

31682

REAL ESTATE EXCHANGE AGREEMENT

THIS REAL ESTATE EXCHANGE AGREEMENT (this "**Agreement**") is made as of April 28, 2010, by and between LCW Partners, LLC, a Delaware limited liability company ("**LCW**") 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. LCW is the owner of that certain real property located in the City of Long Beach, County of Los Angeles, State of California, legally described in Exhibit A and depicted in Exhibit A-1, containing approximately 33.8 acres, excluding therefrom the mineral rights described in the grant deed from LCW to LCW Oil Operations, LLC ("**LCW Oil**") attached hereto as Exhibit A-2 (the "**Mineral Grant Deed**") (such real property, excluding such mineral rights, being referred to herein as the "**LCW Property**"). The LCW Property is legally described as "Parcel 2" and "Parcel 3" in Exhibit A, and is depicted in Exhibit A-1.

B. The City is the owner of the parcels of real property described in Exhibit B and depicted in Exhibit B-1, containing approximately 11.3 acres (the "**City Property**"). The City Property includes real property commonly known as Assessor's Parcel Map Numbers 7271-016-901, 7271-008-900, 7271-011-900, 7271-012-900, 7271-012-901, and 7271-017-900 (most of which is commonly known as a portion of the City's "San Francisco Yard").

C. The LCW Property and the City Property are from time to time herein generically referred to individually as a "**Property**" or collectively the "**Properties**."

D. The City wishes to acquire the LCW Property for the purpose of improving and restoring the LCW Property for wetlands purposes.

E. LCW Partners wishes to acquire the City Property for the purpose of use or development consistent with all applicable zoning laws and the City's General Plan.

F. LCW is willing to convey the LCW Property to the City in consideration for (among other things): (i) the City's conveyance to LCW (or its assignee as provided in Section 22) of fee title to the City Property; and (ii) the City granting to LCW Oil certain rights as set forth in that certain Surface Use Release Agreement and Grant of Easements (the "**SURGE Agreement**"), in the form attached hereto as Exhibit D.

G. NOW, THEREFORE, FOR AND IN CONSIDERATION of the covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Exchange of Property.** Subject to the terms and conditions of this Agreement:

(i) The City shall convey the City Property to LCW (or its assignee(s)), together with all improvements, fixtures, and certain chattel presently located on the City Property, including, without limitation, (A) improvements and structures presently located on the City Property, and used in connection with the operation or occupancy thereof (collectively, the "**Improvements**"), excluding, however, those fixtures owned by third parties or tenants of the City Property; (B) all rights, warranties, guaranties, utility contracts, approvals (governmental or otherwise, but only to the extent such are assignable), surveys, and plans and

specifications affecting the City Property (collectively, the "**Intangible Property**"); and (C) all rights, privileges, easements and rights of way appurtenant to the City Property, including without limitation, all, use, occupancy and development rights, air rights, and water rights held by the City (the "**Appurtenances**"), but expressly excluding all mineral, oil and gas and other subsurface rights below 500 feet from the surface of the City Property (the "**Excluded Rights**"); provided, however that such exclusion does not include and the City expressly waives and relinquishes any surface entry rights onto the City Property.

(ii) LCW shall convey the LCW Property to the City, subject to the rights set forth in the SURGE Agreement, which shall be incorporated by reference into the Grant Deed to the LCW Property.

2. **Escrow.** The parties hereby appoint Chicago Title Company as Escrow Holder. By acceptance of any funds and/or documents deposited by the City or LCW, Escrow Holder agrees to hold such funds and/or documents and disburse the same only in accordance with the terms and conditions of this Agreement.

3. **LCW's Reservations of Rights.** As provided above, the Grant Deed from LCW to the City concerning the LCW Property shall incorporate by reference the SURGE Agreement.

4. **Closing.** The closing of the exchange of the City Property and the LCW Property (the "**Closing**") shall occur on the date that is 46 calendar days after the full execution of this Agreement (the date of full execution being referred to herein as the "**Effective Date**"), unless extended by the mutual written agreement of the Parties, or extended by reason of the provisions of this Section 4 or Section 27(e) (the "**Closing Date**"). Possession of the City Property (subject to the rights of any tenants under Leases (as defined below)) shall be delivered to LCW at the Closing. Notwithstanding the foregoing, LCW shall have two separate rights to extend the Closing Date each for a 60-day period, without payment of any sums to the City, by notice to the City at least 3 business days prior to the then scheduled Closing Date.

5. **LCW Due Diligence Period/Access to the City Property.**

(a) LCW shall have an inspection period (the "**LCW Due Diligence Period**") commencing with the Effective Date and expiring on the date that is 30 days after the Effective Date to perform such tests, inspections, document review, due diligence studies and investigations on the City Property as LCW deems necessary in its sole discretion.

(b) During the LCW Due Diligence Period, LCW and LCW's representatives shall have the right to enter onto the City Property at any time, and from time to time, following at least 2 business day's advance notice to the City for the purpose of conducting such inspections, tests, studies, analyses and activities as LCW reasonably deems appropriate (provided LCW shall not unreasonably disturb the operations of tenants in occupancy of space at the City Property ("**Occupancy Tenants**"). The cost of any such inspections, tests and studies shall be borne entirely by LCW. LCW shall provide to the City copies of all reports and studies received by LCW with respect to the City Property, within 5 business days after receipt thereof. The City shall not unreasonably withhold or delay its consent to LCW's performance of any invasive testing of the City Property or any Improvements, and LCW shall promptly restore to its original condition any City Property or Improvements which are damaged or otherwise modified or affected by any testing made by the LCW or its contractors or agents.

(c) In connection with the examination of the City Property during the LCW Due Diligence Period, within 3 business days after the Effective Date, to the extent not heretofore delivered, the City shall provide to LCW copies of all documents (including electronic versions) in the City's possession or control relating to the City Property (other than proprietary or privileged documents) including those documents described in Exhibit E-1 attached hereto (collectively, the "**City Property Documents**"). Among other things, the City shall provide to LCW within 3 business days after the Effective Date a true, correct, and complete rent roll (the "**Rent Roll**") with respect to (i) the letter agreement between the City of Long Beach and Harbor Diesel and Equipment, Inc., dated December 18, 2008, and (ii) the Right of Entry Agreement between the City of Long Beach and the South Coast Air Quality Management District dated as of February 16, 2007 (collectively, the "**Leases**"), on the City Property, which Rent Roll shall include the name of each tenant, the space leased, the execution date, commencement date, and expiration date of the Lease, the current monthly rent, the month upon which rent is payable, the last date on which rent was received and the date through which rent has been paid, whether the tenant is delinquent or current, the amount of the original security deposit, and the current balance of the security deposit, along with true, correct and complete copies of all written Leases.

(d) If it is found by LCW that any documents or records were omitted from such delivery of the City Property Documents, then the City shall use commercially reasonable efforts to deliver them to LCW within 3 business days after receipt of notice from LCW. LCW may terminate this Agreement at any time before expiration of the LCW Due Diligence Period, at LCW's commercially reasonable discretion, by written notice to the City. Such notice shall set forth, in reasonable detail, the basis for LCW's termination, which shall be based only on reasonable disapproval of facts concerning the City Property determined by LCW during the LCW Due Diligence Period. If LCW elects, at any time during the LCW Due Diligence Period, to terminate this Agreement, then LCW and the City shall have no further obligation to the other (except to the extent expressly provided herein to the contrary).

(e) LCW shall indemnify, protect, defend, and forever save and hold harmless the City, and the City's councilmembers, employees, directors, officers, contractors and agents from and against any liability, loss, damages and costs and expenses (including attorneys fees), demands, causes of action, claims or judgments (collectively, "**Liabilities or Losses**"), arising from or occurring out of any damage to the City Property or the Improvements thereon, as a result of any accident or other occurrence at the City Property that arises out of LCW's inspections pursuant to this Section, except to the extent any such Liabilities or Losses arise by reason of the City's or its agents', tenants' and invitees' gross negligence or intentional misconduct, and LCW shall promptly restore to its original condition the City Property or improvements which are damaged or otherwise modified or affected by any testing made by LCW or its contractors or agents (reasonable wear and tear excepted). The indemnity set forth in this paragraph shall survive Closing for a period of 6 months. In addition, this indemnification shall survive termination of this Agreement for any reason, and may be enforced under applicable law as permitted by applicable statutes. LCW shall not be liable to the City by reason of any reduction in value of the City Property resulting from the discovery or disclosure of any Hazardous Substances on, or defects to, the City Property existing prior to LCW's or its agents' entry on the City Property.

6. **City Due Diligence Period/Access to the LCW Property.**

(a) The City shall have an inspection period (the "**City Due Diligence Period**") commencing with the Effective Date and expiring on the date that is 30 days after the

Effective Date, to perform such tests, inspections, document review, due diligence studies and investigations on the LCW Property as the City deems necessary in its sole discretion.

(b) During the City Due Diligence Period, the City and its representatives shall have the right to enter onto the LCW Property at any time, and from time to time, following at least 2 business day's advance notice to LCW for the purpose of conducting such inspections, tests, studies, analyses and activities as the City reasonably deems appropriate. Notwithstanding the foregoing, prior to the Close of Escrow (including during the City Due Diligence Period), the City shall not perform a wetlands delineation study on the LCW Property. The cost of any such inspections, tests and studies shall be borne entirely by the City. The City shall provide to LCW copies of all reports and studies received by the City with respect to the LCW Property, within 5 business days after receipt thereof. LCW shall not unreasonably withhold or delay its consent to the City's performance of any invasive testing of the LCW Property or any improvements located thereon, and the City shall promptly restore to its original condition the LCW Property or improvements which are damaged or otherwise modified or affected by any testing made by the City or its contractors or agents.

(c) In connection with the examination of the LCW Property during the City Due Diligence Period, within 3 business days after the Effective Date, to the extent not heretofore delivered, LCW shall provide to the City copies of all documents (including electronic versions) in LCW's possession or control relating to the LCW Property (other than proprietary or privileged documents) including those documents described in Exhibit E-2 attached hereto (collectively, the "**LCW Property Documents**").

(d) If it is found by the City that any documents or records were omitted from such delivery of the LCW Property Documents, then LCW shall use commercially reasonable efforts to deliver them to the City within 3 business days after receipt of notice from the City. The City may terminate this Agreement at any time before expiration of the City Due Diligence Period, at the City's commercially reasonable discretion, by written notice to LCW. Such notice shall set forth, in reasonable detail, the basis for the City's termination, which shall be based only on reasonable disapproval of facts concerning the LCW Property determined by the City during the City Due Diligence Period. If the City elects, at any time during the City Due Diligence Period, to terminate this Agreement, then the City and LCW shall have no further obligation to the other (except to the extent expressly provided herein to the contrary).

(e) The City shall indemnify, protect, defend, and forever save and hold harmless LCW, and LCW's employees, members, partners, directors, officers, contractors and agents from and against any Liabilities or Losses arising from or occurring out of any damage to the LCW Property or the Improvements thereon, as a result of any accident or other occurrence at the LCW Property that arises out of the City's inspections pursuant to this Section, except to the extent any such Liabilities or Losses arise by reason of LCW's or its agents', tenants' and invitees' gross negligence or intentional misconduct. The indemnity set forth in this paragraph shall survive Closing for a period of 6 months. In addition, this indemnification shall survive termination of this Agreement for any reason, and may be enforced under applicable law as permitted by applicable statutes. The City shall not be liable to LCW by reason of any reduction in value of the LCW Property resulting from the discovery or disclosure of any Hazardous Substances on, or defects to, the LCW Property existing prior to the City's or its agents' entry on the LCW Property.

7. Title.

(a) **The City Property.** The City shall use commercially reasonable efforts to cause Chicago Title Company (the "**Title Company**") to deliver a preliminary title report (a "**PTR**") to LCW for the City Property within 7 business days after the Effective Date, together with all documents for the City Property referred to in the PTR. In addition, the City shall provide LCW with any existing ALTA survey of the City Property ("**Existing City Property Survey**"). LCW shall have the right, at its expense, to cause an ALTA survey of the City Property to be prepared ("**New City Property Survey**", such New City Property Survey and Existing City Property Survey being referred to collectively as the "**City Property Surveys**"). On or before the close of business on the date that is 10 business days prior to expiration of the LCW Due Diligence Period (the "**LCW Title Contingency Period**"), LCW shall either disapprove in writing the exceptions contained in the PTR and the City Property Surveys to which LCW objects, or approve the exceptions. Notwithstanding anything provided in this Agreement to the contrary, all monetary liens and encumbrances, except for current real property taxes and assessments not yet due and payable, shall be paid by the City at Closing. LCW's failure to timely disapprove the PTR and City Property Surveys shall be deemed to be LCW's disapproval of the PTR and City Property Surveys and all exceptions listed therein. Exceptions not disapproved by LCW, and any exceptions created by LCW at Closing, are referred to herein as "**LCW Permitted Exceptions.**" If LCW objects in writing to any exceptions, the City shall within 3 business days after receipt of LCW's written objections, deliver to LCW written notice that either (i) the City will remove by Closing the exceptions to which LCW has objected, or (ii) the City is unwilling or unable to eliminate such exceptions. If the City fails to so notify LCW or is unwilling or unable to remove such exceptions by the Closing, then LCW, within 3 business days thereafter, may (x) elect to terminate this Agreement, in which event the City and LCW shall have no further obligations under this Agreement (except as expressly set forth herein), or alternatively, (y) elect to acquire the City Property subject to such exceptions, which shall be deemed to be LCW Permitted Exceptions. If following LCW's approval of the PTR and the LCW Permitted Exceptions, the PTR is amended to reflect a change in the condition of title to the City Property which change is not immaterial, LCW shall, within 3 business days after receipt of such modification, either (i) terminate this Agreement, or (ii) waive such right to terminate. In that regard, LCW's failure to notify the City and Escrow Holder of LCW's election to terminate shall be deemed LCW's waiver of such election to terminate, and such additional title exceptions shall be considered LCW Permitted Exceptions.

(b) **The LCW Property.** LCW shall use commercially reasonable efforts to cause the Title Company to deliver a PTR to the City for the LCW Property within 7 business days after the Effective Date, together with all documents for the LCW Property referred to in the PTR. In addition, LCW shall provide the City with any existing ALTA survey of the LCW Property ("**Existing LCW Property Survey**"). The City shall have the right, at its expense, to cause an ALTA survey of the LCW Property to be prepared ("**New LCW Property Survey**", such New LCW Property Survey and Existing LCW Property Survey being referred to collectively as the "**LCW Property Surveys**"). On or before the close of business on the date that is 10 business days prior to the expiration of the City Due Diligence Period (the "**City Title Contingency Period**"), the City shall either disapprove in writing the exceptions contained in the PTR and the LCW Property Surveys to which the City objects, or approve the exceptions. Notwithstanding anything provided in this Agreement to the contrary, all monetary liens and encumbrances, except for current real property taxes and assessments not yet due and payable, shall be released from the LCW Property at Closing. The City's failure to timely disapprove the PTR and LCW Property Surveys shall be deemed to be the City's disapproval of the PTR and the LCW Property Surveys and all exceptions listed therein. Exceptions not disapproved by the City, and any exceptions created by the City at Closing, are referred to herein as "**City Permitted Exceptions.**" If the City objects to any exceptions, then LCW shall

within 3 business days after receipt of the City's objections, deliver to the City written notice that either (i) LCW will remove by Closing the exceptions to which the City has objected, or (ii) LCW is unwilling or unable to eliminate such exceptions. If LCW fails to so notify the City or is unwilling or unable to remove such exceptions by the Closing, then the City, within 3 business days thereafter, may (x) elect to terminate this Agreement, in which event the City and LCW shall have no further obligations under this Agreement (except as expressly set forth herein), or alternatively, (y) elect to acquire the LCW Property subject to such exceptions, which shall be deemed to be City Permitted Exceptions. If following the City's approval of the PTR and the City Permitted Exceptions, the PTR is amended to reflect a change in the condition of title to the LCW Property which change is not immaterial, the City shall, within 3 business days after receipt of such modification, either (i) terminate this Agreement, or (ii) waive such right to terminate. In that regard, the City's failure to notify LCW and Escrow Holder of the City's election to terminate shall be deemed the City's waiver of such election to terminate, and such additional title exceptions shall be considered City Permitted Exceptions.

(c) **Permitted Exceptions.** As used in this Agreement, the term "**Permitted Exceptions**" shall mean: (a) current real property taxes and regular assessments for the year in which the Closing occurs not yet due and payable; (b) any supplemental taxes, impositions, or assessments resulting from a Party's acquisition of any Property; (c) all covenants, conditions, restrictions, easements, rights-of-way, encroachments, non-monetary encumbrances, non-monetary title exceptions, and other non-monetary matters disclosed in any PTR or which are a matter of public record as of the Effective Date, except for such material title defects as to which a Party timely objects in writing, as provided in Sections 7(a) and 7(b) hereof, and does not thereafter waive such objection; (d) all easements, rights-of-way, shortages in area, encroachments, encumbrances, title exceptions, and other matters affecting any property such as would be disclosed or discoverable by the acquiring Party making a complete and thorough inspection and survey (conforming to minimum ALTA/ACSM standards) of the applicable Property at the time of Closing (except those disapproved by the applicable Party); (e) all the Leases described in Section 5(c), and (f) any rights set forth in the Mineral Grant Deed.

(d) **Title Policies.**

(i) **LCW Title Policies.** It shall be a condition of LCW's obligations under this Agreement, that at the Close of Escrow LCW's title to the City Property (or its designees' title) is insured by an ALTA Owner's Extended Coverage policy of title insurance issued by the Title Company in an amount equal to \$9,700,000, subject only to the LCW Permitted Exceptions with extended coverage and including an ALTA 3.1 zoning endorsement and a mechanic's lien endorsement, and such other endorsements as reasonably requested by LCW (the "**LCW Title Policies**"). The City shall pay the cost of a CLTA Owner's Standard Coverage policy of title insurance, and LCW shall pay the additional costs applicable to the upgrade to an ALTA policy of title insurance and any endorsements thereto. The LCW Title Policies shall omit survey exceptions if LCW has obtained a survey acceptable to the Title Company.

(ii) **City Title Policy.** It shall be a condition of the City's obligations under this Agreement, that at the Close of Escrow the City's title to the LCW Property (or its assignees' title) is insured by a CLTA Owner's Standard Coverage policy of title insurance issued by the Title Company in an amount equal to \$9,700,000, subject only to the City Permitted Exceptions, and such other endorsements as reasonably requested by the City (the "**City Title Policy**"). LCW shall pay the cost of a CLTA Owner's Standard Coverage policy of

title insurance, and the City shall pay the additional costs applicable to the upgrade to an ALTA policy of title insurance and any endorsements thereto.

8. Obligations During Escrow.

(a) From the Effective Date until the Closing Date, each Party shall continue to operate its property in the ordinary course of business as it exists on the Effective Date; provided, however, each Party covenants that, without the other Party's prior written consent, such Party shall not enter into any contract affecting its Property unless such contract is terminable without penalty by the owner of the applicable Property on no more than 30 days' notice (or, if there is a termination fee or penalty, then the Party entering into such contract shall bear the termination fee or penalty for any such new contract unless the acquiring Party gives its prior consent to such new contract or agrees to assume such new contract at the Closing). In any event, and without limiting the generality of the foregoing, the Parties agree that no Party shall lease, encumber, mortgage, or grant any easements in its Property prior to the Closing, nor shall any party amend, modify, or extend any Lease, nor enter into any new Lease prior to the Closing.

(b) To that end, the City shall, in its customary manner, perform all maintenance and repairs on the City Property, and generally shall operate, maintain and insure the City Property in the same manner in which the City is operating, maintaining and insuring the City Property as of the Effective Date. This obligation of the City shall include, without limitation, the performance of all obligations, as owner of the City Property, under any applicable contracts and Leases, and under any government approvals or licenses, any easements and other documents relating to the City Property.

(c) Except as provided below, each Party shall deliver the applicable property to the other Party at Closing substantially in the condition existing as of the Effective Date, subject to normal wear and tear and damage, but subject to change due to casualty or condemnation as described in Section 24.

(d) From and after the Effective Date, the City shall promptly provide to LCW copies of all monthly operating statements, if any, concerning the operation of the City Property. The City agrees that LCW may contact the City's or the City's managing agent's and supervisors to discuss the reports delivered to LCW and to discuss the operation of the City Property. The City agrees to cooperate fully with LCW and its representatives to apprise LCW of all matters relating to management of the City Property and to facilitate transition of management at the Closing. The City shall allow LCW's management personnel to work at the City Property with the City commencing 30 days prior to the Closing for the purpose of reviewing files and records, determining the exact amount of unpaid and prepaid bills and rents, and otherwise preparing to take over management of the City Property. In connection therewith, the City shall allow LCW reasonable access to all files and records during such period.

(e) The City shall give LCW prompt written notice of any "**Material Change**" (as hereinafter defined) of which the City receives notice. The City shall also give LCW prompt written notice of any material casualty or any actual or threatened condemnation affecting the City Property or if the City becomes aware of any of same. For purposes of this Section 8(e), "**Material Change**" shall mean the occurrence of any event or discovery of any fact that adversely affects the financial condition of the City in any material fashion such that the ability of the City to operate or convey the City Property is materially jeopardized; or would or could cause a material, adverse change in (i) the status of the zoning of the City Property, (ii)

environmental or other physical conditions of the City Property or the Improvements, (iii) casualty, or (iv) condemnation.

(f) The City shall continue to self-insure the City Property in accordance with its past practice.

(g) Each Party shall not deliberately commit any act which would result in any of the warranties or representations contained in this Agreement not being materially true or correct as of the Closing.

(h) Each Party shall not intentionally take or omit to take any action that would have the effect of violating any of such Party's representations, warranties and agreements contained in this Agreement.

(i) After reasonable advance notice to the City or its management company, the City shall furnish to LCW and its agents, employees, and representatives with reasonable access to the City Property and to examine and make copies of all items to which LCW was granted access during the LCW Due Diligence Period and assist any management transitions which would occur upon the Closing of this transaction.

(j) The City staff shall promptly after the Effective Date commence the steps required to request vacation of those portions of 14th Street, Cowles Street, 15th Street, 16th Street and 17th Street located within the City Property (as depicted in the maps attached hereto as Exhibit L), and shall use its best efforts thereafter to cause such vacation to be completed. If the City has not caused this vacation to be completed prior to the Close of Escrow, the City agrees to direct staff to diligently pursue the vacation of such streets after the Close of Escrow in an expeditious manner.

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 the northerly 5 acres (approximately) of the City Property from LCW for a period of 42 months, but without payment of any minimum rent for the first 6 months (though the City shall remain liable for all insurance, taxes, and operating costs and maintenance expenses), and thereafter at a monthly rent of ten cents (\$.10) per square foot per month, triple net. The Leaseback Lease shall be in the form attached hereto as Exhibit J.

10. **Conditions of LCW's Obligation to Close.**

(a) **Conditions.** LCW's obligation to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction or performance of the following terms and conditions, any one or more of which may be waived by LCW in its sole discretion, in whole or in part, on or as of the Closing Date:

(i) LCW's receipt, prior to expiration of the LCW Due Diligence Period, of estoppel certificates, in form and content acceptable to LCW in its reasonable discretion, from each tenant on any of the City Property;

(ii) The City shall have substantially kept, observed, performed, satisfied and complied with all material terms, covenants, conditions, agreements, requirements, restrictions and provisions required by this Agreement to be kept, observed, performed, satisfied or complied with by the City;

(iii) The irrevocable commitment of the Title Company to issue the LCW Title Policy with liability in the sum of \$9,700,000, subject only to the applicable LCW Permitted Exceptions;

(iv) All of the material representations and warranties of the City set forth in this Agreement shall be true and correct at and as of the Closing in all material respects as though such representations and warranties were made at and as of the Closing. The absence of any material litigation or other proceedings with respect to the City Property or otherwise affecting this transaction, except for any such litigation which LCW has, in a written notice delivered to the City on or before the Closing Date, expressly approved after full disclosure by the City with respect to such proceedings;

(v) If any of the parcels constituting the LCW Property or the City Property or any remaining property owned by LCW Partners contiguous to the LCW Property are not, or after the Closing would not be, legal parcels under the Subdivision Map Act, the City's concurrent issuance at Closing of a Certificate of Compliance (the "**Certificate of Compliance**"), in recordable form, certifying that (i) the remainder of the property owned by LCW of which the LCW Property is a part, and/or (ii) the City Property (as the case may be), is in compliance with the Subdivision Map Act;

(vi) LCW shall have received the written approval of this transaction from its lender, American Capital Financial Services, Inc. (or any successor in interest to such lender); and

(vii) The absence of any other material adverse change in the physical condition, tenancy, operations or financial condition of the City Property.

(b) **Failure of Conditions.** Upon the failure of any of the aforesaid conditions precedent, except in the event of a waiver or deemed waiver of such failed condition precedent by LCW, this Agreement shall terminate, all rights and obligations hereunder of each Party shall be at an end except for those obligations that expressly survive termination of this Agreement, including, without limitation, the provisions of Sections 5(e), 6(e), 12, 13, 14, 15, 18, 19, 20, 21, 22, 24, 25, 26, and 27 (the "**Surviving Obligations**").

