exceeds the costs that would have been incurred by the City with respect to such Remediation to the Current Remediation Standard (including, without limitation, any additional costs incurred by the City had LCW not paid for a portion of the cost of the Remediation).

6. **Response Actions.**

(a) The City shall conduct any necessary response actions and activities resulting from its obligations under this Agreement ("**Response Actions**") in compliance with all applicable Environmental Laws. The City shall commence such Response Actions within twenty (20) business days after receiving notice of same, and shall thereafter diligently prosecute Response Action to completion; provided, however, the City's undertaking of the Response Action is conditioned upon the City first receiving applicable agency approvals and permits to perform any and all Response Actions on the Property (including any and all required consents from LCW), 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 the City to develop any necessary plans and to secure the necessary permits. The City 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, the City and LCW shall reasonably cooperate with each other to seek reasonable, cost-effective methods and means of performing Response Actions, if any such actions become necessary. The City 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. The City 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 the City, 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 the City's prior written consent, then the City shall not be liable for such costs, and the City's overall liability to such Indemnified Party and Related Indemnified Parties shall be reduced to the extent the City is actually prejudiced from the Response Actions taken by such Indemnified Party.

(b) Notwithstanding the provisions set forth in Section 6(a), if the City 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 the City upon demand by such Indemnified Party.

(c) LCW hereby grants to the City, and its consultants, contractors, employees and agents, a license to access the Property as necessary to allow the City to

accomplish its obligations under the Agreement. Such a license shall allow the City 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, the City accepts the Property conditions as may exist from time to time without any representation or warranty of LCW, and without any duty of LCW to warn of any conditions. Except to the extent otherwise governed by this Agreement, the City agrees to assume all risks associated with entry and presence on the Property. Except as otherwise provided in this Agreement, LCW 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, the City shall provide at least three (3) full business day's prior written notice to LCW of the date on which the City 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, the City's liabilities and obligations hereunder are conditioned upon LCW and other Indemnified Parties reasonably cooperating with the City.

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

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

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

(i) The City 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.

The City shall cause LCW 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, LCW retains the right, at LCW's cost, to have a contractor of its choice present and obtain split samples.

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

(l) Neither any agent, employee, or representative of the City 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 LCW learns of any such activities in connection with the Response Actions, the Response Actions shall cease immediately and the City shall cause the offending individual(s) to be removed from the Property immediately and reimburse all of LCW's fees and costs in connection therewith.

(m) If the presence, use, on or off-site disposal or transport of Historic Environmental Conditions on, to, under, from or about the Property as a result of any necessary Response Actions undertaken by the City results in any spills or releases of Hazardous Substances, any injury to person, or any injury or damage to the Property, then the City shall promptly and at its sole cost notify LCW, 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, the City shall not cause or permit any Hazardous Substance to be brought upon, kept, or used in or about the Property without LCW's prior written consent.

(o) The City 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 the City. The City 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. The City 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, the City 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, the City 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.

7. **Backfill.** If the City is required to backfill excavations at the Property pursuant to the terms of this Agreement, then the City may cause the backfilling of such excavations with excess soil, if any, from elsewhere on the Property. If backfilling is required, and if no excess soil is available on the Property, then to the extent allowed by law, the City may import Clean Soil from off-site. For purposes of this Agreement, the term "**Clean Soil**" shall mean soil that the City's environmental consultant has tested, on a random sampling basis, and which, according to all Parties, meets or surpasses local cleanup criteria for LCW's Intended Use.

8. **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 the City: 333 West Ocean Boulevard
Long Beach, California 90802
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: Richard F. Anthony
Facsimile: (562) 436-1579
(for convenience, but not for formal notices, e-mail:
richard_anthony@longbeach.gov)

To LCW: 3626 Long Beach Boulevard
Long Beach CA 90807
Attention: Thomas Dean
Fax: (562) 427-0368
(for convenience, but not for formal notices, e-mail:
tom@tomdeanco.com)

with a copy to: c/o LCW Partners
2101 Rosecrans Avenue
Suite 3280
El Segundo, CA 90245
Attention: Jeffrey Berger
Fax: (310) 640-6866
(for convenience, but not for formal notices, e-mail:
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.

9. **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) **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.

(c) **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.

(d) **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.