11. **Conditions of the City's Obligation to Close.**

(a) **Conditions.** The City's obligation to consummate the transactions contemplated by this Agreement shall be subject to the satisfaction or performance of the following terms and conditions, (i) through (iv) of which may be waived by the City in its sole discretion, in whole in part, on or as of the Closing:

(i) LCW shall have substantially kept, observed, performed, satisfied and complied with all material terms, covenants, conditions, agreements, requirements, restrictions and provisions required by this Agreement to be kept, observed, performed, satisfied or complied with by LCW;

(ii) The irrevocable commitment of the Title Company to issue the City Title Policy with liability in the sum of \$9,700,000, subject only to the City Permitted Exceptions;

(iii) All of the material representations and warranties of LCW set forth in this Agreement shall be true and correct at and as of the Closing in all material respects as though such representations and warranties were made at and as of the Closing. The absence of any material litigation or other proceedings with respect to the LCW Property or otherwise affecting this transaction, except for any such litigation which the City has, in a written notice delivered to LCW on or before the Closing Date, expressly approved after full disclosure by LCW with respect to such proceedings;

(iv) The absence of any other material adverse change in the physical condition of the LCW Property; and

(v) The City Council of the City shall have approved the removal from this transaction of (i) approximately 4 acres owned by LCW north of 2nd Street, and (ii) approximately 2.7 southerly acres owned by the City (APN 7271-007-902).

(b) **Failure of Conditions.** Upon the failure of any of the aforesaid conditions precedent, except in the event of a waiver or deemed waiver of such failed condition precedent by the City, this Agreement shall terminate, all rights and obligations hereunder of each Party shall be at an end except for the Surviving Obligations.

12. **Representations and Warranties of the City.** The City represents and warrants the following, each of which are true and correct as of the Effective Date. All such warranties and representations shall survive the Closing for 1 year:

(a) **Conflicts.** The execution of and performance under this Agreement does not and will not conflict with the terms of any agreement to which the City is a party. There is no agreement to which the City is a party which is binding on the City which is in conflict with the execution of or performance under this Agreement or with the obligations imposed upon or rights granted to the City hereunder.

(b) **Contractors and Suppliers.** All contractors, subcontractors, suppliers, architects, engineers and others who have performed services or labor or supplied material in connection with the City's ownership or management of the City Property have been paid in full and all liens arising therefrom (or claims which with the passage of time or notice or both could mature into liens) have been satisfied and released or will be satisfied and released as of Closing.

(c) **Pending Actions.** There is no litigation, action or proceeding pending or, to the City's knowledge, threatened against or pertaining to the City Property or any incident thereon, or which challenges or impairs the City's ability to execute, deliver or perform under this Agreement.

(d) **Rent Roll.** Except for the Leases described in Section 5(c), there are no occupancy Leases otherwise affecting the City Property, and no person, other than tenants under the Leases and subject to the Permitted Exceptions, has any right of possession of all or any portion of the City Property. The Leases have not been amended nor the terms thereof extended. Except as otherwise specifically and expressly set forth in the Rent Roll for the City Property or as disclosed with the City Property Documents: no presently outstanding rent concessions have been given to any tenants; no rent has been paid in advance by any tenants respecting a period subsequent to the Closing (except for the month in which the Closing occurs); no tenants have any claim against the City for any security deposit or other deposits or

interest thereon, other than pursuant to the terms of its Lease with respect to sums specified as security deposits in the Rent Roll; no tenants have any options or rights of first refusal to purchase or to extend or renew their Leases or rent additional space; there are no leasing or other commissions due, nor will any become due, in connection with any Lease, any renewal or extension of any Lease for which the City is not responsible; and there are no future improvement, decoration or alteration obligations of the landlord under any of the Leases (or any obligation to contribute to the cost thereof).

(e) **Service Contracts.** There are no management, service, supply, equipment, rental or similar agreements affecting the City Property that shall survive the Closing other than those that may be approved by LCW, in writing, prior to the expiration of the LCW Due Diligence Period (if any, the "**Approved Contracts**"). The list and copies of contracts provided to LCW are true, correct and complete. Neither the City nor, to the City's actual knowledge, any other Party is in default with respect to any of its material obligations or liabilities pertaining to the contracts. Notwithstanding anything herein to the contrary the City shall terminate any property management agreement with the current property manager as of the Closing Date.

(f) **Operating Statements.** The Operating Statements, if any, for the City Property show all items of income and expense (operating and capital) incurred in connection with the City's ownership, operation and management of the City Property for the periods indicated and are true, correct and complete in all material respects.

(g) **Notice of Violations.** To the City's actual knowledge, except as disclosed in the City Property Documents, neither the City Property nor the use thereof violates or is an illegal non-conforming use with respect to any state or local laws, statutes, ordinances, codes, decrees, rules or regulations (collectively, "**Codes**").

(h) **Real Estate Taxes and Assessments.** There are not presently pending any special assessments, or material governmental or quasi-governmental (*i.e.*, a body or entity deriving its authority from legislative or governmental enactments) fees or charges of any nature with respect to the City Property or any part thereof, nor are any such assessments, fees or charges which would be applicable to the City Property being contemplated.

(i) **Condemnation.** To the City's actual knowledge, no condemnation or other governmental taking proceedings and no zoning changes relating to the City Property are pending or threatened, other than with respect to that certain moratorium evidenced by City Ordinance 08-0035 and the potential disposition or extension thereof.

(j) **Insurer Notices.** The City has not received any notice from any insurance company or board of fire underwriters of any defects or inadequacies respecting the City Property which would adversely affect the insurability of the City Property or cause an increase in the premiums for the City Property which have not been cured or repaired to the satisfaction of the Party issuing the notice.

(k) **Property Documents.** Each of the City Property Documents delivered to LCW pursuant to Section 5 hereof is a true, accurate, current, and complete copy of the document which it purports to represent, in all material respects.

(l) **No Hazardous Substances.** Except for those matters set forth in the environmental studies and reports described on Exhibit F-1 attached hereto, to the actual

knowledge of the City there are no toxic or hazardous substances at actionable levels which have been generated, stored, treated or disposed of, or otherwise deposited in, on or about the City Property (including, without limitation, the surface and subsurface waters of the City Property) in violation of applicable laws, and no substances or conditions exist in or on the City Property which would support a claim or cause of action under any federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements.

For purposes of this Section, "knowledge," "actual knowledge" or words to that effect, shall mean the actual current knowledge of Del Davis, the staff member of the City who is responsible for the activities on the City Property, without inquiry or investigation. All the foregoing representations and warranties shall be true or correct as of the Closing, but if prior to the Closing, the City becomes aware that any representation or warranty set forth in this Agreement that was true and correct when first made has become incorrect due to changes in conditions or the discovery by the City of information of which the City was unaware on the Effective Date, then the City shall promptly notify LCW thereof, and if any of such change is material, then LCW shall then have 15 days after receipt of such notice to accept the new information, or to elect to terminate this transaction.

13. **Representations and Warranties of LCW.** LCW represents and warrants the following, each of which are true and correct as of the Effective Date. All such warranties and representations shall survive the Closing for 1 year:

(a) **Conflicts.** The execution of and performance under this Agreement does not and will not conflict with the terms of any of agreement to which LCW is a party. There is no agreement to which LCW is a party which is binding on LCW which is in conflict with the execution of or performance under this Agreement or with the obligations imposed upon or rights granted to LCW hereunder.

(b) **Contractors and Suppliers.** All contractors, subcontractors, suppliers, architects, engineers and others who have performed services or labor or supplied material in connection with LCW's ownership or management of the LCW Property have been paid in full and all liens arising therefrom (or claims which with the passage of time or notice or both could mature into liens) have been satisfied and released or will be satisfied and released as of Closing.

(c) **Pending Actions.** There is no litigation, action or proceeding pending or, to LCW's knowledge, threatened against or pertaining to the LCW Property or any incident thereon, or which challenges or impairs LCW's ability to execute, deliver or perform under this Agreement.

(d) **Service Contracts.** Except as disclosed by LCW to the City during the City Due Diligence Period, there are no management, service, supply, equipment, rental or similar agreements that shall be the obligation of the owner of the LCW Property that shall survive the Closing. The list and copies of contracts provided to the City are true, correct and complete. Neither LCW nor, to LCW's actual knowledge, any other Party is in default with respect to any of its material obligations or liabilities pertaining to the contracts. Notwithstanding anything herein to the contrary LCW shall terminate any property management agreement with the current property manager as of the Closing Date.

(e) **Notice of Violations.** To LCW's actual knowledge, except as disclosed in the LCW Property Documents, neither the LCW Property nor the use thereof violates or is an illegal non-conforming use with respect to any Codes.

(f) **Real Estate Taxes and Assessments.** There are not presently pending any special assessments, or material governmental or quasi-governmental (*i.e.*, a body or entity deriving its authority from legislative or governmental enactments) fees or charges of any nature with respect to the LCW Property or any part thereof, nor are any such assessments, fees or charges which would be applicable to the LCW Property being contemplated.

(g) **Condemnation.** To LCW's actual knowledge, no condemnation or other governmental taking proceedings and no zoning proceedings relating to the LCW Property are pending or threatened.

(h) **Insurer Notices.** LCW has not received any notice from any insurance company or board of fire underwriters of any defects or inadequacies respecting LCW Property which would adversely affect the insurability of LCW Property or cause an increase in the premiums for LCW Property which have not been cured or repaired to the satisfaction of the Party issuing the notice.

(i) **Property Documents.** To LCW's actual knowledge, each of the LCW Property Documents delivered to the City pursuant to Section 6 hereof is a true, accurate, current, and complete copy of the document which it purports to represent, in all material respects.

(j) **No Hazardous Substances.** Except for those matters set forth in the environmental studies and reports described on Exhibit F-2 attached hereto, to the actual knowledge of LCW, there are no toxic or hazardous substances at actionable levels which have been generated, stored, treated or disposed of, or otherwise deposited in, on or about the LCW Property (including, without limitation, the surface and subsurface waters of the LCW Property) in violation of applicable laws, and no substances or conditions exist in or on the LCW Property which would support a claim or cause of action under any federal, state or local environmental statutes, regulations, ordinances or other environmental regulatory requirements.

For purposes of this Section, "knowledge," "actual knowledge" or words to that effect, shall mean the actual current knowledge of Thomas Dean or Jeff Berger, principals of LCW, without inquiry or investigation. All the foregoing representations and warranties shall be true or correct as of the Closing, but if prior to the Closing, LCW becomes aware that any representation or warranty set forth in this Agreement that was true and correct when first made has become incorrect due to changes in conditions or the discovery by LCW of information of which LCW was unaware on the Effective Date, then LCW shall promptly notify the City thereof, and if any of such change is material, then the City shall then have 15 days after receipt of such notice to accept the new information, or to elect to terminate this transaction.

14. **Indemnity.** The City hereby agrees to indemnify, defend, protect, and hold LCW harmless from any and all Liabilities and Losses, arising out of any breach by the City of its obligations as landlord under the Leases affecting the City Property, or with respect to security deposits held by the City under the Leases and any new Leases approved by LCW after the Effective Date (although nothing contained herein shall be construed to imply that LCW has any duty to approve any new Leases after the Effective Date), that occur or accrue prior to the Closing, and any other third party claims which arise from events occurring in, on, or about the

City Property prior to the Closing (including, without limitation, claims of mechanics' liens for work performed or commenced for the City or on the City's behalf prior to Closing), except to the extent arising by reason of LCW's or its agents, tenants and invitees gross negligence or intentional misconduct. LCW hereby agrees to indemnify, defend, protect, and hold the City harmless from any and all Liabilities and Losses, from any third party claims which arise from events occurring in, on, or about the City Property from and after the Closing, except with respect to the City's exercise of the Excluded Rights and except to the extent arising by reason of the City's or its agents, tenants and invitees gross negligence or intentional misconduct, and except with respect to any portion of the City Property leased to the City under the Leaseback Lease. Notwithstanding any provision of this Agreement to the contrary, the covenants set forth in this Section shall expressly survive Closing.

15. **No Brokers.** Neither Party is aware of any broker or finder to whom a fee or commission may be due by reason of this transaction. To this end, each Party hereby agrees to indemnify, defend, protect and hold the other harmless from and against any liability, cause of action, claim, loss, cost, damage and/or expense, including, without limitation, attorneys' fees and costs and court costs arising out of or incurred in connection with any claim by any broker or finder for any such commission, fee or like payment providing that the person or entity making any such claim alleges that such claim arose out of acts or dealings of the indemnifying Party. Notwithstanding any provision of this Agreement to the contrary, the representations, warranties and agreements set forth in this Section shall expressly survive Closing or the termination of this Agreement.

16. **Closing Adjustments.** The following items shall be prorated and adjusted as of the date of Closing: (a) any prepaid expenses, costs, deposits, fees, premiums or similar charges for Approved Contracts assumed by LCW, maintenance agreements, and licenses which are assigned to LCW or LCW elects to accept shall be adjusted (any deposits shall be credited in full to the City); (b) real property taxes and the current installment of any assessments and similar taxes and levies assessable against any Property, which shall be prorated between the Parties for the applicable tax year based on the most recent ascertainable taxes (and subject to reparation after closing within 5 days following issuance of the final tax bill for each year reparation were calculated); (c) all refundable deposits placed with utility companies shall be withdrawn by the Party who has made the deposit, and it shall be the duty of acquiring Party with respect to any Property to place its own utility deposits at the time of Closing (unless the Parties agree to the contrary); (d) the Parties shall request a reading of utility meters as of the date of Closing, and all charges for water, gas, electric and other service up to the date of Closing shall be paid by the transferring Party, and thereafter by the acquiring Party; (e) the City shall deliver all tenant security deposits to LCW through Escrow; and (f) all rents paid in advance shall be prorated. All reserve amounts held by third parties with respect to the City Property that shall accrue after the Closing to LCW's benefit shall be transferred by such third parties to and disbursed to the City at Closing. With respect to the City Property, rents in arrears, and other sums receivable that are paid in arrears, will not be prorated, but will be paid to the City by LCW as collected by LCW. LCW assumes no obligation to collect or enforce the payment of any such monies that may be owing to the City as of Closing. Notwithstanding anything herein to the contrary, the City shall have the right to take legal action against tenants prior to Closing of this transaction to collect delinquent rent and other charges, including termination, of Leases and/or the eviction or other removal of a delinquent tenant, without first obtaining LCW's prior written approval. Further, the City shall have the right to collect or enforce the payment of any rents or other charges due the City following the Closing of this transaction, although the City shall not have the right to pursue any actions for termination of Leases or possession of premises of delinquent tenants.

17. **Closing Deliveries and Costs.**

- (a) At Closing, the City shall deliver to Escrow Holder, for delivery to LCW:
- (i) a grant deed to the City Property, subject only to the LCW Permitted Exceptions and the Excluded Rights, in the form attached hereto as Exhibit C-2;
 - (ii) the fully executed and notarized SURGE Agreement;
 - (iii) the City's certificate stating that the Rent Roll is true in all material respects as of the Closing, and showing that there has been no material adverse change in the Rent Roll originally approved by LCW, unless consented to by LCW;
 - (iv) all sums required to prorate or adjust sums as provided in this Agreement, including all security deposits;
 - (v) the fully executed City closing statement (to be delivered to Escrow Holder only);
 - (vi) a non-foreign person affidavit;
 - (vii) an Assignment and Assumption of Leases (concerning the Leases on the City Property) in the form attached hereto as Exhibit G;
 - (viii) a bill of sale without warranty transferring to LCW all personalty included in the City Property in the form attached hereto as Exhibit H;
 - (ix) to the extent not previously delivered, the originals of the Leases and Approved Contracts assigned to LCW; the City Property operating records, if any, including copies or originals of all books and records of account, contracts, leasing correspondence, receipts for deposits, unpaid bills and other similar papers or documents which pertain to the City Property; all available operating manuals, equipment warranties, and the like; all advertising materials, booklets, and other similar items, if any, used in the promotion of the City Property; all keys and combinations to locks; and all available architectural or construction plans, specifications and working drawings for the Improvements. The City's obligations under this Paragraph shall survive the Closing;
 - (x) An Environmental Indemnity and Access Agreement [San Francisco Yard], substantially in the form attached hereto as Exhibit K-1 (the "City Environmental Indemnity");
 - (xi) an assignment of all Approved Contracts, in the form attached hereto as Exhibit I;
 - (xii) two fully executed originals of the Leaseback Lease in the form attached hereto as Exhibit J;
 - (xiii) the original Certificate(s) of Compliance (if any); and

(xiv) any and all authority documents that may be reasonably necessary in connection with the consummation of the transactions contemplated by this Agreement.

In addition, the City shall deliver to Escrow Holder all sums required by Section 7(d)(i) with respect to title insurance premiums to be paid by the City, the cost of any title endorsements requested by the City, recording fees with respect to the deed conveying the LCW Property to the City, all transfer taxes arising by reason of the conveyance of the City Property to LCW, and one-half of the escrow fees and costs.

(b) At Closing, LCW shall deliver to Escrow Holder, for delivery to the City:

(i) a grant deed for the LCW Property, subject only to the City Permitted Exceptions (including the SURGE Agreement), in the form attached hereto as Exhibit C-1;

(ii) the fully executed and notarized SURGE Agreement;

(iii) the fully executed LCW closing statement (to be delivered to Escrow Holder only);

(iv) a non-foreign person affidavit;

(v) a fully executed counterpart of the Assignment and Assumption of Leases with respect to the City Property, in the form attached hereto as Exhibit G;

(vi) an assumption of the any Approved Contracts, in the form attached hereto as Exhibit I;

(vii) two fully executed originals of the Leaseback Lease in the form attached hereto as Exhibit J;

(viii) An Environmental Indemnity and Access Agreement [Oil and Gas Property], substantially in the form attached hereto as Exhibit K-2 (the "**LCW Environmental Indemnity**");

(ix) any and all authority documents as may be reasonably necessary in connection with the consummation of the transactions contemplated by this Agreement; and

(x) an endorsement to LCW's existing environmental insurance policy covering the LCW Property adding the City as an additional insured.

In addition, LCW shall deliver to Escrow Holder all sums required by Section 7(d)(ii) with respect to title insurance premiums to be paid by LCW, the cost of any title endorsements requested by LCW, any recording fees with respect to the deed conveying the City Property to LCW, all transfer taxes arising by reason of the conveyance of the LCW Property to the City, and one-half of the escrow fees and costs.

(c) At Closing, Escrow Holder shall record the grant deeds to the City Property and the LCW Property, the SURGE Agreement, and the Certificate(s) of Compliance.

(d) If there shall remain any matter to be done which shall not have been completed prior to Closing, then both Parties agree with the other to take such steps as may be reasonably necessary after Closing in order to complete such matters as soon as practicable. Each Party shall bear its own accounting and attorney's fees.

18. **"AS IS" CONVEYANCE OF THE LCW PROPERTY.** Except as otherwise provided in this Agreement (including, without limitation, the provisions of Section **Error! Reference source not found.**, below), the SURGE Agreement or the LCW Environmental Indemnity:

(a) THE CITY SHALL BE ACQUIRING THE LCW PROPERTY "AS IS, WHERE IS", WITH ALL FAULTS AND DEFECTS, AND IN ITS EXISTING CONDITION. THE CITY COVENANTS, REPRESENTS AND WARRANTS TO LCW THAT THE CITY WILL, BY THE EXPIRATION OF THE CITY DUE DILIGENCE PERIOD, HAVE MADE OR HAVE WAIVED ALL INSPECTIONS OF AND OTHER DUE DILIGENCE REGARDING THE PHYSICAL, LEGAL OR TITLE CONDITION OF THE LCW PROPERTY THAT THE CITY BELIEVES ARE NECESSARY TO PROTECT ITS OWN INTEREST IN, AND ITS CONTEMPLATED USE OF, THE LCW PROPERTY. FURTHER, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES OF LCW SET FORTH IN THIS AGREEMENT, AND EXCEPT FOR THE EXPRESS COVENANTS BY LCW SET FORTH IN THE SURGE AGREEMENT AND THE LCW ENVIRONMENTAL INDEMNITY, THE CITY ACKNOWLEDGES THAT NO REPRESENTATIONS, INDUCEMENTS, PROMISES, AGREEMENTS, ASSURANCES, WHETHER ORAL OR WRITTEN AND EXPRESS OR IMPLIED, CONCERNING THE LCW PROPERTY OR OTHERWISE, HAVE BEEN MADE BY LCW, OR RELIED UPON BY THE CITY. THE CITY FURTHER ACKNOWLEDGES AND AGREES THAT IT IS A SOPHISTICATED PARTY EXPERIENCED IN EVALUATING AND PURCHASING PROPERTIES LIKE THE LCW PROPERTY.

(b) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THE CITY ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SURGE AGREEMENT AND THE LCW ENVIRONMENTAL INDEMNITY, LCW HAS NOT MADE, AND HEREBY SPECIFICALLY NEGATES AND DISCLAIMS, ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, CONCERNING: (I) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, OR FITNESS OF OR FOR A PARTICULAR PURPOSE OF THE LCW PROPERTY; (II) THE MANNER, QUALITY, STATE OF REPAIR, OR LACK OF REPAIR OF THE LCW PROPERTY; (III) THE NATURE, QUALITY, OR CONDITION OF THE LCW PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE WATER, CONSTRUCTION, SOILS, HYDROLOGY, AND GEOLOGY; (IV) THE COMPLIANCE OF OR BY THE LCW PROPERTY OR ITS OPERATION WITH BUILDING CODES, LAWS, RULES, ORDINANCES, OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, INCLUDING, WITHOUT LIMITATION, WHETHER OR NOT ANY OR ALL IMPROVEMENTS ARE IN COMPLIANCE WITH PAST, CURRENT OR FUTURE BUILDING CODES, AND WHETHER OR NOT ANY OR ALL IMPROVEMENTS (OR COMPONENTS THEREOF) MAY OR MAY NOT HAVE BEEN CONSTRUCTED WITH APPLICABLE PERMITS; (V) THE MANNER OR QUALITY OF THE IMPROVEMENTS ON THE LCW PROPERTY OR THE CONSTRUCTION, GRADING, DRAINAGE, OR COMPACTION THEREOF; (VI) COMPLIANCE OF THE LCW PROPERTY (INCLUDING, WITHOUT LIMITATION, THE IMPROVEMENTS), WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION, OR LAND USE LAWS, RULES, OR REGULATIONS, OF EVERY KIND AND NATURE; (VII) COMPLIANCE WITH THE FEDERAL LAW KNOWN AS THE AMERICANS WITH DISABILITIES ACT, INCLUDING ANY REGULATIONS AND RULES ADOPTED

THEREUNDER BY THE STATE OF CALIFORNIA AND/OR LOCAL GOVERNMENTAL BODIES OR AGENCIES OR COMPARABLE STATE STATUTES (COLLECTIVELY, "ADA"); (VIII) THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES AT, IN, ON, AROUND OR UNDER THE LCW PROPERTY (THOUGH LCW INFORMS THE CITY THAT THE LCW PROPERTY IS USED FOR THE EXTRACTION OF OIL AND GAS AND THERE IS A LIKELIHOOD THAT SAME IS CONTAMINATED BY REASON THEREOF AND THERE MAY BE PCB'S AND OTHER TOXIC MATERIALS OF THE TYPE USED IN CONSTRUCTING THE IMPROVEMENTS IN THE YEARS IN WHICH THE IMPROVEMENTS WERE CONSTRUCTED); (IX) THE CONFORMITY OF THE LCW PROPERTY TO APPLICABLE ZONING, LAND USE ENTITLEMENTS OR OTHER BUILDING CODE OR USE REQUIREMENTS; (X) WHETHER THERE IS ADEQUATE PARKING AT THE LCW PROPERTY; OR (XI) THE FACT THAT THE LCW PROPERTY, OR A PART THEREOF, SHALL BE LOCATED ON OR NEAR AN EARTHQUAKE FAULT LINE, FLOOD INUNDATED AREA, OR OTHER HAZARDOUS ZONE OF ANY KIND.

(c) The City acknowledges that extensive local, state and Federal legislation establish broad liability upon owners and/or users of real property for the investigation and remediation of a Hazardous Substance Condition. The determination of the existence of a Hazardous Substance Condition and the evaluation of the impact of such a condition are highly technical. Therefore, except if, and then only to the limited extent expressly set forth in this Agreement, the SURGE Agreement or the LCW Environmental Indemnity, the City acknowledges that at the time of expiration of the City Due Diligence Period, the City shall have consulted its own technical and legal experts with respect to any possible Hazardous Substance Condition aspects of the LCW Property or adjoining properties, and the City is not relying upon any investigation by or statement of LCW or any person or entity representing LCW with respect thereto. A "**Hazardous Substance**" for purposes of this Agreement is defined as any substance whose nature and/or quantity of existence, use, manufacture, disposal or effect, render it subject to Federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or welfare. A "**Hazardous Substance Condition**" for purposes of this Section 18 is defined as the existence on, under or relevantly adjacent to the LCW Property of a Hazardous Substance that would require remediation and/or removal under applicable Federal, state or local law.

(d) THE CITY HEREBY ACKNOWLEDGES THAT IT SHALL CONSULT AND RETAIN ITS OWN EXPERTS TO ADVISE AND REPRESENT IT CONCERNING THE LEGAL AND INCOME TAX EFFECTS OF THIS AGREEMENT, AS WELL AS THE PHYSICAL CONDITION OF THE LCW PROPERTY, THE IMPROVEMENTS AND EQUIPMENT THEREIN, THE SOIL THEREOF, THE CONDITION OF TITLE THERETO, ANY SURVEY, THE ENVIRONMENTAL ASPECTS THEREOF, THE INTENDED AND/OR PERMITTED USAGE THEREOF, THE OUTSTANDING OTHER AGREEMENTS, IF ANY, WITH RESPECT THERETO AND THE EXISTING OR CONTEMPLATED FINANCING THEREOF, AND THAT LCW IS NOT RESPONSIBLE FOR ANY SUCH MATTER, EXCEPT IF AND THEN ONLY TO THE LIMITED EXTENT EXPRESSLY SET FORTH IN THIS AGREEMENT, THE SURGE AGREEMENT OR THE LCW ENVIRONMENTAL INDEMNITY.

(e) NOTWITHSTANDING THE FOREGOING, HOWEVER, (1) IN THE EVENT OF A CONFLICT BETWEEN THE PROVISIONS OF THIS AGREEMENT AND THE SURGE AGREEMENT, THE PROVISIONS OF THE SURGE AGREEMENT SHALL CONTROL; AND (2) IN THE EVENT OF A CONFLICT BETWEEN THE PROVISIONS OF THIS AGREEMENT OR THE LCW ENVIRONMENTAL INDEMNITY, THE PROVISIONS OF THE LCW ENVIRONMENTAL INDEMNITY SHALL CONTROL.

(f) LCW acknowledges that the intent of the City is to ensure that, between the LCW Environmental Indemnity and the SURGE Agreement, the City shall be indemnified for liabilities in connection with the presence of Hazardous Substances at the LCW Property arising from Oil and Gas Operations that occurred at the LCW Property both before and after the Closing Date.

19. **"AS IS" CONVEYANCE OF THE CITY PROPERTY.** Except as provided otherwise in this Agreement or the City Environmental Indemnity:

(a) LCW SHALL BE ACQUIRING THE CITY PROPERTY "AS IS, WHERE IS", WITH ALL FAULTS AND DEFECTS, AND IN ITS EXISTING CONDITION. LCW COVENANTS, REPRESENTS AND WARRANTS TO THE CITY THAT LCW WILL, BY THE EXPIRATION OF LCW DUE DILIGENCE PERIOD, HAVE MADE OR HAVE WAIVED ALL INSPECTIONS OF AND OTHER DUE DILIGENCE REGARDING THE PHYSICAL, LEGAL OR TITLE CONDITION OF THE CITY PROPERTY THAT LCW BELIEVES ARE NECESSARY TO PROTECT ITS OWN INTEREST IN, AND ITS CONTEMPLATED USE OF, THE CITY PROPERTY. FURTHER, EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES OF THE CITY SET FORTH IN THIS AGREEMENT AND THE CITY ENVIRONMENTAL INDEMNITY, LCW ACKNOWLEDGES THAT NO REPRESENTATIONS, INDUCEMENTS, PROMISES, AGREEMENTS, ASSURANCES, WHETHER ORAL OR WRITTEN AND EXPRESS OR IMPLIED, CONCERNING THE CITY PROPERTY OR OTHERWISE, HAVE BEEN MADE BY THE CITY, OR RELIED UPON BY LCW. LCW FURTHER ACKNOWLEDGES AND AGREES THAT IT IS A SOPHISTICATED PARTY EXPERIENCED IN EVALUATING AND PURCHASING PROPERTIES LIKE THE CITY PROPERTY.

(b) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LCW ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, AND EXCEPT AS SET FORTH IN THE CITY ENVIRONMENTAL INDEMNITY, THE CITY HAS NOT MADE, AND HEREBY SPECIFICALLY NEGATES AND DISCLAIMS, ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, CONCERNING: (I) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, OR FITNESS OF OR FOR A PARTICULAR PURPOSE OF THE CITY PROPERTY; (II) THE MANNER, QUALITY, STATE OF REPAIR, OR LACK OF REPAIR OF THE CITY PROPERTY; (III) THE NATURE, QUALITY, OR CONDITION OF THE CITY PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE WATER, CONSTRUCTION, SOILS, HYDROLOGY, AND GEOLOGY; (IV) THE COMPLIANCE OF OR BY THE CITY PROPERTY OR ITS OPERATION WITH BUILDING CODES, LAWS, RULES, ORDINANCES, OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, INCLUDING, WITHOUT LIMITATION, WHETHER OR NOT ANY OR ALL IMPROVEMENTS ARE IN COMPLIANCE WITH PAST, CURRENT OR FUTURE BUILDING CODES, AND WHETHER OR NOT ANY OR ALL IMPROVEMENTS (OR COMPONENTS THEREOF) MAY OR MAY NOT HAVE BEEN CONSTRUCTED WITH APPLICABLE PERMITS; (V) THE MANNER OR QUALITY OF THE IMPROVEMENTS ON THE CITY PROPERTY OR THE CONSTRUCTION, GRADING, DRAINAGE, OR COMPACTION THEREOF; (VI) COMPLIANCE OF THE CITY PROPERTY (INCLUDING, WITHOUT LIMITATION, THE IMPROVEMENTS), WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION, OR LAND USE LAWS, RULES, OR REGULATIONS, OF EVERY KIND AND NATURE; (VII) COMPLIANCE WITH THE FEDERAL LAW KNOWN AS THE AMERICANS WITH DISABILITIES ACT, INCLUDING ANY REGULATIONS AND RULES ADOPTED THEREUNDER BY THE STATE OF CALIFORNIA AND/OR LOCAL GOVERNMENTAL BODIES OR AGENCIES OR COMPARABLE STATE STATUTES (COLLECTIVELY, "ADA");

(VIII) THE PRESENCE OR ABSENCE OF HAZARDOUS SUBSTANCES AT, IN, ON, AROUND OR UNDER THE CITY PROPERTY (THOUGH THE CITY INFORMS LCW THAT THERE IS A LIKELIHOOD THAT THE CITY PROPERTY IS CONTAMINATED AND THERE MAY BE TOXIC MATERIALS OF THE TYPE USED IN CONSTRUCTING THE IMPROVEMENTS IN THE YEARS IN WHICH THE IMPROVEMENTS WERE CONSTRUCTED); (IX) THE CONFORMITY OF THE CITY PROPERTY TO APPLICABLE ZONING, LAND USE ENTITLEMENTS OR OTHER BUILDING CODE OR USE REQUIREMENTS; (X) WHETHER THERE IS ADEQUATE PARKING AT THE CITY PROPERTY; OR (XI) THE FACT THAT THE CITY PROPERTY, OR A PART THEREOF, SHALL BE LOCATED ON OR NEAR AN EARTHQUAKE FAULT LINE, FLOOD INUNDATED AREA, OR OTHER HAZARDOUS ZONE OF ANY KIND.

(c) LCW acknowledges that extensive local, state and Federal legislation establish broad liability upon owners and/or users of real property for the investigation and remediation of a Hazardous Substance Condition. The determination of the existence of a Hazardous Substance Condition and the evaluation of the impact of such a condition are highly technical. Therefore, except if, and then only to the limited extent expressly set forth in this Agreement or the City Environmental Indemnity, LCW acknowledges that at the time of expiration of the LCW Due Diligence Period, LCW shall have consulted its own technical and legal experts with respect to any possible Hazardous Substance Condition aspects of the City Property or adjoining properties, and LCW is not relying upon any investigation by or statement of the City or any person or entity representing the City with respect thereto. A "Hazardous Substance" for purposes of this Agreement is defined as any substance whose nature and/or quantity of existence, use, manufacture, disposal or effect, render it subject to Federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or welfare. A "Hazardous Substance Condition" for purposes of this Section 19 is defined as the existence on, under or relevantly adjacent to the City Property of a Hazardous Substance that would require remediation and/or removal under applicable Federal, state or local law.

(d) LCW HEREBY ACKNOWLEDGES THAT IT SHALL CONSULT AND RETAIN ITS OWN EXPERTS TO ADVISE AND REPRESENT IT CONCERNING THE LEGAL AND INCOME TAX EFFECTS OF THIS AGREEMENT, AS WELL AS THE PHYSICAL CONDITION OF THE CITY PROPERTY, THE IMPROVEMENTS AND EQUIPMENT THEREIN, THE SOIL THEREOF, THE CONDITION OF TITLE THERETO, ANY SURVEY, THE ENVIRONMENTAL ASPECTS THEREOF, THE INTENDED AND/OR PERMITTED USAGE THEREOF, THE OUTSTANDING OTHER AGREEMENTS, IF ANY, WITH RESPECT THERETO AND THE EXISTING OR CONTEMPLATED FINANCING THEREOF, AND THAT THE CITY IS NOT RESPONSIBLE FOR ANY SUCH MATTER, EXCEPT IF AND THEN ONLY TO THE LIMITED EXTENT EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE CITY ENVIRONMENTAL INDEMNITY.

(e) NOTWITHSTANDING THE FOREGOING, HOWEVER, IN THE EVENT OF A CONFLICT BETWEEN THE PROVISIONS OF THIS AGREEMENT AND THE CITY ENVIRONMENTAL INDEMNITY, THE PROVISIONS OF THE CITY ENVIRONMENTAL INDEMNITY SHALL CONTROL.

20. **Consequential Damages.** In the event of a breach or default by either party, in no event shall the defaulting Party be liable for consequential, special, or punitive damages.

21. **Train Station Building.** There presently exists on the City Property a building containing approximately 5,000 square feet of usable area, which was formerly used as a train station. The City reserves the right to remove the train station building at any time during the

four year period following the Close of Escrow (including, if applicable after expiration or sooner termination of the Leaseback Lease, if same should expire or terminate prior to the date that is 4 years after the Close of Escrow), at the City's sole cost, and LCW consents and agrees that the City shall have the right to remove same. LCW shall not charge the City for any costs incurred by LCW is any administrative review that might arise in connection with City's entry onto the City Property in connection with such removal. The City shall provide to LCW at least 5 days prior written notice of the date on which the City shall commence the removal of the train station building, and shall reasonably cooperate with LCW if LCW reasonably requests a modification of that date, and shall comply with other reasonable terms and conditions relating to such entry. The City shall indemnify, defend (with counsel reasonably acceptable to LCW), and hold harmless LCW and its successors and assigns with respect to such removal activities, and the City shall require its contractors to carry at least \$2,000,000 in liability insurance and to name LCW (or, if applicable its successors or assigns) as an additional insured thereon. LCW acknowledges that this provision does not grant to LCW a permit to remove same without obtaining the appropriate demolition permit from the City at the time (if any) that LCW may wish to demolish the train station building, even if LCW wishes to do so after expiration of the 4 year period described above. The provisions of this paragraph shall survive the Closing.

22. Assignment.

(a) Except as provided in Section 22(b), this Agreement may not be assigned by either Party without the express, written consent of the other. This restriction shall in no way limit LCW's right to pledge its interests under this Agreement to any lender as collateral, including American Capital Financial Services, Inc., nor shall it restrict such lender's ability to foreclose on such pledge or otherwise succeed to LCW's rights hereunder in connection with such pledge.

(b) Notwithstanding the foregoing, LCW shall have the right, at any time, to assign its right to acquire any of the City Property to American Capital Financial Services, Inc. or its designee or another entity or entities that controls, is controlled by, or under common control with, LCW (including an entity or entities in which Tom Dean or Jeff Berger, or either one of them, are principals), and upon such assignment, the term "LCW" shall thereafter refer to the applicable entity to whom this Agreement is assigned with respect to the applicable City Property to be purchased by such entity.

23. **Notices.** Any notices required or permitted to be given under the terms of this Agreement shall be considered properly made if (i) delivered personally; (ii) sent via recognized, overnight courier service (e.g., Federal Express, DHL, Airborne Express, etc.); (iii) transmitted via facsimile; or (iv) sent via certified mail, return receipt requested, postage prepaid, to the Parties at the addresses opposite their respective signatures. Each Party may, from time to time, by notice as herein provided, designate a different address to which notice to it shall be sent, which designation shall be effective three days after given. Notices shall be deemed given upon delivery of such notice when delivery is by personal delivery or overnight courier, 1 business day after delivery by fax (provided there is a fax confirmation) and three business days after the deposit of such notice in the United States mail, certified mail, return receipt requested.

24. **Risk of Loss.** The City assumes all risk of loss or damage to the City Property by fire or other casualty until the deed of conveyance to City Property is delivered to LCW at Closing. If, at any time prior thereto, any portion of the City Property is destroyed or damaged as a result of fire or any other cause whatsoever, then the City shall promptly give written notice thereof to LCW. In the event that (a) the total cost to repair or restore such destruction or

damage, as determined by the City's insurance claim adjuster, exceeds \$250,000 (the "Threshold Amount"), and/or (b) the estimated time to restore or repair such destruction or damage, as determined by the City's insurance claim adjuster, exceeds 90 days from the casualty date, then LCW shall have the right to terminate this Agreement by written notice delivered to the City within 20 calendar days following the date upon which LCW receives the City's written notice of the destruction or damage. If (i) such destruction or damage can be repaired or restored for the Threshold Amount, or less, and can be repaired in 90 days or less from the casualty date, or (ii) the cost of such repair or restoration shall exceed the Threshold Amount, and/or the time to complete the repair and restoration of the City Property shall exceed 90 days from the casualty date, but LCW does not elect to so terminate this Agreement within said 20 day period, then this Agreement shall remain in full force and effect and the Parties shall proceed to Closing without any reduction or adjustment or credit, except that all insurance proceeds, if any, will be assigned to LCW (to the extent not disbursed to the City to reimburse the City for the cost of repair) and LCW shall assume the liability for any such repairs (subject to the terms of the following sentence). In the event of a casualty (whether the cost of which is more or less than the Threshold Amount) the City may, but shall not be required to, repair such damage, in which event all warranties with respect to such work shall be assigned to LCW. In such event, the City may undertake such repair in the City's sole and absolute discretion, but the City shall not have any obligation to LCW to do so. The City may start and stop such work in the City's sole and absolute discretion, and if the City has commenced any such repair, then the City is not obligated to complete any such repair prior to the Closing. The City shall be entitled to any insurance proceeds necessary to reimburse the City for the costs incurred by the City in repairing or restoring any damage. To the extent the City has not been reimbursed by the Closing from any insurance available to pay for any repair work undertaken by the City (whether less than or greater than the Threshold Amount), then the City shall receive such proceeds after Closing, if and to the extent there are surplus insurance proceeds after LCW's payment from such proceeds of all costs incurred by LCW to restore any damaged Improvements. If after Closing LCW receives any insurance proceeds due to the City on account of repair work performed by the City with respect to which the City has not previously been reimbursed by LCW (notwithstanding the provisions hereof), then LCW shall deliver same to the City after Closing. LCW shall not, in any event, be entitled to the proceeds of any rental interruption or business interruption insurance payable to the City on account of the period prior to the Closing. Unless otherwise notified in writing by either Party, Escrow Holder shall assume no destruction, damage or loss costing more than the Threshold Amount to repair, rebuild or cure has occurred prior to Closing.

25. **Waiver of Jury.** With respect to any dispute arising under or in connection with this Agreement, each Party hereby irrevocably waives all rights it may have to a jury trial, and each Party agrees that it will not seek to consolidate any such action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived. THIS WAIVER IS KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY MADE BY LCW AND THE CITY AND EACH ACKNOWLEDGES THAT NEITHER THE OTHER PARTY NOR ANY PERSON ACTING ON BEHALF OF THE OTHER PARTY HAS MADE ANY REPRESENTATION OF FACT TO INDUCE THIS WAIVER OF TRIAL BY JURY OR IN ANY WAY TO MODIFY OR NULLIFY ITS EFFECT. LCW AND THE CITY EACH FURTHER ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED (OR HAS HAD THE OPPORTUNITY TO BE REPRESENTED) IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER, BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL. LCW AND THE CITY EACH FURTHER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER PROVISION.

26. **Attorneys Fees.** In the event of any litigation, or judicial reference, or arbitration between LCW and the City concerning this transaction, the prevailing Party shall be entitled to reasonable attorney's fees and costs, including, without limitation, any attorney's fees and costs incurred in connection with any appeal or collection.

27. **Miscellaneous.**

(a) **Time of Essence.** Time is of the essence in connection with the terms and conditions of this Agreement and each Party's obligations hereunder.

(b) **Further Documents and Assurances.** LCW and the City shall each, diligently and in good faith, undertake all actions and procedures reasonably required to place the Escrow in condition for closing as and when required by this Agreement. LCW and the City agree to provide all further information, and to execute and deliver all further documents and instruments, reasonably required by Escrow Holder or the Title Company.

(c) **Counterparts.** This Agreement may be executed in two or more counterparts. Each counterpart shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

(d) **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California without application of its conflicts of laws provisions. The venue for any action or dispute concerning this transaction shall be the Superior Court of Los Angeles County.

(e) **Performance Due on Non-Business Day.** If the time period for the performance of any act or notice called for under this Agreement expires on a Saturday, Sunday, any other day in which banking institutions in the State of California are authorized or obligated by law or executive order to close, or any other day in which the City of Long Beach is closed for normal business due to a management mandated furlough (a "Holiday"), the act or notice in question shall be performed on the next succeeding day that is not a Saturday, Sunday or Holiday.

(f) **Severability.** If any of the provisions of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement by the application of such provision or provisions to persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby, and every provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(g) **Captions and Headings.** The captions and headings in this Agreement are for convenience and shall not be held or deemed to define, limit, describe, explain, modify, amplify or add to the interpretation, construction or meaning of any provisions of or the scope or intent of this Agreement.

(h) **Binding Effect.** Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the City and LCW and their respective heirs, personal representatives, successors and assigns.

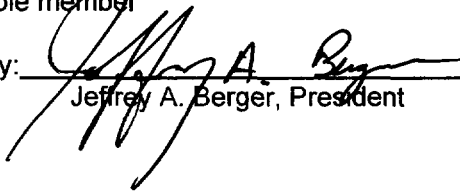
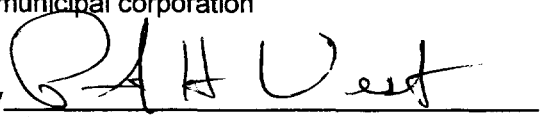
(i) **Integration.** This Agreement supersedes any and all prior or contemporaneous communications, written or oral, between the City and LCW regarding the Properties and constitutes the sole understanding between the Parties.

(j) **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and shall not be modified, amended or otherwise changed in any manner except by a writing executed by the Parties.

(k) **"Days."** The term "days" shall mean calendar days, unless "business days" is specified. For purposes hereof, "business days" shall mean Monday through Friday, excluding national and California state holidays when banks are closed for business.

[Signatures on the Following Page]

IN WITNESS WHEREOF, the Parties have executed this Agreement under seal as of the date first above written.

<p>ADDRESS FOR NOTICES:</p> <p>3626 Long Beach Boulevard Long Beach, CA 90807 Facsimile Number: (562) 427-0368</p> <p>and to:</p> <p>2101 Rosecrans Ave, Suite 3280 El Segundo, CA 90245 Facsimile 310-640-6866</p> <p>WITH A COPY TO:</p> <p>Resch Polster & Berger LLP 9200 Sunset Boulevard Suite 900 West Hollywood, California 90069 Attention: David Gitman and Jeffrey A. Rabin Facsimile Number: 310-552-3209</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:  Jeffrey A. Berger, President</p>
<p>ADDRESS FOR NOTICES:</p> <p>333 West Ocean Boulevard Long Beach, California 90802 Attention: City Manager</p> <p>WITH A COPY TO:</p>	<p>The City:</p> <p>City of Long Beach a municipal corporation</p> <p>By:  City Manager</p>

APPROVED AS TO FORM


5-6, 2010
ROBERT E. SHANNON, City Attorney
By: 
RICHARD ANTHONY
DEPUTY CITY ATTORNEY

EXHIBIT A
Legal Description of LCW Property

Parcel 2 (together with Parcel 3, the "LCW Property")

S'ly Portion to be Conveyed to City of Long Beach

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 (together with Parcel 2, the "Oil and Gas Property")

30 ac.± Southerly Parcel to be Conveyed to City of Long Beach

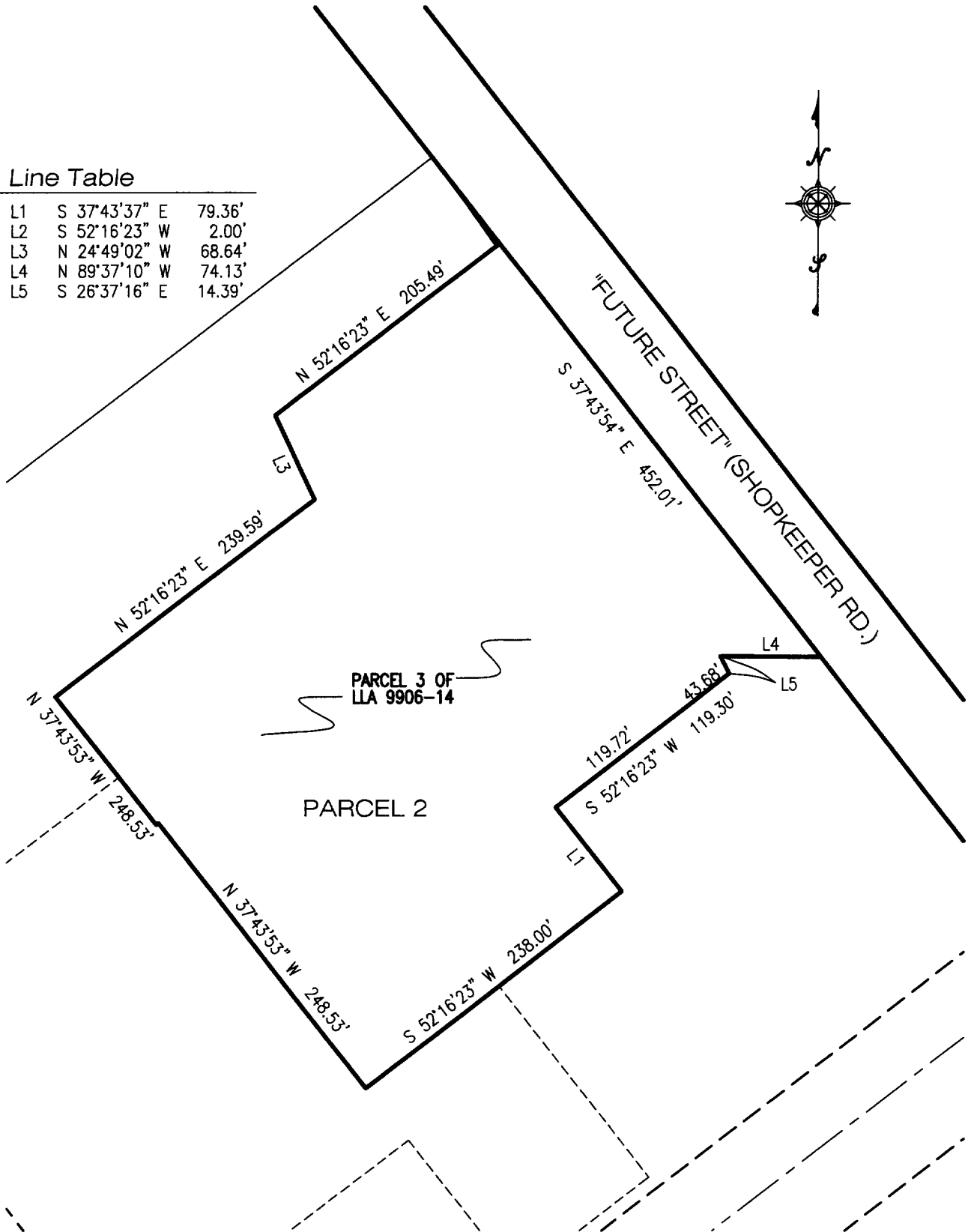
That portion of the Northwest 1/4 of Fractional Section 11, Township 5 South, Range 12 West, in the Rancho Los Alamitos, in the City of Long Beach, County of Los Angeles, State of California, together with that portion of Westminster Avenue vacated by Resolution No. C-2192 of said City of Long Beach,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

Line Table

L1	S 37°43'37" E	79.36'
L2	S 52°16'23" W	2.00'
L3	N 24°49'02" W	68.64'
L4	N 89°37'10" W	74.13'
L5	S 26°37'16" E	14.39'