(e) **Time of Essence.** LCW and the City 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.

(f) **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 the City or LCW 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.


(g) **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.

(h) **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.

(i) **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.

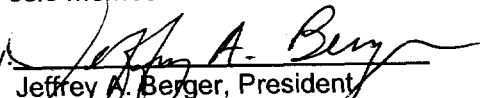
CITY OF LONG BEACH

By 
Its City Manager

LCW YARD, 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

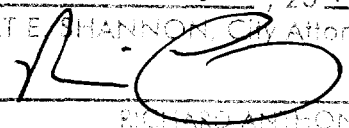
6.3, 20 10
ROBERT E. SHANNON, City Attorney
By 
RICHARD ANTHONY
DEPUTY CITY ATTORNEY

EXHIBIT A
Legal Description of the Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

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.

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.

TOGETHER WITH THAT PORTION OF THAT CERTAIN ALLEY LOCATED WITHIN SAID BLOCK, VACATED BY THE CITY OF LONG BEACH RESOLUTION NO. RES-07-0133 ON OCTOBER 2, 2007, RECORDED DECEMBER 28, 2007 AS INSTRUMENT NO. 20072857194 AND OCTOBER 20, 2009 AS INSTRUMENT NO. 20091586470, BOTH 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, OF 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.

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:

ALL OF BLOCKS 9 THROUGH 11, INCLUSIVE, 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.

TOGETHER WITH THOSE CERTAIN STREETS AND ALLEYS LOCATED WITHIN SAID BLOCKS, VACATED BY THE CITY OF LONG BEACH RESOLUTION NO. RES-07-0133 ON OCTOBER 2, 2007, RECORDED DECEMBER 28, 2007 AS INSTRUMENT NO. 20072857194 AND OCTOBER 20, 2009 AS INSTRUMENT NO. 20091586470, BOTH OF OFFICIAL RECORDS OF SAID COUNTY.

EXCEPT THOSE PORTIONS OF SAID BLOCKS LYING WESTERLY OF THE EASTERLY RIGHT-OF-WAY OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT CHANNEL.

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.

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.

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.

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 SAID COUNTY.

TOGETHER WITH THOSE CERTAIN STREETS AND ALLEYS LOCATED WITHIN SAID BLOCK, VACATED BY THE CITY OF LONG BEACH RESOLUTION NO. RES-07-0133 ON OCTOBER 2, 2007, RECORDED DECEMBER 28, 2007 AS INSTRUMENT NO. 20072857194 AND OCTOBER 20, 2009 AS INSTRUMENT NO. 20091586470, BOTH 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
List of Environmental Reports

Environmental Reports and Disclosures Concerning the City Property

1. Phase I Environmental Assessment, Long Beach Public Service Yard, 901 West Anaheim (APN 7271-007-902), Long Beach, California, prepared by SCS Engineers, dated June 1, 2004, File No. 01204007.00 [Draft]
2. Phase I Environmental Assessment, Long Beach Public Service Yard, San Francisco Avenue – 7 APNS, Long Beach, California, prepared by SCS Engineers, dated September 13, 2004, File No. 01204007.01 (APNs 7271-017-900, 7271-016-900, 7271-012-901, 7271-012-900, 7271-011-900, 7271-008-900, and 7271-007-902) [Draft]
3. Phase II Investigation Report, Long Beach Public Service Yard, 1601 San Francisco Avenue, Long Beach, California 90802, prepared by SCS Engineers, dated August 2, 2005, File No. 01204007.02 [Draft]
4. Sketch Map of Site, Southern Portion of Property, prepared by SCS Engineers.
5. Sketch Map of Site, Northern Portion of Property, prepared by SCS Engineers.
6. Draft and Final Groundwater Investigation Report, Former Long Beach City Tow Yard, 901 West Anaheim (APN 7271-007-902) Long Beach, California (LARWQCB No. 908130498), prepared by SCS Engineers, dated October 17, 2005, File No. 01204007.02
7. Table 3, Summary of Analytical Results for Metals, Long Beach Public Service Yard, 1601 San Francisco Avenue, Long Beach, California SCS Project No. 01204007.02
8. Proposal for Groundwater Monitoring Services, from SCS Engineers dated December 16, 2005, Proposal No. 01371205