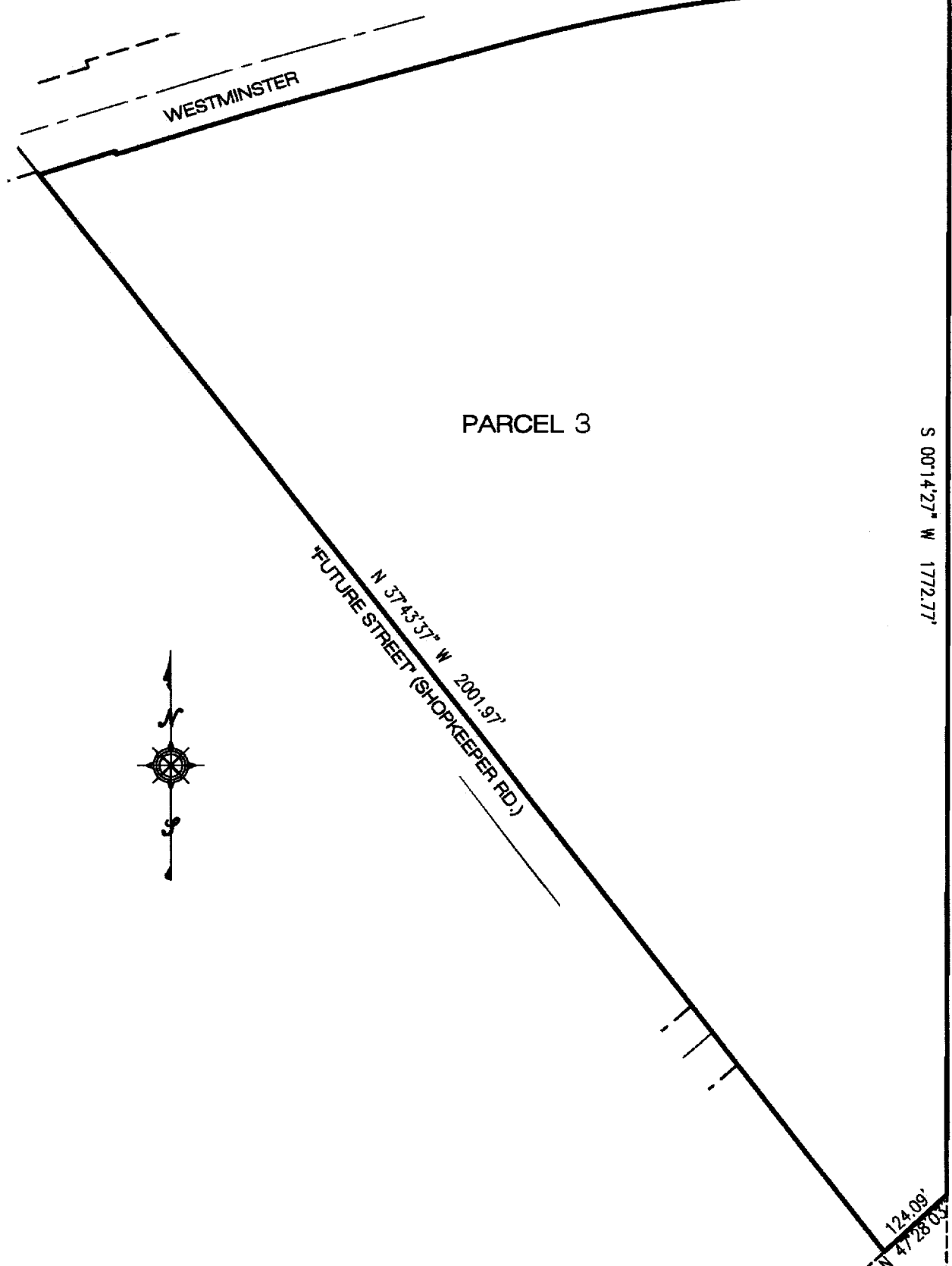


SCALE 1:200

EXHIBIT A-1

PAGE 1 OF 1

GENERAL DEPICTION OF LAND TO BE CONVEYED TO CITY OF LONG BEACH



**Exhibit B
City Property
Legal Description**

PARCEL 1:

THAT PORTION OF BLOCK 13, "BLOCKS IN THE TOWN OF THE TOWN OF SEABRIGHT", IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 55 PAGE 2, OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID BLOCK 13, AND RUNNING THENCE WEST ALONG THE NORTH LINE OF SAID BLOCK A DISTANCE OF 314.59 FEET TO THE EASTERLY RIGHT OF WAY LINE OF THE LOS ANGELES COUNTY FLOOD CONTROL CHANNEL; THENCE SOUTHERLY ALONG THE EASTERLY RIGHT OF WAY LINE OF THE LOS ANGELES COUNTY FLOOD CONTROL CHANNEL TO A LINE 142.5 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF SAID BLOCK 13; THENCE EAST ALONG SAID LINE 142.5 FEET SOUTH OF AND PARALLEL TO THE NORTH LINE OF BLOCK 13 A DISTANCE OF 315.25 FEET TO THE EAST LINE OF SAID BLOCK; AND THENCE NORTH ALONG SAID EAST LINE TO THE POINT OF BEGINNING.

PARCEL 2:

THAT PORTION OF BLOCK 13, "BLOCKS IN THE TOWN OF THE TOWN OF SEABRIGHT", IN THE CITY OF LONG BEACH, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 55 PAGE 2, OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID BLOCK 13, AND RUNNING THENCE WEST ALONG THE SOUTH LINE OF SAID BLOCK A DISTANCE OF 315.97 FEET TO THE EASTERLY RIGHT OF WAY LINE OF THE LOS ANGELES COUNTY FLOOD CONTROL CHANNEL; THENCE NORTHERLY ALONG THE EASTERLY RIGHT OF WAY LINE OF THE LOS ANGELES COUNTY FLOOD CONTROL CHANNEL TO A LINE 142.5 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID BLOCK 13; THENCE EAST ALONG SAID LINE 142.5 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF BLOCK 13 A DISTANCE OF 315.31 FEET TO THE EAST LINE OF SAID BLOCK; AND THENCE SOUTH ALONG SAID EAST LINE TO THE POINT OF BEGINNING.

PARCEL 3:

THAT CERTAIN EAST-WEST ALLEY IN BLOCK 13 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, VACATED BY RESOLUTION NO. 07-0133 OF THE CITY OF LONG BEACH ON OCTOBER 2, 2007, RECORDED DECEMBER 28, 2007 AS INSTRUMENT NO. 20072857194 OF OFFICIAL RECORDS OF SAID COUNTY.

PARCEL 4:

THAT PORTION OF 17TH STREET 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 SOUTHERLY PROLONGATION OF THE EASTERLY LINE OF BLOCK 13 OF SAID TOWN OF SEABRIGHT, AND LYING EASTERLY OF THE EASTERLY RIGHT-OF-WAY OF THE LOS ANGELES COUNTY FLOOD CONTROL DISTRICT CHANNEL.

PARCEL 5: [INTENTIONALLY OMITTED]

PARCEL 6: [INTENTIONALLY OMITTED]

PARCEL 7:

BLOCKS 9 THROUGH 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 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 STREETS AND ALLEYS 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 7A:

THOSE PORTIONS OF: (i) THE NORTHERLY 30 FEET OF 14TH STREET (FORMERLY CHICAGO AVENUE), COWLES STREET (FORMERLY KANSAS AVENUE), (ii) 15TH STREET (FORMERLY CALIFORNIA AVENUE) AND (iii) 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 8:

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 9:

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 1.

END OF LEGAL DESCRIPTION

Exhibit B-1 – City Property

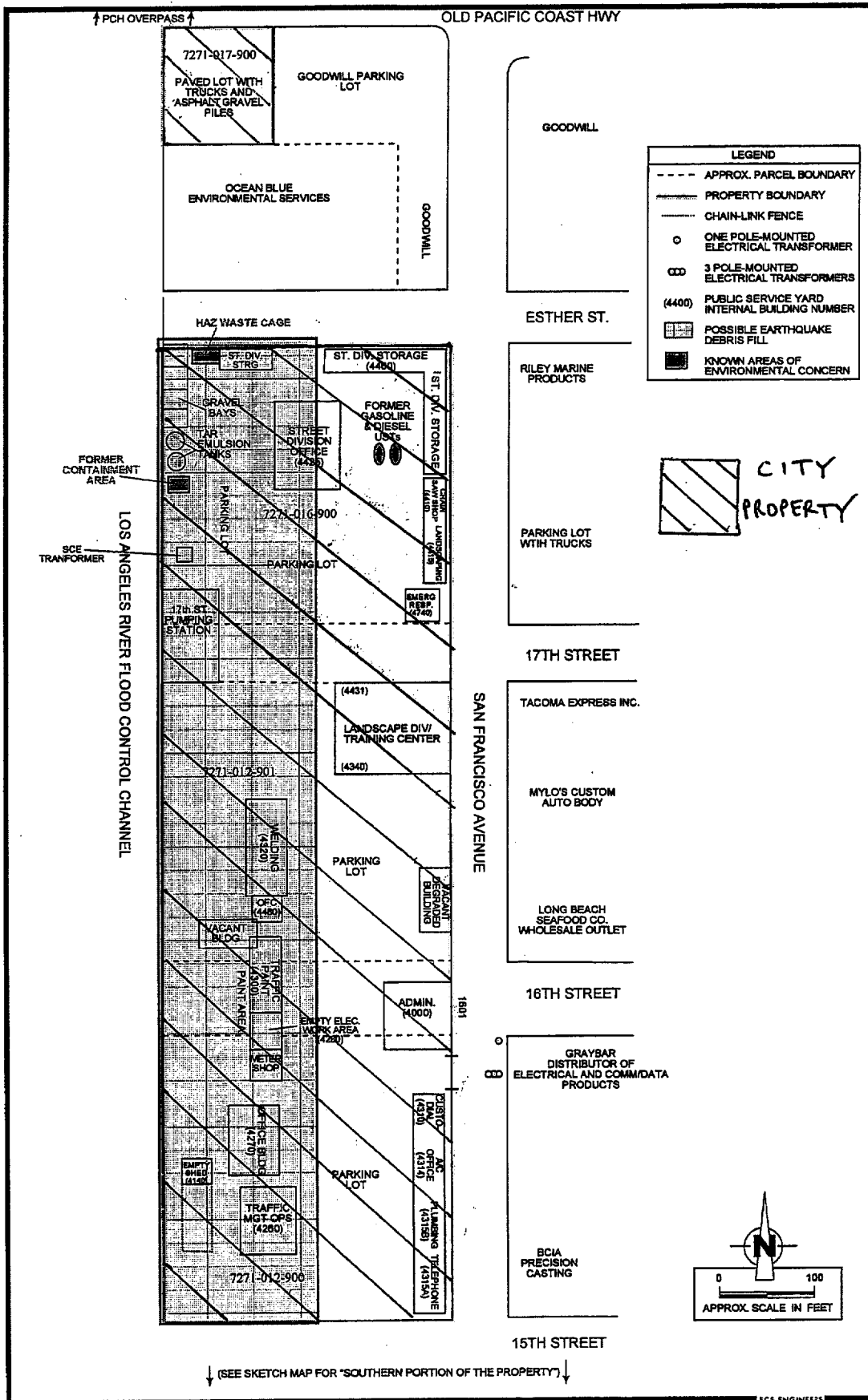


Figure 2. Sketch Map of Site, Northern Portion of the Property.

Exhibit B-1 -- City Property

↑ SKETCH MAP OF "NORTHERN PORTION OF PROPERTY" ↑

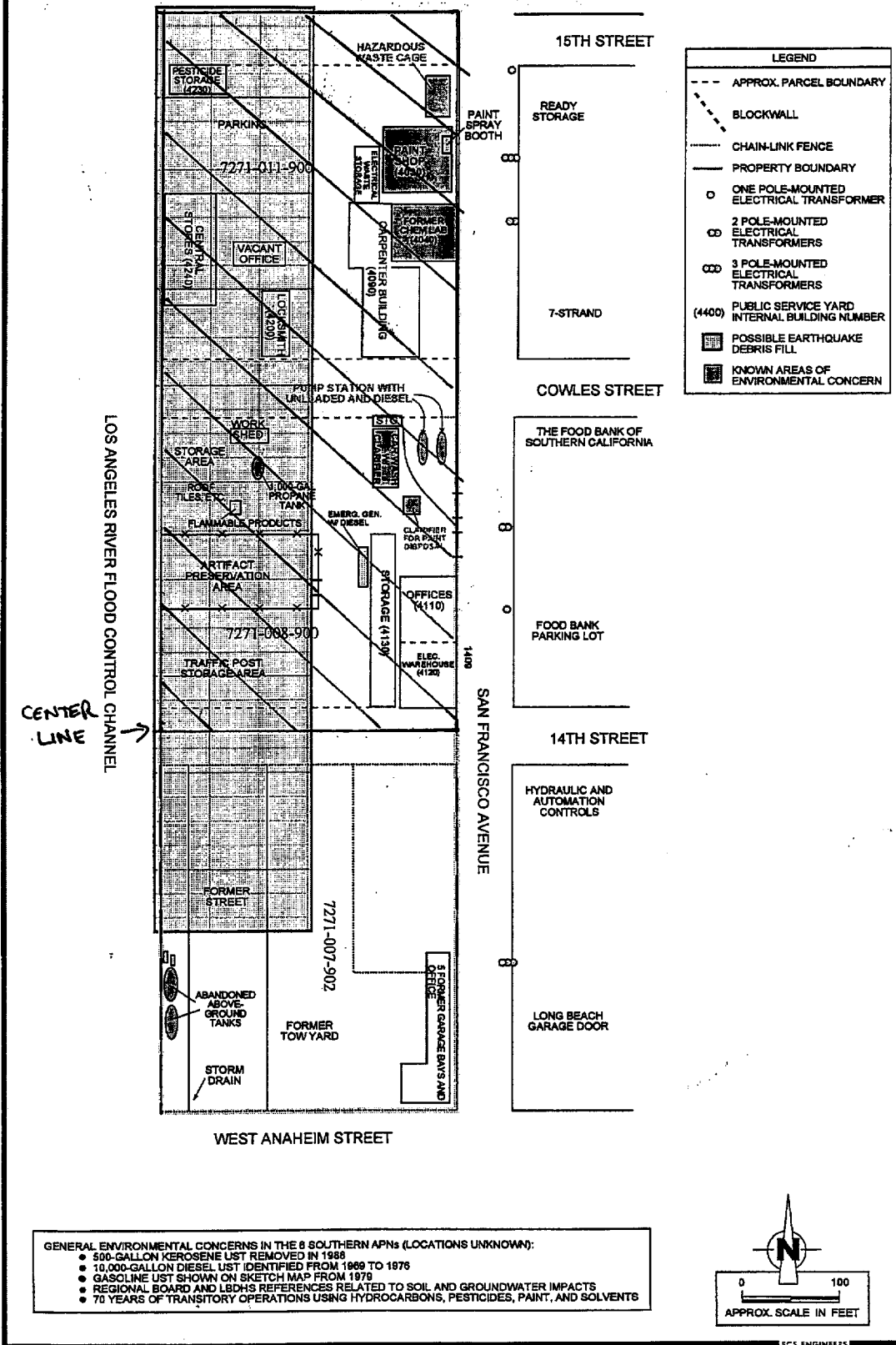


Figure 1. Sketch Map of Site, Southern Portion of Property.

**Exhibit C-1
Form of Grant Deed to the LCW Property**

RECORDING REQUESTED BY:
WHEN RECORDED MAIL TO and
MAIL TAX STATEMENTS TO:

City of Long Beach

APN: _____

(Space Above Line For Recorder's Use Only)

Documentary transfer tax is \$0.00. Except pursuant to Revenue and Taxation Code Section 11922.

GRANT DEED

WITNESSETH:

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, LCW PARTNERS, LLC, a California limited liability (as "Grantor"), hereby grants to the CITY OF LONG BEACH, a municipal corporation (as "Grantee"), that certain real property located in the City of Long Beach, County of Los Angeles, State of California, more particularly described in Exhibit 1 attached hereto (the "Property").

Subject to the following: all easements, covenants, conditions, restrictions and rights of way and other matters of record.

Further subject and subordinate to that certain Surface Use Release Agreement and Grant of Easements, being recorded concurrently herewith, by and between LCW Oil Operations, LLC, a Delaware limited liability company, and the City of Long Beach, a municipal corporation, and as the same may be amended in the future.

Grantee agrees, on its own behalf and on behalf of its successors and assigns, that Grantee shall provide at least 90 days' advance written notice to Grantor (at the address for notices set forth in the "Indemnity" described below) of any proposed development or other activity on the Property by Grantee that is likely to give rise to actual and material remediation costs on the part of Grantor pursuant to that certain Environmental Indemnity and Access Agreements [Oil and Gas Property] dated _____, 20__, between Grantor and Grantee (each an "Indemnity"). Grantor shall submit to Grantee within 60 days after receipt of such notice a reasonable design alternative and any other reasonable requests concerning limiting Grantor's potential liability to Grantee under any Indemnity. It is agreed that Grantee shall reasonably accommodate such proposed design alternative if such alternative does not require Grantee to incur material additional cost. Upon any subsequent transfer of the Property, the transferor shall be released from any liability hereunder, and only the then current owner of the Property shall be liable for compliance with the terms hereof at the time of any proposed

development or other activity during the applicable party's ownership of the Property. The covenants set forth in this paragraph shall expire on the date that is 20 years after the recordation hereof.

IN WITNESS WHEREOF, the undersigned has executed this Grant Deed as of _____, 2010.

"Grantor":

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

STATE OF CALIFORNIA)	
)	ss
COUNTY OF LOS ANGELES)	

On _____, before me, _____, a Notary Public, personally appeared Jeffrey A. Berger, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

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

WITNESS my hand and official seal.

Notary Public	

Exhibit 1

**Exhibit C-2
Form of Grant Deed to the City Property**

RECORDING REQUESTED BY:
WHEN RECORDED MAIL TO and
MAIL TAX STATEMENTS TO:

LCW Partners, LLC
c/o Tom Dean
3626 Long Beach Boulevard
Long Beach, CA 90807

APN: _____

(Space Above Line For Recorder's Use Only)

[transfer taxes set forth in separate declaration]

GRANT DEED

WITNESSETH:

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the CITY OF LONG BEACH, a municipal corporation (as "Grantor"), hereby grants to the LCW PARTNERS, LLC, a Delaware limited liability company (as "Grantee"), that certain real property located in the City of Long Beach, County of Los Angeles, State of California, more particularly described in Exhibit 1 attached hereto (the "Property").

Subject to the following: all easements, covenants, conditions, restrictions and rights of way and other matters of record.

Reserving and excepting all oil, natural gas, petroleum, other hydrocarbons and any other minerals by whatsoever name known, in, on and under the Property, and all products derived from any of the foregoing, below a depth of 500 feet from the surface; provided, however that such reservation does not include and Grantor expressly waives and relinquishes any surface entry rights onto the Property to a depth of 500 feet.

Grantee agrees, on its own behalf and on behalf of its successors and assigns, that Grantee shall provide at least 90 days' advance written notice to Grantor (at the address for the Long Beach City Hall, attention: City Manager) of any proposed development or other activity on the Property by Grantee that is likely to give rise to material remediation costs on the part of Grantor pursuant to that certain Environmental Indemnity and Access Agreement [San Francisco Yard Property] dated _____, 20__, between Grantor and Grantee (the "Indemnity"). Grantor shall submit to Grantee within 60 days after receipt of such notice a reasonable design alternative and any other reasonable requests concerning limiting Grantor's potential liability to Grantee under the Indemnity. It is agreed that Grantee shall reasonably accommodate such proposed design alternative if such alternative does not require Grantee to incur material additional cost. Upon any subsequent transfer of the Property, the transferor shall be released from any liability hereunder, and only the then current owner of the Property shall

Exhibit 1
Legal Description of the City Property

EXHIBIT D

Recording Requested By and
When Recorded Return To:

Songstad & Randall LLP
2201 Dupont Drive, Suite 100
Irvine, California 92612
Attention: Andrew Leitch, Esq.

SURFACE USE RELEASE AGREEMENT AND GRANT OF EASEMENTS

THIS SURFACE USE RELEASE AGREEMENT AND GRANT OF EASEMENTS ("**Agreement**") is entered into as of this _____ day of _____, 2010 (the "**Effective Date**") by and between LCW OIL OPERATIONS, LLC, a Delaware limited liability company ("**LCW**"); and the CITY OF LONG BEACH, a municipal corporation ("**City**"); with regard to the following facts:

RECITALS

A. City owns fee title to that certain real property described in **Exhibit "A"** attached hereto ("**Surface Property**"), which concurrently herewith, City acquired from LCW Partners, LLC, a Delaware limited liability company ("**LCW Partners**") pursuant to the terms of that certain Real Estate Exchange Agreement dated _____, 2010 by and between City and LCW Partners.

B. LCW owns those certain mineral rights and surface extraction rights described in **Exhibit "B"** attached hereto ("**Mineral Property**"). LCW and City do not intend for this Agreement to adversely affect the right, title or interest of LCW to the Mineral Property.

C. City, and its contemplated successors and assigns, intend to use the Surface Property for the City's Intended Use (as defined in Section 2(h)).

D. The Surface Property has historically been used for Oil and Gas Operations (as defined in Section 2(w)). LCW intends to continue to use portions of the Surface Property for current and future Oil and Gas Operations.

E. It is the intent of the parties hereto that this Agreement shall establish and define certain parameters which shall allow for Oil and Gas Operations to be continued on the Surface Property in conjunction with the City's Intended Use of the Surface Property.

NOW THEREFORE, IN FURTHERANCE OF THE FOREGOING, and in consideration of the mutual covenants, conditions, representations, warranties and agreements contained herein, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Surface Use Release, Grant of Easements, and Licenses.

(a) LCW hereby releases any and all general or specific rights it may have to access or conduct Oil and Gas Operations on any portion of the Surface Property, except as specifically provided by this Agreement. Notwithstanding the foregoing, the releases hereunder shall not be deemed to affect the right, title or interest of LCW to the Mineral Property, except for the release and relinquishment of the surface rights as expressly set forth in this Section 1.

(b) City, as owner of the Surface Property, does hereby grant to LCW the following easements over those portions of the Surface Property as more particularly described on Exhibits "C", "C-1", "C-2", "C-3" and "D" attached hereto and depicted on Exhibits "C-4" and "D-1" attached hereto: (i) exclusive use easements for conducting Oil and Gas Operations (the "**Exclusive Use Easements**"); (ii) non-exclusive use easements for conducting Oil and Gas Operations, including without limitation underground oil and gas pipelines and utilities (the "**Joint Use Easements**"); (iii) non-exclusive use easements for operating, maintaining, repairing, replacing, improving, and testing above ground pipelines, utilities, and related equipment (the "**Above Ground Pipeline and Utility Easements**"); and (iv) non-exclusive use easements for access from public streets to the Exclusive Use Easements, the Joint Use Easements, and the Pipeline and Utility Easements (the "**Access Easements**"). Collectively, all easements described in this Section 1 shall be known as the "**Easements**." Collectively, the Joint Use Easements, the Above Ground Pipeline and Utility Easements and the Access Easements shall be known as the "**Non-Exclusive Easements**." Use of all Easements is available to all LCW employees, consultants, contractors, inspectors, regulatory authorities supervising Oil and Gas Operations, or other invitees by or through LCW ("**LCW Authorized Parties**"). No use by City of the Non-Exclusive Easements shall interfere or otherwise adversely affect use by LCW and the LCW Authorized Parties of the Non-Exclusive Easements. Use by LCW and the LCW Authorized Parties shall be in compliance with Section 1(c), below. Each of the Easements shall continue in full force and effect until LCW, at its sole discretion, elects to permanently cease all Oil and Gas Operations over the Surface Property relating to such Easements, at which time LCW shall, at no cost to City, execute such documentation required by City to evidence the abandonment of the Easements. In addition to the rights granted to LCW herein, LCW shall also have the right, but not the obligation, to erect fencing or install locked gates, at its sole cost and expense, along any of the borders of the Exclusive Use Easements to prevent the public from entering the Exclusive Use Easements, provided that LCW first obtain all permits required under applicable law for such fencing and/or gates.

(c) Regardless of the provisions of Section 1(b)(ii), (iii) and (iv) to the contrary: (i) LCW shall not construct, install or otherwise place new improvements for pipeline or utility purposes on any portion of the Surface Property outside of the Exclusive Use Easements without the prior written consent of City, which consent shall not be unreasonably withheld; (ii) LCW shall not relocate any existing subsurface pipeline or utility improvements to a location above ground without the prior written consent of City, which consent shall not be unreasonably withheld; and (iii) LCW shall only use existing roadways for access, unless it first obtains the prior written consent of City to use any other portion of the Surface Property for access, which consent shall not be unreasonably withheld.

(d) At the time LCW constructs or installs any new improvements outside of the Exclusive Use Easements, LCW shall specifically locate by survey such improvements on the Surface Property.

2. Definitions.

(a) **"Agency" or "Agencies"** means any federal, state or local agency having Jurisdiction over the Surface Property and/or the Mineral 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) **"City Indemnification Notice"** is defined in Section 3(c)(i).

(c) **"City Indemnified Party" or "City Indemnified Parties"** shall mean City and its successors in interest with respect to the Surface Property, and those persons and entities who now or in the future are their elected and appointed officials, partners, employees, agents, representatives, departments, agencies and officers.

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

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

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

(g) **"City Work Papers"** is defined in Section 7(f).

(h) **"City's Intended Use"** shall mean City's and its contemplated successors and assigns intended use of the fee interest in the Surface Property as public open space and wildlife habitat, which may include restoration of portions of the Surface Property to a variety of habitats, including seasonal ponds, freshwater, brackish and saltwater wetlands, and uplands to benefit endangered and threatened species, migratory shorebirds, waterfowl, seabirds, and coastal fish and aquatic species.

(i) **"City's Response Deadline"** is defined in Section 7(c)(ii).

(j) **"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.

(k) **"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.

(l) **"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 Oil and Gas Environmental Conditions at the Property.

(m) **"LCW Indemnification Notice"** is defined in Section 7(c)(i).

(n) **"LCW Indemnified Party"** or **"LCW Indemnified Parties"** shall mean LCW and its successors in interest with respect to the Mineral Property, and their officers, directors, employees, partners, members, managers, and agents.

(o) **"LCW Notice of Claim"** is defined in Section 7(c)(i).

(p) **"LCW Related Indemnified Parties"** is defined in Section 7(c)(i).

- (q) **"LCW Response Actions"** is defined in Section 4(a).
- (r) **"LCW Work Papers"** is defined in Section 3(f).
- (s) **"LCW's Response Deadline"** is defined in Section 3(c)(ii).
- (t) **"Liabilities"** is defined in Section 3(a).

(u) **"Non-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 Surface 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 during City's ownership of the Surface Property and thereafter (but not prior to City's ownership) by any reason, other than Oil and Gas Operations or other activities of LCW conducted on or at the Property.

(v) **"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 (as hereinafter defined), 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 during LCW's ownership of the Mineral Property or thereafter (but not prior to LCW's ownership).

(w) **"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.

(x) **"Property"** means the Surface Property and the Mineral Property.

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

(z) **"Restoration Activities"** means any activities by City or any successor in interest to rejuvenate, restore, expand, reclaim, landscape, construct, or otherwise improve the Surface Property so as to: (a) change the Surface Property from its current state to a more natural, undeveloped state, or (b) expand the existing wetlands.

3. Indemnity by LCW.

(a) Subject to the limitations specified in Section 3(b) below, and provided that any party seeking to assert a LCW Indemnified Claim (defined below) notifies LCW in accordance with Sections 4 and 16 of this Agreement, and except as otherwise expressly limited herein, LCW shall indemnify, protect, defend and hold the City 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 (collectively, the "**Liabilities**") incurred in connection therewith based on, arising out of, or in connection with:

(i) LCW's breach of this Agreement;

(ii) any activities conducted by LCW or any LCW Authorized Parties when using the Easements, the License, or otherwise on the Surface Property or in connection with the Mineral Property;

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

(iv) LCW's conduct of LCW Response Actions on the Surface Property;

(v) LCW's violation(s) of any Environmental Laws at the Surface Property during LCW's ownership of the Mineral Property; or

(vi) any Oil and Gas Operations conducted by any party at the Property during such party's ownership of the Mineral Property.

(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 Sections 7, 8, and 10 below for which City is responsible or as to which City is indemnifying the LCW Indemnified Parties;

(iii) any Liabilities suffered by City Indemnified Parties or LCW Indemnified Parties due to 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 City Indemnified Parties or their contractors; or

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

(vi) Any and all Liabilities arising from or related to the relocation or modification of Facilities pursuant to Section 12 currently located within the Exclusive Easements and any related or corresponding Restoration Activities within the Exclusive Easements.

Liabilities set forth in Sections 3(a)(i) through 3(a)(vi) above, to the extent not excluded in Sections 3(b)(i) through 3(b)(vi), are hereinafter collectively referred to as "**LCW 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 LCW Indemnified Claims.

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

(i) After receipt by a City Indemnified Party of notice of any claim or the commencement of any action ("**City Notice of Claim**") for which such City Indemnified Party believes it is entitled to indemnification or defense under this Agreement, such City Indemnified Party shall deliver written notice ("**City Indemnification Notice**") to LCW of the claim promptly, but in no event later than twenty (20) days after the City Indemnified Party's actual receipt of the City 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 City Indemnified Party except to the extent of any actual prejudice to LCW from such failure or delay with respect to that certain City Indemnified Party(ies) and those City Indemnified Parties which derive their rights solely from their relationship with that certain City Indemnified Party only (i.e., agents, representatives, employees, officers, directors, shareholders, partners, trustees, affiliates, beneficiaries, attorneys, successors, representatives, heirs, executors, and assigns of a City Indemnified Party) (collectively, "**City Related Indemnified Parties**"). The City Indemnification Notice shall describe in reasonable detail the facts known to the City Indemnified

Party giving rise to such City Indemnified Claim. Thereafter, the City Indemnified Party shall promptly deliver to LCW after the City Indemnified Party's receipt thereof, copies of all notices and documents (including court papers) received by the City 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 City Indemnified Parties' request that LCW retain counsel to defend the City 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 City 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 City 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 City Indemnified Parties of the identity of the counsel selected. The counsel selected by LCW shall be subject to the City Indemnified Parties' reasonable approval. If necessary, as a condition precedent to LCW's obligation to retain counsel for the City Indemnified Parties, the Parties agree to and will execute a mutually acceptable conflict waiver letter. However, if a City 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 City Indemnified Party, then the City 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 City Indemnified Parties shall reasonably cooperate with LCW in such defense and make available to LCW all witnesses, pertinent records, materials and information in the City 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 a City Indemnified Party is, directly or indirectly, conducting the defense against any such LCW Indemnified Claim, LCW shall cooperate with the City Indemnified Party in such defense and make available to the City 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 City 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 City Indemnified Parties by LCW's Response Deadline, then the City 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 City 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 City Indemnified Party may take such actions as it deems prudent to defend itself in connection with any LCW Indemnified Claim, provided that such actions shall be at the respective City 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 City copies of all non-privileged: (i) correspondence exchanged with Agency(ies) with Jurisdiction over Oil and Gas Environmental Conditions at the Property; (ii) correspondence and documents relating to the defense or settlement of any third-party claim pertaining to or affecting Oil and Gas 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 Oil and Gas Environmental Conditions at the Property (collectively "**LCW Work Papers**") in LCW's care, custody, or control. LCW shall forward copies of the LCW Work Papers to the addresses set forth below.

(g) No compromise or settlement of such LCW Indemnified Claim may be effected by either the City 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 a LCW Indemnified Claim without the written consent of the City Indemnified Parties so long as such settlement: (i) includes an unconditional release of the City Indemnified Parties from all Liability in respect of such LCW Indemnified Claim, (ii) does not subject the City 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 City Indemnified Party, and (iv) does not materially and adversely interfere with the City's Intended Use.

4. Response Actions by LCW.

(a) LCW shall conduct any necessary response actions and activities resulting from its obligations under this Agreement ("**LCW Response Actions**") in compliance with all applicable Environmental Laws. LCW shall commence such LCW Response Actions within thirty (30) business days after receiving notice of same, and shall thereafter diligently prosecute the LCW Response Action to completion; provided, however, LCW's undertaking of the LCW Response Action is conditioned upon LCW first receiving applicable agency approvals and permits to perform any and all LCW Response Actions on the Property (including any and all required consents from City), if any such approvals, permits and consents are required, and such 30 business day period for commencing the LCW 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 LCW Response Action activities. Without limiting the generality of the foregoing, LCW and City shall reasonably cooperate with each other to seek reasonable, cost-effective methods and means of performing LCW 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 LCW Response Action, including determination of all methods and means of performing the LCW 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 LCW Indemnified Claims. Except in emergency situations where public, safety or welfare is threatened ("**Emergency Situations**"), City Indemnified Parties shall not take any LCW Response Action or incur any costs with respect to LCW Indemnified Claims without the prior written consent of LCW, which consent may not be unreasonably withheld. Notwithstanding the foregoing, if a City Indemnified Party takes LCW Response Actions or incurs any costs with respect to a LCW 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 City Indemnified Party and City Related Indemnified Parties shall be reduced to the extent LCW is actually prejudiced from the LCW Response Actions taken by such City Indemnified Party.

(b) Notwithstanding the provisions set forth in Section 7(a), if LCW fails to commence taking LCW Response Actions or thereafter fails to diligently prosecute the LCW Response Actions to completion, a City Indemnified Party may, but shall not be required to, take reasonable LCW Response Actions for the LCW Indemnified Claim to mitigate its damages, and all reasonable costs and expenses incurred by such City Indemnified Party in connection therewith or relating thereto shall be reimbursed by LCW upon demand by such City Indemnified Party.

(c) City hereby grants to LCW, and its consultants, contractors, employees and agents, a license to access the Surface 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 Surface Property such equipment or machinery as may be reasonably necessary to conduct appropriate LCW Response Actions and to defend any LCW Indemnified Claims. In entering the Surface Property to conduct the LCW Response Actions, LCW accepts the Surface Property conditions as may exist from time to time without any representation or warranty of City, and without any duty of 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 Surface Property. Except as otherwise provided in this Agreement, City shall not be liable for any injury of any kind whatsoever to any person entering upon the Surface Property under this Agreement arising from any cause whatsoever except for injuries caused by the negligence or intentional conduct of the City Indemnified Parties.

(d) Prior to commencing any LCW Response Action, LCW shall provide at least three (3) full business day's prior written notice to City of the date on which LCW proposes to commence the LCW 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 City and other City Indemnified Parties reasonably cooperating with LCW.

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

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

(h) City or City's agent shall be entitled, at its sole option and expense, to have a representative present during the performance of the LCW 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 LCW 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 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 LCW Response Actions entail air, soil and/or groundwater assessment and/or sampling, City retains the right, at City's cost, to have a contractor of its choice present and obtain split samples.

(k) Upon completion of any and all LCW Response Actions, LCW shall cause any tools, equipment, or materials placed on the Surface 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 Surface Property in connection with performing any LCW Response Actions. If City learns of any such activities in connection with the LCW Response Actions, the LCW Response Actions shall cease immediately and LCW shall cause the offending individual(s) to be removed from the Surface Property immediately and reimburse all of City's fees and costs in connection therewith.

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

(o) LCW shall not suffer or permit to be enforced against the Surface Property, or any part thereof, any mechanics', materialmen's, contractors', or subcontractors' liens arising from, or any claim for damage arising out of, the LCW Response Actions conducted by LCW. LCW agrees to indemnify the City Indemnified Parties, and hold the Surface 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 City Indemnified Parties, LCW shall post a bond as required by law within 30 days after receipt of demand from the City Indemnified Parties, in an amount equal to such contested lien, claim, or demand.

5. Release by LCW.

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 City Indemnified Parties from any and all LCW 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 LCW Indemnified Claims.

6. Assessment, Monitoring and Remediation Activities by LCW.

Subject to the limitations of LCW's obligations in Section 3(b), if an Agency with Jurisdiction orders Remediation of Oil and Gas Environmental 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 Surface 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 City requests and LCW agrees to undertake such Remediation to a standard higher than the Current Remediation Standard, then City shall promptly reimburse LCW for the amount by which the costs and expenses incurred by LCW for such Remediation of the Surface 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 City not paid for a portion of the cost of the Remediation).

7. Indemnity by City.

(a) Subject to the limitations set forth in Section 7(b) below, and provided that any party seeking to assert a City Indemnified Claim (defined below) notifies City in accordance with Sections 8 and 16 of this Agreement, and except as otherwise expressly limited herein, City shall indemnify, protect, defend and hold the LCW Indemnified Parties harmless from and against any and all Liabilities based on, arising out of, or in connection with:

(i) City's breach of this Agreement;

(ii) use of the Non-Exclusive Easements by any party other than LCW or LCW Authorized Parties, including without limitation, trespassers, City or any of its lessees, contractors, employees, agents, or invitees;

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

(iv) the relocation of Facilities by City or its successors pursuant to Section 12 currently located within the Exclusive Use Easements and any related or corresponding Restoration Activities within the Exclusive Use Easements;

(v) City's conduct of City Response Actions on the Surface Property; or

(vi) City's violation(s) of any Environmental Laws during City's ownership of the Surface Property.

(b) Notwithstanding anything provided in this Agreement to the contrary, including, without limitation, the provisions of Section 7(a), 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) those Liabilities specified in Sections 3, 4, and 6 above for which LCW is responsible or as to which LCW is indemnifying the City Indemnified Parties;

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

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

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

Liabilities set forth in Sections 7(a)(i) through 7(a)(vi) above, to the extent not excluded in Sections 7(b)(i) through 7(b)(v), are hereinafter collectively referred to as "**City Indemnified Claims**". Without limiting the generality of the foregoing, the matters set forth in Sections 7(b)(i) through 7(b)(v) shall be excluded from the definition of City Indemnified Claims.

(c) In addition to its agreement to protect, indemnify, and hold harmless the LCW Indemnified Parties for the City Indemnified Claims specified in Section 7(a) above, City shall defend the LCW Indemnified Parties in connection with any claim or demand against the LCW Indemnified Parties arising out of or related to the City Indemnified Claims. City's indemnity and defense obligation shall be subject to the following provisions:

(i) After receipt by a LCW Indemnified Party of notice of any claim or the commencement of any action ("**LCW Notice of Claim**") for which such LCW Indemnified Party believes it is entitled to indemnification or defense under this Agreement, such LCW Indemnified Party shall deliver written notice ("**LCW Indemnification Notice**") to City of the claim promptly, but in no event later than twenty (20) days after the LCW Indemnified Party's actual receipt of the LCW Notice of Claim; provided,

however, such failure to notify or delay in notifying City shall not relieve City from any liability which it may have to any LCW Indemnified Party except to the extent of any actual prejudice to City from such failure or delay with respect to that certain LCW Indemnified Party(ies) and those LCW Indemnified Parties which derive their rights solely from their relationship with that certain LCW Indemnified Party only (i.e., agents, representatives, employees, officers, directors, shareholders, partners, trustees, affiliates, beneficiaries, attorneys, successors, representatives, heirs, executors, and assigns of a LCW Indemnified Party) (collectively, "**LCW Related Indemnified Parties**"). The LCW Indemnification Notice shall describe in reasonable detail the facts known to the LCW Indemnified Party giving rise to such LCW Indemnified Claim. Thereafter, the LCW Indemnified Party shall promptly deliver to City after the LCW Indemnified Party's receipt thereof, copies of all notices and documents (including court papers) received by the LCW Indemnified Party relating to the claim (excluding documents protected by attorney-client privilege).

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

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

attorney-client privilege. Similarly, in the event a LCW Indemnified Party is, directly or indirectly, conducting the defense against any such City Indemnified Claim, City shall cooperate with the LCW Indemnified Party in such defense and make available to the LCW Indemnified Party, at City's expense, all such witnesses, records, materials and information in City's possession or control relating thereto as is reasonably requested by the LCW 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 City fails to retain counsel for the LCW Indemnified Parties by City's Response Deadline, then the LCW Indemnified Parties may retain counsel to defend themselves against such claims or demands. City shall pay all reasonable attorneys' fees and expenses incurred by such counsel in defending the LCW Indemnified Parties against the claim or demand, until City engages counsel to undertake such defense.

(e) Notwithstanding any provision set forth in Section 7, any LCW Indemnified Party may take such actions as it deems prudent to defend itself in connection with any City Indemnified Claim, provided that such actions shall be at the respective LCW Indemnified Parties' sole cost and expense, except to the extent provided in Section 7(d) above.

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

(g) No compromise or settlement of such City Indemnified Claim may be effected by either the LCW Indemnified Parties or City without the consent of the other (which shall not be unreasonably withheld or delayed). Notwithstanding the foregoing, City may pay, settle or compromise a City Indemnified Claim without the written consent of the LCW Indemnified Parties so long as such settlement: (i) includes an unconditional release of the LCW Indemnified Parties from all Liability in respect of such City Indemnified Claim, (ii) does not subject the LCW 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 LCW Indemnified Party, and (iv) does not materially and adversely interfere with current Oil and Gas Operations at or on the Surface Property.

8. Response Actions by City.

(a) City shall conduct any necessary response actions and activities resulting from its obligations under this Agreement ("**City Response Actions**") in compliance with all applicable Environmental Laws. City shall commence such City Response Actions within thirty (30) business days after receiving notice of same, and shall thereafter diligently prosecute the City Response Action to completion; provided, however, City's undertaking of the City Response Action is conditioned upon City first receiving applicable agency approvals and permits to perform any and all City Response Actions on the Surface Property (including any and all required consents from the LCW), if any such approvals, permits and consents are required, and such 30 business day period for commencing the City Response Action shall be extended for the amount of time reasonably required for City to develop any necessary plans and to secure the necessary permits. City shall promptly remove from the Surface Property any wastes or other materials generated as a result of such City Response Action activities. Without limiting the generality of the foregoing, LCW and City shall reasonably cooperate with each other to seek reasonable, cost-effective methods and means of performing City Response Actions, if any such actions become necessary. City shall have the right to engage any and all consultants, advisors, and contractors reasonably required to effect the City Response Action, including determination of all methods and means of performing the City Response Actions. 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 City Indemnified Claims. Except in emergency situations where public, safety or welfare is threatened ("**Emergency Situations**"), LCW Indemnified Parties shall not take any City Response Action or incur any costs with respect to City Indemnified Claims without the prior written consent of City, which consent may not be unreasonably withheld. Notwithstanding the foregoing, if a LCW Indemnified Party takes City Response Actions or incurs any costs with respect to a City Indemnified Claim where no Emergency Situation exists, without City's prior written consent, then City shall not be liable for such costs, and City's overall liability to such LCW Indemnified Party and LCW Related Indemnified Parties shall be reduced to the extent City is actually prejudiced from the City Response Actions taken by such LCW Indemnified Party.

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

(c) LCW hereby grants to City and its consultants, contractors, employees and agents, a license to access the Mineral Property as necessary to allow LCW to accomplish its obligations under the Agreement. Such a license shall allow LCW to, among other things, use such equipment or machinery on the Mineral Property as may be reasonably necessary to conduct appropriate City Response Actions and to

defend any City Indemnified Claims. In entering the Mineral Property to conduct the City Response Actions, City accepts the Mineral Property conditions as may exist from time to time without any representation or warranty of the LCW, and without any duty of LCW to warn of any conditions. Except to the extent otherwise governed by this Agreement, City agrees to assume all risks associated with entry and presence on the Mineral Property. Except as otherwise provided in this Agreement, LCW shall not be liable for any injury of any kind whatsoever to any person entering the Mineral Property under this Agreement arising from any cause whatsoever except for injuries caused by the negligence or intentional conduct of the LCW Indemnified Parties.

(d) Prior to commencing any City Response Action, City shall provide at least three (3) full business day's prior written notice to LCW of the date on which City proposes to commence the City 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, City's liabilities and obligations hereunder are conditioned upon LCW and other Indemnified Parties reasonably cooperating with City.

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

(i) 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 City 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.

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

City is self-insured, and may provide evidence of compliance with the requirements of this Section 8(i) through its self-insurance program.

(j) To the extent that the City 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 City Response Actions, City shall cause any tools, equipment, or materials placed within the Mineral Property.

(l) Neither any agent, employee, or representative of City nor its contractors may consume, sell, serve, distribute, or give any alcoholic beverages to anyone on or about the Surface Property in connection with performing any City Response Actions. If LCW learns of any such activities in connection with the City Response Actions, the City Response Actions shall cease immediately and City shall cause the offending individual(s) to be removed from the Surface 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 Hazardous Substances on, to, under, from or about the Property as a result of any necessary City Response Actions undertaken by City results in any spills or releases of Hazardous Substances, any injury to person, or any injury or damage to the Mineral Property, then 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 City Response Actions, City shall not cause or permit any Hazardous Substance to be brought into, kept, or used in or about the Mineral Property without LCW's prior written consent.

(o) City shall not suffer or permit to be enforced against the Mineral Property, or any part thereof, any mechanics', materialmen's, contractors', or subcontractors' liens arising from, or any claim for damage arising out of, the City Response Actions conducted by City. City agrees to indemnify the LCW Indemnified Parties, and hold the Mineral 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. 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, 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 LCW Indemnified Parties, City shall post a bond as required by law within 30 days after receipt of demand from the LCW Indemnified Parties, in an amount equal to such contested lien, claim, or demand.

9. Release by City. 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 LCW Indemnified Parties from any and all City Indemnified Claims. 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.”

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

10. Assessment, Monitoring and Remediation Activities by City.

Subject to the limitations of City's obligations in Section 7(b), if an Agency with Jurisdiction orders Remediation of Non- Oil and Gas Environmental Conditions, then City agrees to assume responsibility for and cause the completion of, as necessary, such Remediation to 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.

11. Maintenance of Easements.

LCW shall, at its sole cost and expense, maintain and repair the Exclusive Use Easements and improvements now existing or hereafter constructed on the Exclusive Use Easements by LCW; provided, however, if such maintenance or repair is required due to City's breach of this Agreement, then City shall promptly reimburse LCW for the expenses incurred in performing such repair and maintenance. LCW shall, subject to partial reimbursement from City as set forth below, maintain and repair those portions of the Non-Exclusive Easements which are being used by LCW from time to time and improvements now existing or hereafter constructed on the Non-Exclusive Easements by LCW. City shall reimburse LCW for fifty percent (50%) of all costs incurred in maintaining or repairing any and all portions of the Non-Exclusive Easements within thirty (30) days after receipt by City of an invoice from LCW, along with reasonable documentation evidencing such costs. Notwithstanding the foregoing, City shall have no obligation to reimburse LCW for costs incurred for maintenance and repair required due to any of the following: (a) LCW's breach of this Agreement; (b) damages in excess of ordinary wear and tear caused by use of the Non-Exclusive Easements by LCW or LCW Authorized Parties; or (c) damages with respect to improvements constructed on the Non-Exclusive Easements by LCW. If the monthly costs of such repair and maintenance exceed \$5,000, then LCW shall first obtain City's approval of such costs, which approval shall not be unreasonably withheld. If City's

consent is not obtained, then City's reimbursement obligation shall not exceed \$2,500 (fifty percent of \$5,000) for any given month. Notwithstanding the foregoing, City shall be obligated to reimburse LCW for one hundred percent (100%) of costs incurred for maintenance and repair required due to any of the following: (a) City's breach of this Agreement; or (b) damages in excess of ordinary wear and tear caused by use of the Non-Exclusive Easements by any party other than LCW or LCW Authorized Parties.

City shall, at its cost and expense, maintain and repair the improvements constructed on the Non-Exclusive Easements by or at the direction of City, except to the extent such maintenance or repair is required due to any of the following: (y) LCW's breach of this Agreement; or (z) use of Non-Exclusive Easements by LCW or any LCW Authorized Parties, in which case LCW shall promptly reimburse City for all costs for such maintenance and repair required pursuant to subsections (y) and (z) above.

12. Modifications to Easements.

The parties agree that in order to accommodate the City's Intended Use, it may be necessary to modify the Easements and relocate facilities and or improvements used in connection with the Oil and Gas Operations, including without limitation, idled, closed, and active wells, pipelines, and utilities (collectively, "**Facilities**"), within the Easements. LCW agrees to the reasonable relocation or modification of the Easements and shall relocate those Facilities which are reasonably necessary to accommodate such relocation or modification of the Easements, provided that the following conditions have been satisfied: (i) LCW has not been required to relocate the same Facilities within the previous ten (10) year period ending on the date the current relocation request is received by LCW; (ii) LCW is not required to expend any costs related to or arising from such relocation or modification other than costs for Remediation required to be performed by LCW pursuant to this Agreement, including the Remediation LCW is required to perform arising from or related to the relocation or modification of Facilities currently located within the Non-Exclusive Easements; (iii) the requesting party has obtained any necessary permits or governmental approvals for both the actual relocation and the new operations and/or Facilities; (iv) the restoration plan provides a seamless transition of new operational replacement Facilities before existing Facilities are shut down so that LCW's Oil and Gas Operations are not interrupted for any period of time exceeding twenty-four (24) hours; (v) the aggregate cost and expense of continued Oil and Gas Operations to LCW will not be materially increased; (vi) such relocation or modification shall be in coordination with a final restoration or redevelopment plan approved by City and other applicable regulatory agencies for the City's Intended Use including a final grading plan; (vii) such restoration plan is not subject to a CEQA appeal or other legal challenge; (viii) such restoration plan has previously been approved by LCW, which approval shall not be unreasonably withheld; (ix) LCW is able to reasonably complete the relocation within one (1) year of all other conditions being met; and (x) the reasonably projected ultimate recovery from the Oil and Gas Operations, including from currently idled wells, as mutually agreed upon by the parties after they have negotiated in good faith for a minimum of seven (7) days, has not been materially diminished. Without limiting the generality of the foregoing, City

shall pay, or cause a third party to pay, any and all reasonable costs incurred by LCW in relocation or modification of any Facilities, including all costs required to improve any relocated Facility so that same shall be operable at the new location, but excluding costs for Remediation required to be performed by LCW pursuant to this Agreement. In lieu of relocation provided in this Section 12 and at the request of either party hereto, the parties shall negotiate in good faith to sell the Facilities subject to relocation to City or its successors if the reasonable fair market value of the Facilities and all future production associated therewith is less than the reasonable relocation costs for said Facilities.

If an existing Easement is to be relocated pursuant to this Section 12 ("**Existing Easement**") to a new location as a relocated Easement ("**Newly Relocated Easements**"), the parties shall amend this Agreement, at no cost to City, to reflect LCW's relinquishment of its right, title and interest in and to the Existing Easement, and the granting to LCW of right, title and interest in and to the Newly Relocated Easement within ten (10) days after either party delivers a written request to the other party for such an amendment. Upon final establishment of a Newly Relocated Easement, should such Newly Relocated Easement be subject to proposed relocation or modification pursuant to further relocation plans, City shall not be obligated to pay any costs for Remediation arising from Oil and Gas Environmental Conditions existing within the Newly Relocated Easements incurred in connection with such relocation or modification.

13. Abandonment of Wells.

If LCW, in its sole and absolute discretion, decides to permanently abandon any oil and gas well on the Surface Property, then LCW, at its own cost and expense, shall be responsible for the ultimate abandonment of such oil and gas wells on the Surface Property to a standard acceptable to the State of California Division of Oil, Gas and Geothermal Resources at the time of abandonment and suitable for the City's Intended Use. If, however, the abandonment arises out of a relocation required pursuant to Section 12, then City shall bear or cause a third party to bear the cost and expense of such abandonment.

14. Cooperation.

If LCW is obligated to relocate Facilities pursuant to Section 12, then LCW and City agree to use commercially reasonable efforts to efficiently conduct the relocation of the Facilities hereunder and in a manner so as to minimize Net Operating Revenue loss and otherwise not unreasonably interfere with the restoration of the Surface Property in accordance with the City's Intended Use. LCW, at no cost to itself, and City agree to cooperate in good faith to facilitate the restoration of the Surface Property in accordance with the City's Intended Use while not unreasonably interfering with Oil and Gas Operations within the Easements and to reasonably and timely execute and approve such documents, plans, applications and permits as may be necessary to facilitate the restoration of the Surface Property in accordance with the City's Intended Use and the relocation of the Facilities.

15. Attorneys' Fees.

If any party to this Agreement brings an action against another party by reason of a breach or alleged violation of any covenant, term or obligation of this Agreement, or for the enforcement of any provision of this Agreement or otherwise arising out of this Agreement, the prevailing party in such action shall be entitled to its cost of suit and reasonable attorneys' fees, which shall be made part of any judgment rendered in such action.

16. Notices.

Any notice to be given by either party to the other shall be in writing and shall be delivered in person, by certified or registered mail, postage prepaid, or by reputable overnight carrier keeping receipt of delivery addressed to the party for whom intended (which delivery shall be deemed accomplished on the date received or, with respect to certified mail, on the date three (3) days after sending) as follows:

If to LCW: LCW Oil Operations, LLC
2101 E. Rosecrans Avenue, Suite 3280
El Segundo, California 90245
Attention: Jeff Berger

With a copy to: Songstad & Randall LLP
2201 Dupont Drive, Suite 100
Irvine, California 92612
Attention: Andrew Leitch

If to City: City of Long Beach
333 W. Ocean Boulevard
Long Beach, California 90802
Attention: City Manager

With a copy to: Los Cerritos Wetlands Authority
c/o Rivers and Mountains Conservancy
El Encanto
100 N. Old San Gabriel Canyon Road
Azusa, CA 91702

Attention: Executive Officer

Each party shall have the right to designate a different address for purposes of receiving notice hereunder.

17. Covenant Running, Successors and Assigns.

The respective rights and obligations hereunder shall be deemed to be covenants running with the land and shall each benefit and burden the Surface Property and the Mineral Property, and shall inure to the benefit and be binding upon the heirs, successors, assigns, and representatives of the parties hereto. The owner of the Mineral Property and the Easements shall automatically be deemed, by acceptance of a deed to such property, to have assumed all obligations relating thereto accruing after such owner's acquisition of the Mineral Property and the Easements. Upon the sale or other transfer of the Mineral Property to any new owner, the transferor shall be released from all further liability or obligation under this Agreement, except for matters arising during the transferor's period of ownership of the Mineral Property. Upon the sale or other transfer of the Surface Property by City to any new owner, such new owner of the Surface Property shall automatically be deemed, by acceptance of a deed to such property, to have assumed all obligations relating thereto accruing before or after such owner's acquisition of the Surface Property. Upon the sale or other transfer of the Surface Property to any new owner, the transferor shall be released from any liability or obligation under this Agreement, except for matters arising during the transferor's period of ownership of the Surface Property. LCW shall not transfer or grant rights to use any Easement to a third-party, other than to an LCW Authorized Party for uses which benefit LCW or to an affiliate of LCW, unless LCW transfers the entire Mineral Property to such third-party. Any transfer of rights hereunder may be made by either party by delivering written notice to the other party. Such transfers shall not require the consent of the non-transferring party.

18. Exhibits.

All exhibits attached hereto are incorporated herein by this reference.

19. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

20. Counterparts.

This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto have signed the same documents. All counterparts shall be construed together and shall constitute one agreement.

21. Further Assurances.

Each of the parties shall execute and deliver any and all additional papers, documents and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the parties. Except as otherwise permitted herein, City agrees not to take any affirmative action to seek to close down or otherwise interfere with Oil and Gas Operations on the Surface Property that are conducted in accordance with the

terms of this Agreement. LCW shall assume all responsibility for, and obligations relating to, assessing data and information related to the Property in order to evaluate and determine the potential applicability of governmental reporting or notification laws. LCW will make a determination, at its sole and absolute discretion, whether any obligations exist to report environmental findings to governmental agencies or other entities. Neither City nor City's employees or agents shall report any findings to any governmental agency, unless: (a) LCW has identified a substantial and imminent danger to human health or the environment; or (b) City or its employee or agents are required to report findings pursuant to applicable law.

22. Entire Agreement.

This Agreement constitutes the entire understanding of the parties hereto and shall supersede any and all other prior agreements, whether written or oral, regarding the subject hereof. This Agreement shall not be amended or modified except by a writing signed by all the owners of the Easements, the Surface Property and the Mineral Property.

23. Estoppel Certificates.

Each party shall, from time to time, within fifteen (15) days after written request from the other party, whether for the benefit of such other party or its prospective transferee, lender, or prospective lender (a "**Requesting Entity**"), execute, acknowledge and deliver to the Requesting Entity, a certificate ("**Estoppel Certificate**") stating (i) that the terms and provisions of this Agreement are unmodified and are in full force and effect or, if modified, identifying such modifications; (ii) whether, to the actual knowledge, of the party executing the Estoppel Certificate, after conducting a reasonable investigation of the relevant facts, there is any existing default under this Agreement (or grounds therefor after giving the requisite notice hereunder) by the Requesting Entity and, if so, specifying the nature and extent thereof; (iii) whether, to the actual knowledge of the party executing the Estoppel Certificate, after conducting a reasonable investigation of the relevant facts, there are any sums which the party executing such Estoppel Certificate is entitled to be reimbursed by the Requesting Entity, and if there is any such sum, specifying the nature and amounts thereof; and (iv) the nature and extent of any claims then being asserted or to the actual knowledge capable of being asserted, or otherwise actually known by such party, after conducting a reasonable investigation of the relevant facts, against the enforcement of the Requesting Entity's rights.

24. Permitted Delays.

Notwithstanding anything to the contrary set forth in this Agreement, whenever performance is required of any party under this Agreement, the party shall use all due diligence and take all reasonable and necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, or damage to work in progress by

reason of fire or other casualty, delays in obtaining governmental permits and approvals, or other cause beyond the reasonable control of the party required to perform (collectively, "Force Majeure"), then the time for performance as herein specified shall be extended by the period of the delay actually so caused. The provisions of this Section 24 shall not (i) operate to excuse any party from the prompt payment of any amounts to be paid by it under this Agreement, or (ii) be applicable to delays resulting from the inability of a party to obtain financing or to proceed with its obligations because of a lack of funds.

25. Construction of Agreement.

The agreements contained herein shall not be construed in favor of or against either party, but shall be construed as if both parties prepared this Agreement.

[Balance of page intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date:

_____, 20__

LCW OIL OPERATIONS, LLC, a Delaware limited liability company

By: _____

Its: _____

"LCW"

CITY OF LONG BEACH, a municipal corporation

_____, 20__

By _____

City Manager

"City"

This Agreement is approved as to form on _____, 20__.

ROBERT E. SHANNON, City Attorney

By _____

Deputy

EXHIBIT "A"
SURFACE PROPERTY LEGAL DESCRIPTION

EXHIBIT "A"
PARCEL 1

LEGAL DESCRIPTION OF
SURFACE PROPERTY
(N'ly Portion to be Conveyed to City of Long Beach)
APN NO. 7237-017-011

A parcel of land in the City of Long Beach, County of Los Angeles, State of California being a portion of Section 2, Township 5 South, Range 12 West, in the Rancho Los Alamitos, described as follows:

Commencing at the South quarter corner of said Section 2, thence Northerly along the North South center section line of said Section 2 North 00°14'46" East 691.08 feet to a point on said center section line distant 4,605 feet from the North quarter corner of said Section 2, said point being an angle point in the boundary line of the City of Long Beach and the County of Los Angeles; Thence at right angles westerly along said boundary line North 89°45'14" West 50.00 feet to the Westerly line of Studebaker Road (50 feet wide) and the **True Point of Beginning** of this description; Thence continuing North 89°45'14" West 170.00 feet to a point on a line drawn parallel to and 220.00 feet westerly of said center section line; Thence Northerly along said parallel line North 00°14'46" East 1,670.73 feet to the Southwesterly line of the land described in deed to Southern California Edison Company recorded May 22, 1963 as Instrument No. 4370 of official records of said county; Thence Southeasterly along said Southwesterly line South 49°00'29" East 290.39 feet to the most Northerly corner of Parcel 1 of Grant Deed recorded November 30, 2007 as Instrument No. 20072448368 of official records of said county, said point being on said center section line; Thence Southerly along the westerly line of said Parcel 1 and said center section line South 00°14'46" West 311.83 feet to the westerly line of said Studebaker Road, said point being the beginning of curve concave easterly and having a radius of 2,050 feet, a radial line to said point bears North 77°04'25" West; Thence southerly along said curve and said Westerly line through a central angle of 12°40'49" an arc distance of 453.70 feet; Thence continuing along said Westerly line and tangent to said curve South 00°14'46" West 719.36 feet to the **True Point of Beginning**.

(Containing 6.79 acres more or less.)

_____ Date: _____

Larry V. Case
LS. 5411
Reg. Exp. 12/31/11

EXHIBIT "A"
PARCEL 2

LEGAL DESCRIPTION OF
SURFACE PROPERTY
(S'ly Portion to be Conveyed to City of Long Beach)

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.

Also excepting that portion of Parcel 3 of LLA 9906-14 described as follows:

Beginning at the northeasterly terminus of that certain course shown on said LLA 9906-14 as having a bearing and distance of "North 52°11'12" East 239.59 feet"; thence South 38°15'25" East a distance of 146.07 feet; thence South 89°36'37" East a

distance of 22.74 feet; thence South 38°15'25" East a distance of 59.37 feet; thence North 52°16'23" East a distance of 71.57 feet; thence South 89°36'37" East a distance of 35.51 feet; thence South 38°15'25" East a distance of 47.76 feet to the boundary of said Parcel 3; thence along the boundary of said Parcel 3 the following seven (7) courses:

South 52°16'23" West 119.72 feet;
South 37°43'37" East 79.36 feet;
South 52°16'23" West 238.00 feet;
North 37°43'37" West 248.53 feet;
South 52°16'23" West 2.00 feet;
North 37°43'37" West 119.91 feet;
North 52°16'23" East 239.59 feet to the point of beginning.

Description was prepared by me or under my direction

_____ Date: _____
Larry V. Case
LS. 5411
Reg. Exp. _____

EXHIBIT "A"
PARCEL 3

LEGAL DESCRIPTION OF
SURFACE PROPERTY

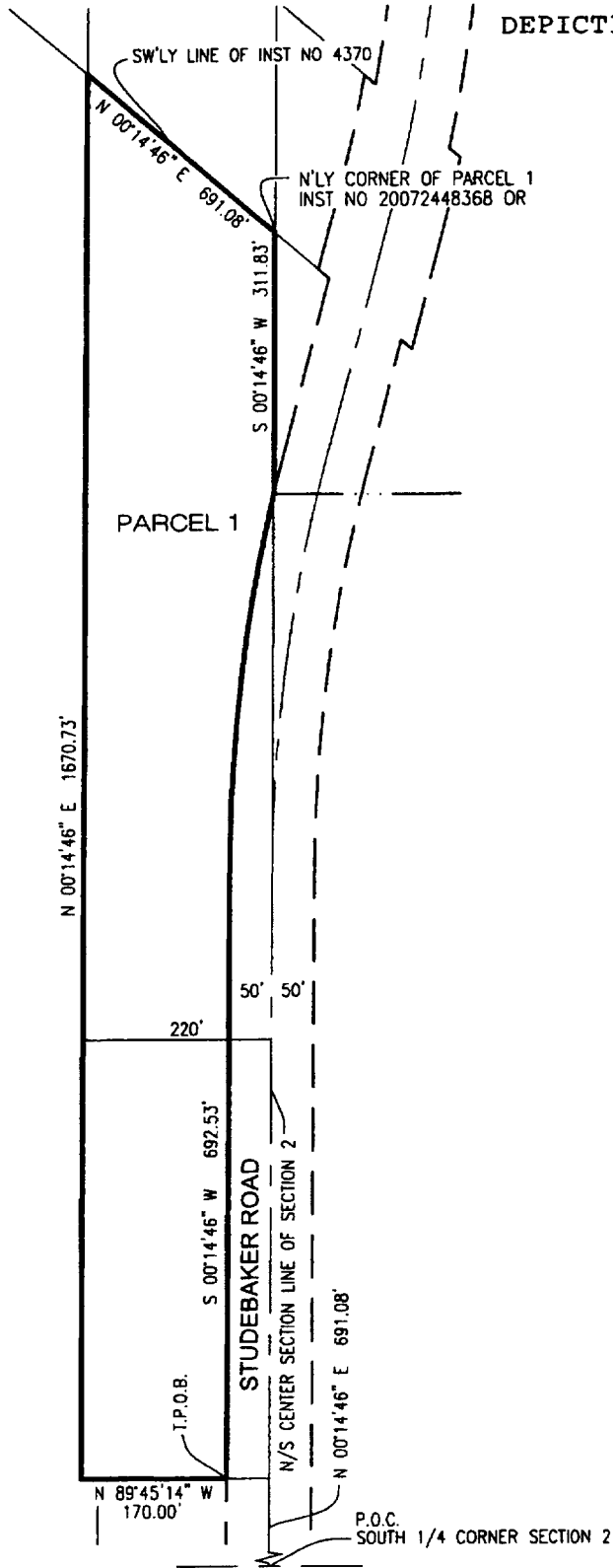
(30 ac.± Southerly Parcel to be Conveyed to City of Long Beach)

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.

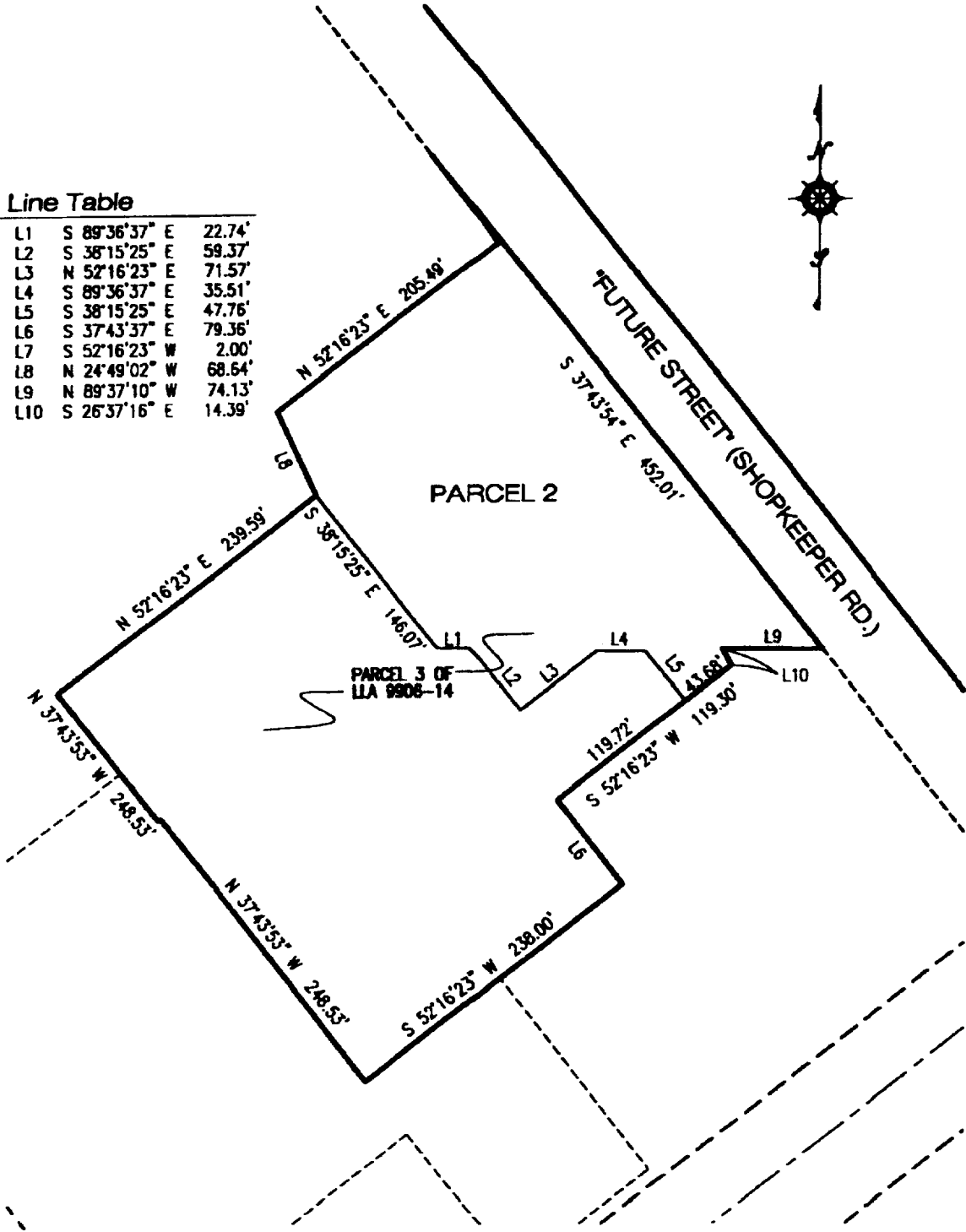
EXHIBIT "A"

DEPICTION OF PARCEL 1



Line Table

L1	S 89°36'37"	E	22.74'
L2	S 38°15'25"	E	59.37'
L3	N 52°16'23"	E	71.57'
L4	S 89°36'37"	E	35.51'
L5	S 38°15'25"	E	47.76'
L6	S 37°43'37"	E	79.36'
L7	S 52°16'23"	W	2.00'
L8	N 24°49'02"	W	68.54'
L9	N 89°37'10"	W	74.13'
L10	S 26°37'16"	E	14.39'



SCALE 1:200

EXHIBIT "A"
DEPICTION OF PARCEL 3

PAGE 1 OF 1

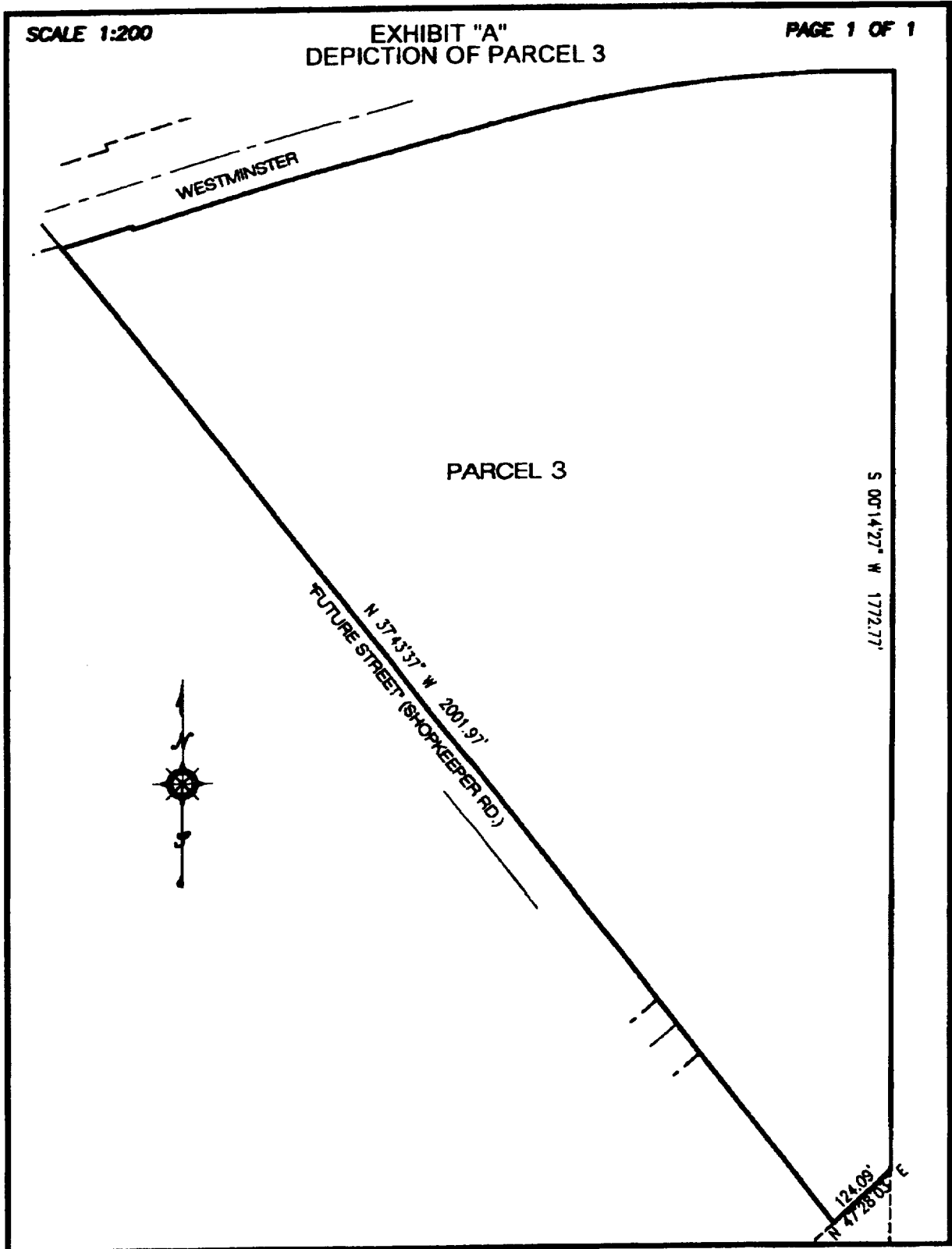


EXHIBIT "B"
MINERAL PROPERTY LEGAL DESCRIPTION

With respect to the surface property described in Exhibit "A" to the Surface Use Agreement and Grant of Easements (to which this Exhibit "B" is attached) (collectively, the "Properties"), the following mineral interests and use rights ("Interests and Use Rights"):

- A. All oil, natural gas, petroleum, other hydrocarbons and any other minerals by whatsoever name known, in, on and under the Properties, and all products derived from any of the foregoing ("Hydrocarbons").
- B. All associated production and extraction rights consisting of the rights to utilize and occupy the surface and subsurface estates to produce, drill, explore, operate, develop, store, extract and take Hydrocarbons through well bores of wells drilled or to be drilled on the surface of the Properties, or well bores located on adjoining properties, but drilled directionally underlying the Properties or directionally drilled wells from Properties other than the Properties into, through or across the subsurface of the Properties and to bottom such whip stocked or directionally drilled wells under and beneath the Properties.
- C. To use and occupy the surface and the subsurface of the Properties to conduct operations by methods now known or unknown, which are reasonably necessary to develop, explore, operate, produce, store, extract or take Hydrocarbons or other minerals from the Properties, including, without limitation, injecting materials into the subsurface to enhance or maintain Hydrocarbon production.
- D. To use and occupy the surface and the subsurface of the Properties to inject, store, pressurize or remove any Hydrocarbons produced from the Properties and for purposes of storing the same in the subsurface of the Properties.
- E. To use and occupy the surface and subsurface with full access and use interests as reasonably necessary in connection with exploring, developing, producing, processing, storing (surface or subsurface) and marketing Hydrocarbons and construction, expansion, relocation, repair and replacement of pipelines, electrical, water, utilities and other necessary facilities for the production, transportation or storage of Hydrocarbons and other substances that are extracted from or injected into well bores.
- F. All surface equipment and facilities currently in place constituting a fixture, utilized in connection with development, production, processing, storing and marketing of Hydrocarbons, including but not limited to pumping units,

Christmas trees, well head equipment, tanks, storage and monitoring facilities and office facilities.

- G. All contracts, documents, deeds, leases, licenses, operating agreements, leases, divisions orders, operating agreements, construction contracts, or other agreements associated with or burdening the mineral estate.
- H. Surface and subsurface access in connection with remediation of Hydrocarbon impacted or other contaminated soils or ground water, including without limitation onsite biological remediation soil blending, the importation of clean soils and/or the implementation of any other processes which may be approved by any cognizant governmental agency regulating such remediation activities.
- I. A dominant easement on, over or across the surface of the Properties for vehicular, equipment and pedestrian access ingress and egress in connection with the exercise of any rights otherwise granted herein.

SUBJECT TO all applicable laws, ordinances and governmental regulations affecting the Interest and Use Rights and that certain Deed of Trust, Security Agreement, Assignment of Rents and Leases, and Fixture Filing (California) dated as of October 29, 2007 and recorded in the official records of the County of Los Angeles as document number 20072448369.

EXHIBIT "C"
DESCRIPTION OF NON-EXCLUSIVE EASEMENTS

I. Joint Easements

A. Areas each having a dimension of 150 feet by 150 feet centered around each existing well located on the Surface Property.

B. A blanket easement over the entire subsurface of the Surface Property to allow for directional drilling originating from the Exclusive Use Easements.

C. A blanket easement over the entire subsurface of the Surface Property for operating, maintaining, repairing, replacing, improving, and testing pipelines, utilities, and related equipment.

II. Above Ground Pipeline Easements

A blanket easement over the entire Surface Property. The current locations of such easements are described in Exhibits "C-1" and "C-4."

III. Above Ground Utility Easements

A blanket easement over the entire Surface Property. The current locations of such easements are described in Exhibits "C-2" and "C-4."

IV. Access Easements

A blanket easement over the entire Surface Property. The current locations of such easements are described in Exhibits "C-3" and "C-4."

EXHIBIT "C-1"
**LEGAL DESCRIPTION OF CURRENT ABOVE GROUND PIPELINE
EASEMENTS**

EXHIBIT "C-1"

LEGAL DESCRIPTION FOR CURRENT OIL PIPELINE

Various parcels and strips of land lying in Section 11, Township 5 south, Range 12 west, in the Rancho Los Alamitos as shown on map nos. 1 and 2 of portion of Rancho Los Alamitos, recorded in book 700 pages 138 through 141 of deeds and partially in Parcel 3 of Lot Line Adjustment No. 9906-14 recorded January 25, 2000 as instrument no. 00-0112748, partially within the City of Long Beach and partially without, County of Los Angeles, State of California, in the office of the county recorder of said county, described as follows:

Strip #1 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at a point in the southwesterly line of Parcel 4 of grant deed recorded November 30, 2007 as instrument no. 20072448368 of official records of said county distant thereon North 37°43'37" West 80.21 feet from the most southerly corner of said parcel 4; thence North 45°48'48" East 196.34 feet to the easterly line of said parcel 4 and to the **end point** of this description.

Strip #2 (Pipeline Easement)

A strip of land 16.00 feet wide, measured at right angles, lying 8.00 feet each side of the following described centerline:

Beginning at a point in the southwesterly line of said Parcel 4 distant thereon North 37°43'37" West 347.78 feet from the most southerly corner of said parcel 4; thence North 00°14'27" East 134.59 feet to a point hereinafter referred to as Point "A"; thence continuing North 00°14'27" East 164.18 feet to a point hereinafter referred to as Point "B"; thence continuing North 00°14'27" East 78.59 feet to a point hereinafter referred to as Point "C" and the **end point** of this description.

Strip #3 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "A" described in "strip #2"; thence South 89°45'33" East 142.84 feet to the **end point** of this description.

Strip #4 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "B" described in "strip #2"; thence South 89°45'33" East 305.00 feet to the easterly line of said Parcel 4 and the **end point** of this description.

Strip #5 (Pipeline Easement)

A strip of land 20.00 feet wide, measured at right angles, lying 10.00 feet each side of the following described centerline:

Commencing at the aforementioned Point "C" described in "strip #2"; thence North 88°47'22" West 1.02 feet; thence North 00°14'27" East 4.00 feet to the **True Point of Beginning**; thence North 88°47'22" West 46.54 feet to a point hereinafter referred to as Point "D" and the **end point** of this description.

Strip #6 (Pipeline Easement)

A strip of land 14.00 feet wide, measured at right angles, lying 7.00 feet each side of the following described centerline:

Commencing at the aforementioned Point "C" described in "strip #2"; thence North 88°47'22" West 1.02 feet to the **True Point of Beginning**; thence North 00°14'27" East 135.51 feet to a point hereinafter referred to as Point "E" and the **end point** of this description.

Strip #7 (Pipeline Easement)

A strip of land 12.00 feet wide, measured at right angles, lying 6.00 feet each side of the following described centerline:

Commencing at the aforementioned Point "E" described in "strip #6"; thence North 89°45'33" West 1.00 feet to the **True Point of Beginning**; thence North 00°14'27" East 195.07 feet to a point hereinafter referred to as Point "F"; thence continuing North 00°14'27" East 267.40 feet to a point hereinafter referred to as Point "G"; thence continuing North 00°14'27" East 267.40 feet 24.35 feet to a point hereinafter referred to as Point "H" and the **end point** of this description.

Strip #8 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "F" described in "strip #7"; thence South 89°25'57" West 73.32 feet to a point hereinafter referred to as Point "I"; thence North 04°31'22" East

27.31 feet; thence North 01°12'42" West 1.97 feet to a point hereinafter referred to as Point "J"; thence continuing North 01°12'42" West 37.51 feet; thence North 07°50'11" 36.04 feet; thence North 09°19'43" West 80.32 feet to a point hereinafter referred to as Point "K"; thence continuing North 09°19'43" West 9.57 feet; thence North 00°14'27" East 35.13 feet to a point hereinafter referred to as Point "L"; thence South 89°45'33" East 218.30 feet to a point hereinafter referred to as Point "M"; thence South 00°45'17" West 223.38 feet to a point hereinafter referred to as Point "N"; thence South 89°25'57" West 124.02 feet to the **Point of Beginning**.

Strip #9 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "N" described in "strip #8"; thence South 00°45'17" West 91.51 feet to a point hereinafter referred to as Point "O"; thence continuing South 00°45'17" West 87.34 feet; thence South 03°08'19" East 52.63 feet; thence North 89°45'33" West 115.67 feet to a point hereinafter referred to as Point "P"; thence continuing North 89°45'33" West 46.53 feet to a point hereinafter referred to as Point "Q"; thence North 00°14'27" East 55.18 feet; thence North 89°45'33" West 30.59 feet; thence North 00°14'27" East 11.71 feet to a point hereinafter referred to as Point "R"; thence continuing North 00°14'27" East 124.19 feet; thence North 04°31'22" East 37.62 feet to the aforementioned Point "I" and the **end point** of this description.

Strip #10 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "P" described in "strip #9"; thence South 44°01'02" East 116.59 feet and the **end point** of this description.

Strip #11 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "Q" described in "strip #9"; thence North 89°45'33" West 53.07 feet; thence North 00°14'27" East 24.25 feet; thence South 89°45'33" East 53.07 feet to the aforementioned a point on the above described centerline of Strip #9 and the **end point** of this description.

Strip #12 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "R" described in "strip #9"; thence North 89°45'33" West 51.46 feet to the **end point** of this description.

Strip #13 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "J" described in "strip #8"; thence North 90°00'00" West 18.91 feet to the **end point** of this description.

Strip #14 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "K" described in "strip #8"; thence North 90°00'00" West 16.21 feet to the **end point** of this description.

Strip #15 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "G" described in "strip #7"; thence North 89°45'33" West 207.97 feet to the **end point** of this description.

Strip #16 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "L" described in "strip #8"; thence North 00°14'27" East 42.28 feet to a point on the centerline of the above described "strip #15" and to the **end point** of this description.

Strip #17 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Commencing at the aforementioned Point "H" described in "strip #7"; thence South 55°41'31" East 220.22 feet to the **Point of Beginning**; thence North 55°41'31" West 751.96 feet point to the **end point** of this description.

Strip #18 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "H" described in "strip #7"; thence North 00°14'27" East 485.82 feet to the **end point** of this description.

Strip #19 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "M" described in "strip #8"; thence North 00°45'17" East 31.17 feet; thence North 90°00'00" East 13.93 feet to the **end point** of this description.

Strip #20 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "N" described in "strip #8"; thence North 89°25'57" East 12.51 feet to the **end point** of this description.

Strip #21 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "O" described in "strip #9"; thence South 89°14'43" East 27.15; thence North 00°53'00" West 48.50 feet to the **end point** of this description.

Strip #22 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "Q" described in "strip #9"; thence South 00°15'04" West 96.16 feet to the aforementioned Point "D" described in "strip #5" and to the **end point** of this description.

Strip #23 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Commencing at the aforementioned Point "D" described in "strip #5"; thence South 00°00'05" East 4.00 feet to the **True Point of Beginning**; thence North 88°47'22" West 113.96 feet to a point hereinafter referred to as Point "S"; thence continuing North 88°47'22" West 240.81 feet; thence North 56°01'48" West 65.05 feet to a point hereinafter referred to as Point "X"; thence continuing North 56°01'48" West 8.31 feet; thence North 89°45'17" West 131.17 feet; thence South 01°26'26" East 50.87 feet to **end point** of this description.

Strip #24 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "S" described in "strip #23"; thence South 00°40'52" West 106.06 feet to a point hereinafter referred to as Point "T"; thence continuing South 00°40'52" West 65.41 feet to the Westerly line of said parcel 4 and to the **end point** of this description.

Strip #25 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "T" described in "strip #24"; thence South 89°50'53" East 106.06 feet to a point hereinafter referred to as Point "T"; thence continuing South 00°40'52" West 16.52 feet to **end point** of this description

Strip #26 (Pipeline Easement)

A strip of land 18.00 feet wide, measured at right angles, lying 9.00 feet each side of the following described centerline:

Beginning at a point in the centerline of the above described strip no. 23 distant thereon North 88°47'22" West 188.79 feet from Point S described above; thence North 01°12'41"

East 100.30 feet to a point hereinafter referred to as Point "U" and to **end point** of this description

Strip #27 (Pipeline Easement)

A strip of land 14.00 feet wide, measured at right angles, lying 7.00 feet each side of the following described centerline:

Beginning at a point the aforementioned Point "U"; thence parallel with said northwesterly line North 37°43'37" West 422.49 feet; thence North 00°14'27" East 391.32 feet to a point hereinafter referred to as Point "V"; thence continuing North 00°14'27" East 27.99 feet to a point hereinafter referred to as Point "W"; thence continuing North 00°14'27" East 136.25 feet; thence North 15°18'35" West 50.92 feet to the Southerly line of Westminster Road (70.00 feet wide) and the Northerly line of said Parcel 4 and to **end point** of this description.

Strip #28 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "U"; thence parallel with said northwesterly line South 37°43'37" East 28.21 feet; thence South 10°33'37" East 31.60 feet; thence South 89°43'55" East 112.69 feet to **end point** of this description.

Strip #29 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "V"; thence North 90°00'00" East 95.93 feet to **end point** of this description.

Strip #30 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "W"; thence North 89°45'33" West 253.87 feet; thence North 00°14'27" East 38.40 feet to **end point** of this description.

Strip #31 (Pipeline Easement)

A strip of land 8.00 feet wide, measured at right angles, lying 4.00 feet each side of the following described centerline:

Beginning at the aforementioned Point "X"; thence South 01°57'32" West 137.13 feet; thence South 89°26'17" East 17.07 feet to **end point** of this description.

Strip #32 (Pipeline Easement)

The northerly 4.00 feet and the easterly 4.00 feet of said Parcel 4 of said Grant Deed.

Description was prepared by me or under my direction

_____ Date: _____
Larry V. Case
LS. 5411
Reg. Exp. _____

EXHIBIT "C-2"
LEGAL DESCRIPTION OF CURRENT ABOVE GROUND UTILITY
EASEMENTS

EXHIBIT "C-2"

LEGAL DESCRIPTION FOR OVERHEAD UTILITIES

Various strips of land lying in Section 11, Township 5 south, Range 12 west, in the Rancho Los Alamitos as shown on map nos. 1 and 2 of portion of Rancho Los Alamitos, recorded in book 700 pages 138 through 141 of deeds and partially in Parcel 3 of Lot Line Adjustment No. 9906-14 recorded January 25, 2000 as instrument no. 00-0112748, partially within the City of Long Beach and partially without, County of Los Angeles, State of California, in the office of the county recorder of said county, described as follows:

Strip #1 (Electrical Distribution Easement)

A strip of land 10.00 feet wide, measured at right angles, lying 5.00 feet each side of the following described centerline:

Beginning at a point in the southwesterly line of Parcel 4 of grant deed recorded November 30, 2007 as instrument no. 20072448368 of official records of said county distant thereon North 37°43'37" West 314.87 feet from the most southerly corner of said parcel 4; thence North 00°11'23" East 109.12 feet to a point hereinafter referred to as Point A; thence continuing North 00°11'23" East 378.74 feet to a point hereinafter referred to as Point B; thence continuing North 00°11'23" East 153.10 feet to a point hereinafter referred to as Point C; thence continuing North 00°11'23" East 307.99 feet to a point hereinafter referred to as Point D; thence continuing North 00°11'23" East 281.55 feet to a point hereinafter referred to as Point E; thence continuing North 00°11'23" East 161.42 feet to a point hereinafter referred to as Point F; thence North 27°42'41" West 130.21 feet and to the **end point** of this description.

Strip #2 (Electrical Distribution Easement)

A strip of land 10.00 feet wide, measured at right angles, lying 5.00 feet each side of the following described centerline:

Commencing at the aforementioned Point A described in "strip #1"; thence North 89°30'07" East 115.33 feet to the **True Point of Beginning**; thence South 89°30'07" West 199.55 feet to the southwesterly line of said Grant Deed and to the **end point** of this description.

Strip #3 (Electrical Distribution Easement)

A strip of land 10.00 feet wide, measured at right angles, lying 5.00 feet each side of the following described centerline:

Beginning at a point in the southwesterly line of Parcel 4 of grant deed recorded November 30, 2007 as instrument no. 20072448368 of official records of said county distant thereon

North 37°43'37" West 606.77 feet from the most southerly corner of said parcel 4; thence South 89°53'02" East 86.05 feet to a point hereinafter referred to as Point G; thence continuing South 89°53'02" East 93.35 feet to a point on the centerline of strip #1 described above, said point being the **end point** of this description.

Strip #4 (Electrical Distribution Easement)

A strip of land 10.00 feet wide, measured at right angles, lying 5.00 feet each side of the following described centerline:

Beginning at the aforementioned Point G described in "strip #3"; thence South 00°22'33" East 112.01 feet to the southwesterly line of said Grant Deed and to the **end point** of this description.

Strip #5 (Electrical Distribution Easement)

A strip of land 10.00 feet wide, measured at right angles, lying 5.00 feet each side of the following described centerline:

Beginning at a point in the southwesterly line of Parcel 4 of grant deed recorded November 30, 2007 as instrument no. 20072448368 of official records of said county distant thereon North 37°43'37" West 608.82 feet from the most southerly corner of said parcel 4; thence North 00°46'05" East 108.38 feet; thence North 08°03'03" West 56.48 feet and to the **end point** of this description.

Strip #6 (Electrical Distribution Easement)

A strip of land 10.00 feet wide, measured at right angles, lying 5.00 feet each side of the following described centerline:

Beginning at a point in the centerline of strip no. 5 described above distant thereon North 00°46'05" East 90.46 feet from the southerly terminus of said strip; thence South 89°25'29" West 28.24 feet; thence North 85°58'35" West 182.98 feet; thence North 00°30'44" West 121.83 feet; thence South 89°28'14" West 247.68 feet to the **end point** of this description.

Strip #7 (Electrical Distribution Easement)

A strip of land 10.00 feet wide, measured at right angles, lying 5.00 feet each side of the following described centerline:

Commencing at the aforementioned Point B described in "strip #1"; thence South 89°39'45" East 136.58 feet to the **True Point of Beginning**; thence North 89°39'45" West 136.58 feet; thence South 43°23'22" West 136.89 feet to the **end point** of this description.

Strip #8 (Electrical Distribution Easement)

A strip of land 10.00 feet wide, measured at right angles, lying 5.00 feet each side of the following described centerline:

Commencing at the aforementioned Point C described in "strip #1"; thence North 89°24'03" East 127.51 feet to the **True Point of Beginning**; thence South 89°24'03" West 242.63 feet to the **end point** of this description.

Strip #9 (Electrical Distribution Easement)

A strip of land 10.00 feet wide, measured at right angles, lying 5.00 feet each side of the following described centerline:

Commencing at the aforementioned Point D described in "strip #1"; thence North 88°55'18" East 129.86 feet to the **True Point of Beginning**; thence South 88°55'18" West 254.06 feet to the **end point** of this description.

Strip #10 (Electrical Distribution Easement)

A strip of land 10.00 feet wide, measured at right angles, lying 5.00 feet each side of the following described centerline:

Commencing at the aforementioned Point F described in "strip #1"; thence South 89°15'34" East 95.42 feet to the **True Point of Beginning**; thence North 89°15'34" West 435.10 feet to a point hereinafter referred to as Point H; thence continuing North 89°15'34" West 156.23 feet to a point hereinafter referred to as Point I; thence continuing North 89°15'34" West 134.90 feet to a point hereinafter referred to as Point J; thence continuing North 89°15'34" West 139.18 feet to a point hereinafter referred to as Point K; thence South 00°22'58" West 120.69 feet; thence South 89°24'42" West 44.28 feet and the **end point** of this description.

Strip #11 (Electrical Distribution Easement)

A strip of land 10.00 feet wide, measured at right angles, lying 5.00 feet each side of the following described centerline:

Beginning at the aforementioned Point E described in "strip #1"; thence North 45°55'37" West 234.87 feet to a point on the centerline of strip #10 described above, said point being the **end point** of this description.

Strip #12 (Electrical Distribution Easement)

A strip of land 10.00 feet wide, measured at right angles, lying 5.00 feet each side of the following described centerline:

Commencing at the aforementioned Point H described in "strip #10"; thence South 00°43'23" West 66.97 feet to the **True Point of Beginning**; thence North 00°43'23" East 203.71 feet to a point on the northerly line of said Parcel 4, said point being the **end point** of this description.

Strip #13 (Electrical Distribution Easement)

A strip of land 10.00 feet wide, measured at right angles, lying 5.00 feet each side of the following described centerline:

Beginning at the aforementioned Point I described in "strip #10"; thence South 00°35'16" West 153.48 feet to the **end point** of this description.

Strip #14 (Electrical Distribution Easement)

A strip of land 10.00 feet wide, measured at right angles, lying 5.00 feet each side of the following described centerline:

Beginning at the aforementioned Point J described in "strip #10"; thence South 00°04'27" West 502.13 feet to the **end point** of this description.

Strip #15 (Electrical Distribution Easement)

A strip of land 10.00 feet wide, measured at right angles, lying 5.00 feet each side of the following described centerline:

Beginning at the aforementioned Point K described in "strip #10"; thence North 17°48'41" West 10.41 feet to the northerly line of said Parcel 4 of said Grant Deed and the **end point** of this description.

Description was prepared by me or under my direction

_____ Date: _____
Larry V. Case
LS. 5411
Reg. Exp. _____

EXHIBIT "C-3"
LEGAL DESCRIPTION OF CURRENT ACCESS EASEMENTS

EXHIBIT "C-3"

LEGAL DESCRIPTION FOR CURRENT ACCESS

Various parcels of land lying in Section 11, Township 5 south, Range 12 west as shown on map nos. 1 and 2 of portion of Rancho Los Alamitos, recorded in book 700 pages 138 through 141 of deeds, in the Rancho Los Alamitos and partially in Parcel 3 of Lot Line Adjustment No. 9906-14 recorded January 25, 2000 as instrument no. 00-0112748, partially within the City of Long Beach and partially without, County of Los Angeles, State of California, in the office of the county recorder of said county, described as follows:

Parcel #A (Access Easement)

A parcel of land described as follows:

Beginning at a point in the southwesterly line of Parcel 4 of Grant Deed recorded November 30, 2007 as instrument no. 20072448368 of official records of said county and the northeasterly line of said Parcel Map No.19212, distant thereon South 37°43'37" East from the most northerly corner of the street designated thereon as "future street"; thence North 47°00'54" East 55.84 feet to the beginning of a curve concave westerly and having a radius of 12.00 feet; thence northerly along said curve through a central angle of 126°07'01" an arc distance of 26.41 feet to the beginning of a compound curve concave easterly and having a radius of 40.00 feet; thence northerly along said curve through a central angle of 168°52'30" an arc distance of 117.90 feet; thence North 89°46'23" East 236.35 feet; thence North 00°13'37" West 45.14 feet; thence North 89°46'23" East 18.00 feet; thence South 00°13'37" East 45.14 feet; thence North 89°46'23" East 278.41 feet to the most westerly corner of Parcel #10 as described herein on Exhibit D-1 of this document; thence continuing along the southerly line of said Parcel #10 North 89°46'23" East 278.41 feet 253.93 feet; thence South 00°00'00" East 3.89 feet; thence South 89°39'08" East 117.80 feet to the beginning of a curve concave northwest and having a radius of 25.00 feet; thence northeasterly along said curve through a central angle of 90°44'73" an arc distance of 39.60 feet; thence North 00°24'21" West 129.66 feet to the southeasterly corner of Parcel #9 described in said Exhibit D-1; thence continuing along the easterly line of said Parcel #9 North 00°24'21" West 37.72 feet; thence North 89°35'39" East 10.00 feet; thence South 00°24'21" East 158.30 feet to the beginning of a curve concave northeasterly and having a radius of 35.00 feet; thence southeasterly along said curve through a central angle of 89°14'47" an arc distance of 54.52 feet; thence South 89°39'08" East 141.47 feet; thence parallel with the Easterly line of said Parcel 4 of said Grant Deed South 00°14'27" West 1000.88 feet; thence North 89°45'33" West 16.84 feet; thence parallel with last said Easterly line South 00°14'27" West 586.84 feet; thence South 29°41'17" West 9.37 feet to the southwesterly line of said Parcel 4; thence along last said southwesterly line North 37°43'37" West 57.97 feet; thence North 43°27'19" East 15.65 feet to the beginning of a curve concave northwesterly and having a radius of 50.00 feet; thence northeasterly along said curve through a central angle of 43°12'52" an arc distance of 37.71 feet; thence parallel with last said easterly line of said Parcel 4 North 00°14'27" East 360.87 feet to the beginning of a curve concave southwesterly and having a radius of 25.00 feet; thence

northwesterly along said curve through a central angle of 93°04'30" an arc distance of 40.61 feet; thence South 87°09'57" West 126.64 feet to the easterly line of Parcel #2 described in said Exhibit D-1; thence along last said easterly line of said Parcel #2 North 00°00'00" East 10.01 feet; thence North 87°09'57" East 129.37 feet to the beginning of a curve concave northwesterly and having a radius of 25.00 feet; thence northeasterly along said curve through a central angle of 86°55'30" an arc distance of 37.93 feet; thence North 00°14'27" East 20.08 feet; thence North 90°00'00" West 22.04 feet to the easterly line of Parcel #3 described in said Exhibit D-1; thence along last said easterly line of said Parcel #3 North 00°00'00" East 12.00 feet; thence South 90°00'00" East 22.09 feet; thence North 00°14'27" East 9.48 feet to the beginning of a curve concave southwesterly and having a radius of 40.00 feet; thence northwesterly along said curve through a central angle of 87°49'00" an arc distance of 62.70 feet; thence North 89°34'33" West 216.06 feet to the beginning of a curve concave southeasterly and having a radius of 25.00 feet; thence southwesterly along said curve through a central angle of 90°00'00" an arc distance of 39.35 feet; thence South 00°14'27" West 194.86 feet to the southwesterly line of said Parcel 4 of said Grant Deed; thence along last said southwesterly line North 37°43'37" West 26.01 feet; thence North 00°14'27" East 117.69 feet to the southeasterly corner of Parcel #19 described in said Exhibit D-1; thence continuing along the easterly line of said Parcel #19 North 00°14'27" East 31.96 feet to the beginning of a curve concave southwesterly and having a radius of 50.00 feet; thence northwesterly along said curve through a central angle of 89°50'00" an arc distance of 78.38 feet; thence North 89°34'33" West 56.10 feet; thence South 00°25'27" West 33.77 feet; thence North 89°34'33" West 23.61 feet to the said southwesterly line of said Parcel 4; thence along said southwesterly line North 37°43'37" West 17.03 feet; thence North 00°25'27" East 20.37 feet; thence North 89°34'33" West 16.00 feet to the said southwesterly line of said Parcel 4; thence along said southwesterly line North 37°43'37" West 27.98 feet; thence South 89°34'33" East 119.99 feet; thence North 00°00'00" West 32.33 feet to the southerly line of Parcel #18 described in said Exhibit D-1; thence along said southerly line South 88°47'22" East 14.71 feet; thence South 00°00'00" East 32.13 feet; thence South 89°34'33" East 328.12 feet to the beginning of a curve concave northwesterly and having a radius of 100.00 feet; thence northeasterly along said curve through a central angle of 73°11'43" an arc distance of 127.75 feet; thence North 90°00'00" West 23.89 feet to the easterly line of Parcel 4 described herein; thence along the easterly line of last said Parcel 4 North 00°00'00" West 12.00 feet; thence South 90°00'00" East 26.81 feet; thence North 05°11'40" East 17.27 feet; thence parallel with the easterly line of said Parcel 4 of said Grant Deed North 00°14'27" East 161.18 feet; thence North 89°45'33" West 33.83 feet to the Easterly line of Parcel #5 described in said Exhibit D-1; thence along the easterly line of said Parcel #5 North 00°14'27" East 15.00 feet; thence South 89°45'33" East 33.83 feet; thence parallel with the easterly line of said Parcel 4 of said Grant Deed North 00°14'27" East 71.85 feet; thence North 89°45'33" West 27.30 feet to the easterly line of Parcel #6 described in said easement document; thence along said easterly line North 00°14'27" East 15.00 feet; thence South 89°45'33" East 27.30 feet; thence parallel with the easterly line of said Parcel 4 of said Grant Deed North 00°14'27" East 232.41 feet to the southeasterly corner of Parcel #7 described in said Exhibit D-1; thence continuing along said easterly line and the northerly prolongation thereof and said parallel line North 00°14'27" East 158.33 feet to the beginning of a curve concave southwesterly and having a radius of 400.00 feet; thence northwesterly along said curve and the easterly line of Parcel #8 described in said Exhibit D-1 the northerly and southerly prolongations thereof through a central angle of 34°59'33" an arc distance of 174.48 feet to the beginning of a compound curve concave southwesterly and having a radius of 75.00 feet; thence northwesterly along said curve through a central angle of 64°54'02" an arc distance of 84.95 feet; thence North 89°39'08" West 216.82 feet

to a point hereinafter referred to as Point "Y"; thence North 86°56'59" West 88.81 feet; thence South 88°18'59" West 134.46 feet; thence South 89°46'23" West 106.45 feet; thence North 89°48'55" West 139.11 feet to a point hereinafter referred to as Point "Z"; thence South 89°46'23" West 134.07 feet to the beginning of a curve concave southeasterly and having a radius of 125.00 feet; thence southwesterly along said curve through a central angle of 42°45'29" an arc distance of 93.28 feet; thence South 47°00'54" West 149.46 feet to said southwesterly line of said Parcel 4 of said Grant Deed and said northeasterly line of said Parcel Map; thence along last said southwesterly and last said northeasterly line North 37°43'37" West 15.06 feet to the **Point of Beginning**.

Parcel #B (Access Easement)

A parcel of land described as follows:

Beginning at the aforementioned Point "Z", said point being the beginning of a curve concave southwesterly and having a radius of 55.00 feet, a radial line to said point of beginning bears South 00°13'37" East; thence southeasterly along said curve and the easterly line of Parcel #12 described in said Exhibit D-1 and the northerly and southerly prolongations thereof, through a central angle of 98°29'29" and arc distance of 94.55 feet thence South 08°15'52" West 83.58 feet; thence South 00°43'50" West 302.26 feet; thence South 90°00'00" West 25.44 feet to the easterly line of Parcel 14 described in said easement document; thence along said easterly line South 00°00'00" East 12.00 feet; thence North 90°00'00" East 25.29 feet to the beginning of a non-tangent curve concave northeasterly and having a radius of 290.00 feet, a radial line to said point bears South 89°29'47" East; thence southeasterly along said curve through a central angle of 38°13'50" an arc distance of 193.50 feet to a point on the northeasterly line of Strip #27 described herein on Exhibit C-1 of this document; thence along said northeasterly line South 37°43'37" East 147.82 feet to the beginning of a curve concave northerly and having a radius of 87.00 feet; thence southerly along said curve through a central angle of 56°05'00" an arc distance of 85.16 feet; thence North 86°11'23" East 146.69 feet to the beginning of a curve concave southwesterly and having a radius of 15.00 feet; thence southeasterly along said curve through a central angle of 58°06'05" an arc distance of 15.21 feet to the beginning of a reverse curve concave northeasterly and having a radius of 50.00 feet; thence southeasterly along said curve through a central angle of 54°03'01" an arc distance of 47.17 feet to the westerly prolongation of the most northerly line of Strip #11 described in said Exhibit C-1; thence along said most northerly line and said prolongation thereof South 89°45'33" East 70.34 feet; thence North 00°14'27" East 10.00 feet; thence North 89°45'33" West 70.34 feet to the beginning of a curve concave northeasterly and having a radius of 40.00 feet; thence northwesterly along said curve through a central angle of 67°25'05" an arc distance of 47.07 feet; thence South 89°45'33" East 60.68 feet; thence North 00°00'00" East 50.05 feet; thence South 89°41'17" West 26.20 feet; thence North 00°03'47" West 38.89 feet to the beginning of a non-tangent curve concave westerly and having a radius of 800.00 feet, a radial line to said curve bears North 82°03'04" West; thence northerly along said curve through a central angle of 07°02'41" an arc distance of 98.36 feet; thence North 90°00'00" East 12.24 feet to the westerly line of Parcel #17 described in first said easement

document; thence along said westerly line North 00°00'00" East 12.00 feet; thence North 90°00'00" West 12.14 feet to the northerly continuation of last said curve, a radial line to said point bears North 89°57'19" West; thence along said curve through a central angle of 10°24'09" an arc distance of 145.25 feet; thence North 90°00'00" East 13.58 feet to the westerly line of Parcel #16 of first said easement document; thence along said westerly line North 00°00'00" West 12.00 feet; thence North 90°00'00" West 15.79 feet; thence North 10°28'37" West 80.18 feet; thence North 00°00'13" West 307.37 feet to the beginning of a curve concave southeasterly and having a radius of 75.00 feet; thence northerly along said curve through a central angle of 11°12'25" an arc distance of 14.68 feet to the beginning of a compound curve concave southeasterly and having a radius of 25.00 feet; thence northeasterly along said curve through a central angle of 79°08'14" and arc distance of 34.53 feet to the aforementioned Point "Y"; thence along the southerly line of Parcel "A" described in said Exhibit D-1, North 86°56'69" West 70.49 feet; thence South 55°51'02 East 24.32 feet to the beginning of a curve concave southwesterly and having a radius of 30.00 feet; thence southeasterly along said curve through a central angle of 55°50'49" an arc distance of 29.24 feet; thence South 00°00'13" East 311.11 feet; thence North 89°45'33" 21.73 feet to the easterly line of Parcel 15 described above; thence South 00°14'27" West 56.33 feet; thence South 89°45'33" East 18.64; thence South 10°28'37" East 34.29 feet to the beginning of a curve concave westerly and having a radius of 775.00 feet; thence southerly along said curve through a central angle of 16°49'19" an arc distance of 227.54 feet to the beginning of a compound curve concave northwesterly and having a radius of 125.00 feet; thence southwesterly along said curve through a central angle of 79°50'41" an arc distance of 174.19 feet; thence South 86°11'23" West 62.16 feet to the beginning of a curve concave northeasterly and having a radius of 75.00 feet; thence northwesterly along said curve through a central angle of 56°05'00" an arc distance of 73.41 feet; thence parallel with the southwesterly line of said Parcel 4 of said Grant Deed North 37°43'37" West 150.10 feet to the beginning of a curve concave northeasterly and having a radius of 277.00 feet; thence northwesterly along said curve through a central angle of 38°27'27" an arc distance of 185.93 feet; thence North 00°43'50" East 246.77 feet to the beginning of a curve concave easterly and having a radius of 400.00 feet; thence northerly along said curve through a central angle of 13°16'36" an arc distance of 92.69 feet; thence North 90°00'00" East 13.68 feet to the westerly line of Parcel #13 described in said Exhibit D-1; thence along said westerly line North 00°00'00" East 15.00 feet; thence South 90°00'00" West 9.63 feet; thence North 17°47'37" East 61.49 feet to the beginning of a curve concave southeasterly and having a radius of 50.00 feet; thence northeasterly along said curve through a central angle of 71°58'46" an arc distance of 62.81 feet to the southerly line of Parcel "A" described in said Exhibit D-1; thence along said southerly line North 89°48'55" West 139.11 feet to the **Point of Beginning**.

Parcel #C (Access Easement)

A parcel of land described as follows:

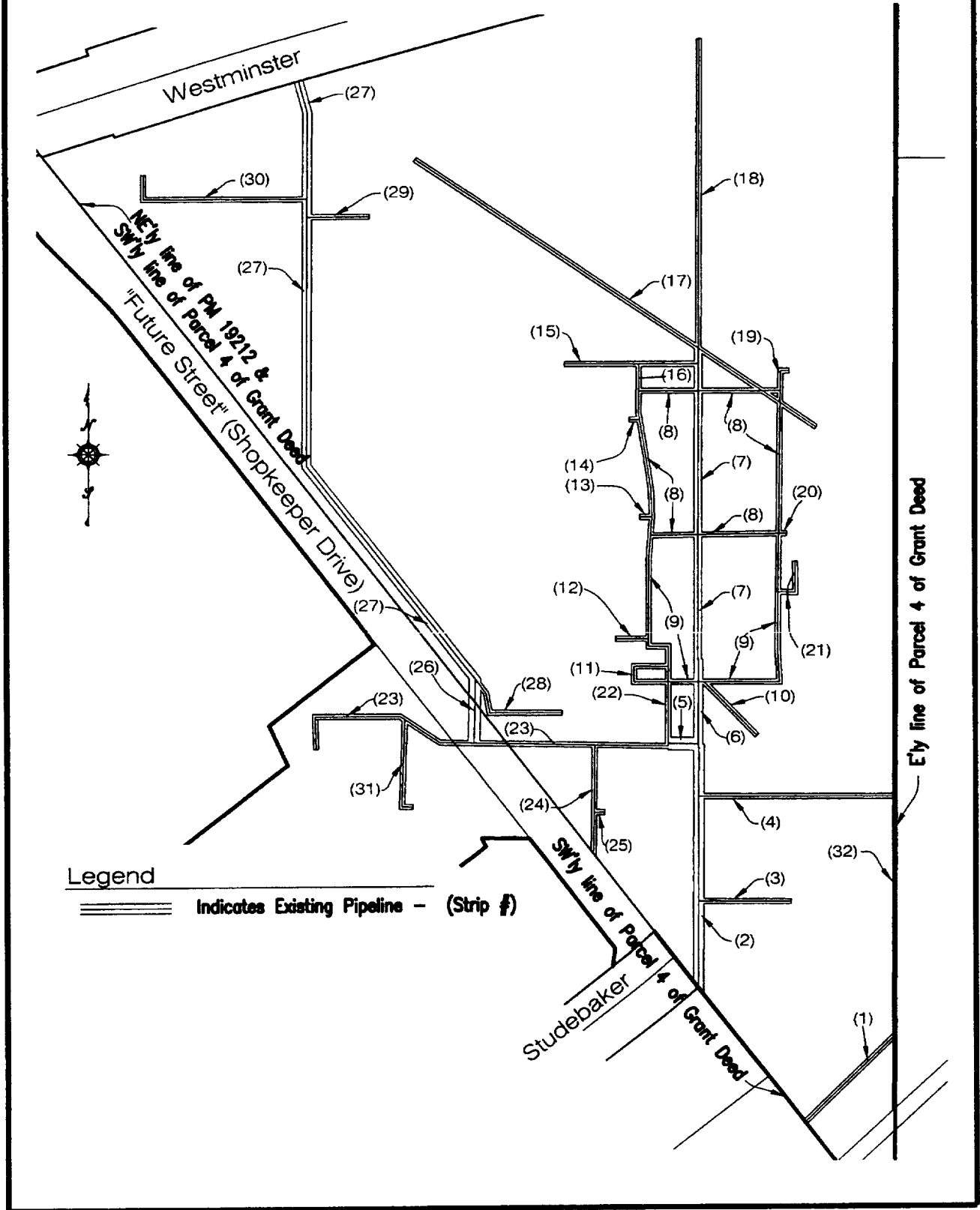
Beginning at a point on that certain course in the southerly line of that certain street designated on said Parcel Map No. 19212 as "future street" shown as being "North 37°52'23" West 468.81 feet" on said Parcel Map, distant thereon North 37°43'54" West 362.89 feet from the most southerly corner of said course; thence North 58°11'47" East 8.54 feet; thence North 31°48'13" West 67.68 feet; thence North 42°11'18" West 49.00 feet; thence North 52°35'44" East 42.24 feet; thence South 14°41'52" East 49.61 feet; thence

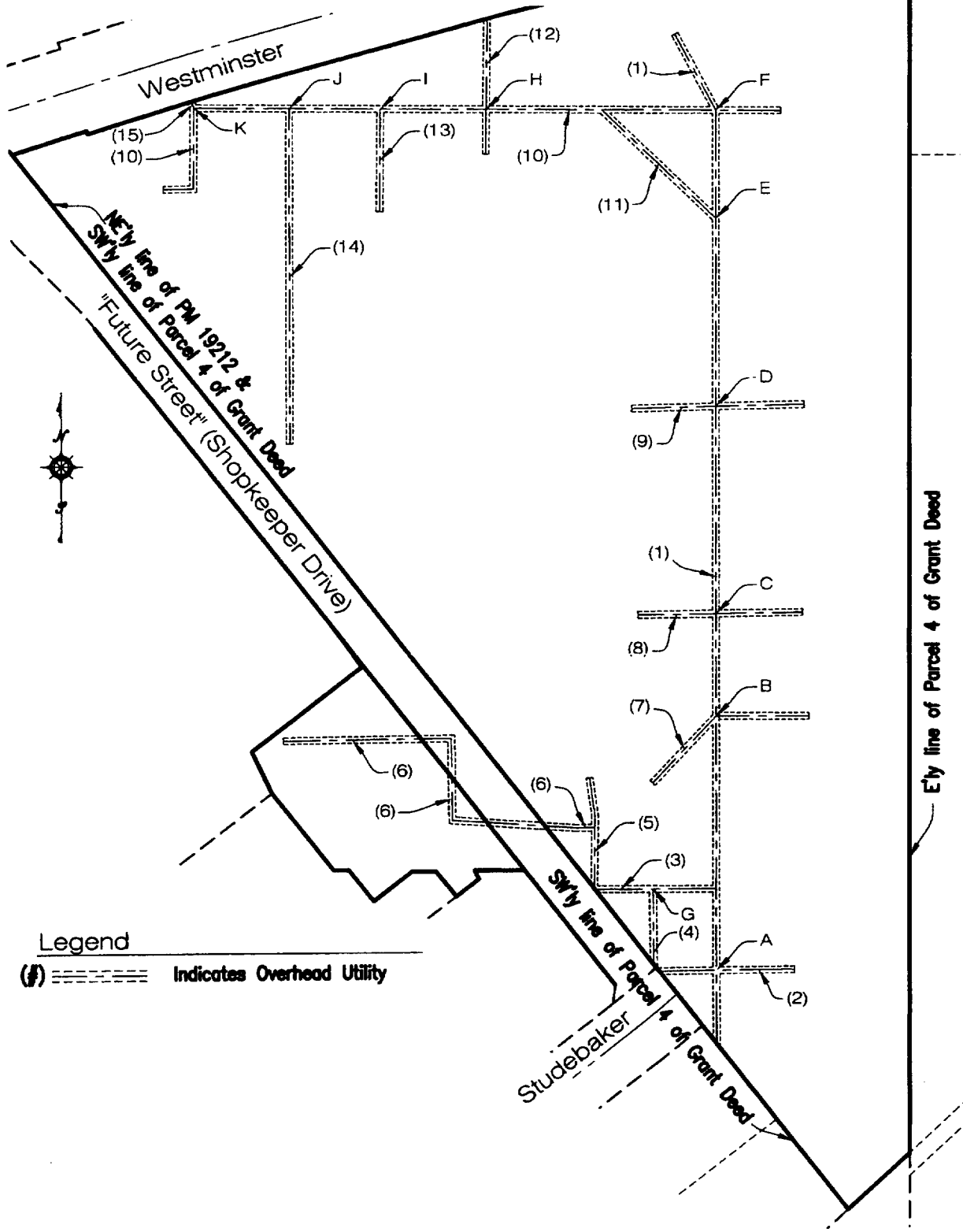
South 31°48'13" East 132.49 feet to the beginning of a curve concave southwest and having a radius of 100.00 feet; thence southeasterly along said curve through a central angle of 28°43'34" an arc distance of 50.14' feet; thence South 03°04'39" East 45.69 feet to the beginning of a curve concave northeasterly and having a radius of 40.00 feet; thence southeasterly along said curve through a central angle of 86°29'24" an arc distance of 60.39 feet; thence South 89°34'33" East 18.03 feet to said southerly line; thence along said southerly line South 37°43'54" East 27.98 feet; thence North 89°34'33" West 52.50 feet to the beginning of a curve concave southeasterly and having a radius of 20.00 feet; thence southwesterly along said curve through a central angle of 89°40'00" an arc distance of 31.42 feet; thence South 00°25'27" West 15.47 feet to the northerly line of Parcel #20 described in said Exhibit D-1; thence along said northerly line North 89°34'33" West 30.56 feet; thence North 00°25'27" East 15.47 feet to the beginning of a curve concave southwesterly and having a radius of 20.00 feet; thence northwesterly along said curve through a central angle of 90°00'00" an arc distance of 31.42 feet; thence North 89°34'33" West 126.71 feet; thence North 00°25'27" East 31.04 feet to the southerly line of Parcel #21 described in said Exhibit D-1; thence along last said southerly line South 89°34'33" East 117.94 feet to the beginning of a curve concave northwesterly and having a radius of 35.00 feet; thence northeasterly along said curve through a central angle of 89°25'33" an arc distance of 54.63 feet; thence North 00°59'54" East 27.15 feet to the beginning of a curve concave westerly and having a radius of 100.00 feet; thence northerly along said curve through a central angle of 23°42'38" an arc distance of 41.38 feet to the **Point of Beginning**.

Description was prepared by me or under my direction

_____ Date: _____
Larry V. Case
LS. 5411
Reg. Exp. 12/31/09

EXHIBIT "C-4"
**DEPICTION OF CURRENT ABOVE GROUND PIPELINE EASEMENTS,
ABOVE GROUND UTILITY EASEMENTS, AND ACCESS EASEMENTS**





Legend
(f) - - - - - Indicates Overhead Utility

Westminster

NE'y line of PM 1922 &
SW'y line of Parcel 4 of Grant Deed
"Future Street" (Shopkeeper Drive)

SW'y line of Parcel 4 of Grant Deed
Studebaker

Ely line of Parcel 4 of Grant Deed



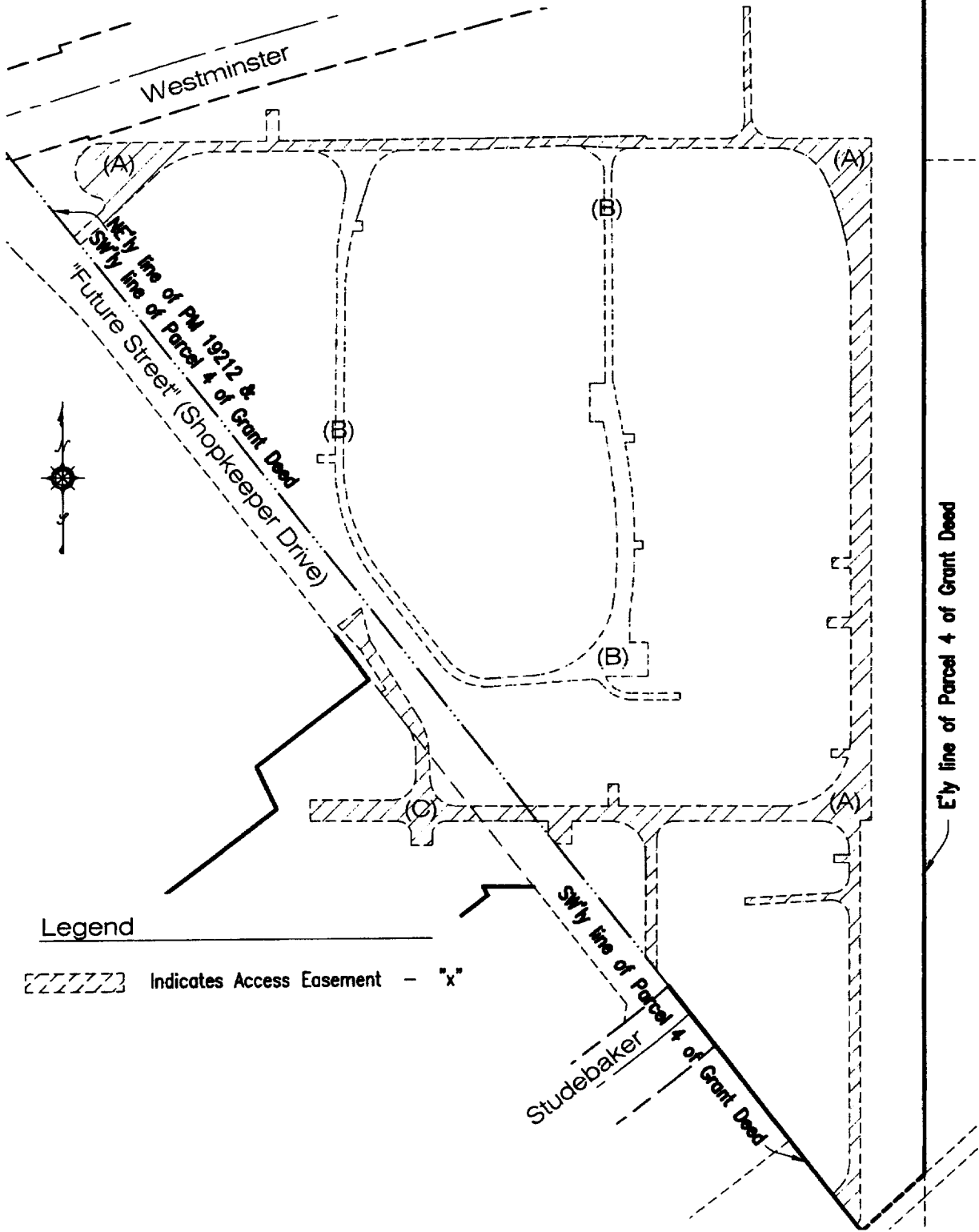


EXHIBIT "D"
LEGAL DESCRIPTION OF EXCLUSIVE USE EASEMENTS

EXHIBIT "D"

LEGAL DESCRIPTION FOR OIL FACILITIES EASEMENT

Various parcels of land lying in Section 11, Township 5 south, Range 12 west, in the Rancho Los Alamitos as shown on map nos. 1 and 2 of portion of Rancho Los Alamitos, recorded in book 700 pages 138 through 141 of deeds and partially in Parcel 3 of Lot Line Adjustment No. 9906-14 recorded January 25, 2000 as instrument no. 00-0112748, partially within the City of Long Beach and partially without, County of Los Angeles, State of California, in the office of the county recorder of said county, described as follows:

Parcel #1 (Oil Facilities Easement)

A parcel of land described as follows:

Beginning at the end point of strip #3 described herein on Exhibit C-1 of this document; thence North 00°14'27" East 12.69 feet; thence South 89°45'33" East 52.72 feet; thence South 00°14.27" West 33.77 feet; thence North 89°45'33" West 52.72 feet; thence North 00°14.27" East 21.08 feet to the **Point of Beginning**.

Parcel #2 (Oil Facilities Easement)

A parcel of land described as follows:

Commencing at a point on the centerline of strip #2 described in said Exhibit C-1, distant thereon North 00°14'27" East 118.05 from Point "A" described in said Exhibit C-1; thence at right angles South 89°45'33" East 8.00 feet to the **True Point of Beginning**; thence North 90°00'00" East 34.56 feet; thence South 00°00'00" West 50.63 feet; thence North 90°00'00" West 34.78 feet to the easterly line said strip #2; thence along said easterly line North 00°14'27" East 50.63 feet to the **Point of Beginning**.

Parcel #3 (Oil Facilities Easement)

A parcel of land described as follows:

Beginning at a point on the centerline of strip #4 described in said Exhibit C-1, distant thereon South 89°45'33" East 138.25 feet from Point "B" described in said Exhibit C-1; thence North 00°00'00" East 8.28 feet; thence North 90°00'00" East 35.15 feet; thence South 00°00'00" West 40.12 feet; thence North 90°00'00" West 35.15 feet; thence North 00°00'00" East 31.83 feet to the **Point of Beginning**.

Parcel #4 (Oil Facilities Easement)

A parcel of land described as follows:

Commencing at a point on the Easterly line of Parcel 4 of Grant Deed recorded November 30, 2007 as instrument no. 20072448368 of official records of said county distant thereon North 00°14'27" East 623.37 feet from the southerly terminus of said easterly line; thence at right angles North 89°45'33" West 135.11 feet to the **True Point of Beginning**; thence North 90°00'00" West 32.63 feet; thence South 00°00'00" East 35.84 feet; thence North 90°00'00" East 32.63 feet; thence North 00°00'00" West 35.84 feet to the **Point of Beginning**.

Parcel #5 (Oil Facilities Easement)

A parcel of land described as follows:

Beginning at a point on the centerline of strip #21 described in said Exhibit C-1 distant thereon South 89°14'43" East 24.69 feet from Point "O" described in said Exhibit C-1; thence North 00°14'27" East 9.05 feet; thence South 89°45'33" East 18.71 feet; thence South 00°14'27" West 64.09 feet; thence North 89°45'33" West 18.71 feet; thence North 00°14'27" East 55.04 feet to the **Point of Beginning**.

Parcel #6 (Oil Facilities Easement)

A parcel of land described as follows:

Beginning at a point the end point of strip #21 described in said Exhibit C-1; thence North 89°45'33" West 12.86 feet; thence along a line that bears North 00°14'27" East and passes through the end point of strip #20 described in said Exhibit C-1 North 00°14'27" East 47.44 feet; thence South 89°45'33" East 36.60 feet; thence South 00°14'27" West 47.44 feet; thence North 89°45'33" West 23.74 feet to the **Point of Beginning**.

Parcel #7 (Oil Facilities Easement)

A parcel of land described as follows:

Beginning at a point the end point of strip #19 described in said Exhibit C-1; thence North 00°14'27" East 17.98 feet; thence South 89°45'33" East 60.20 feet; thence South 00°14'27" West 35.99 feet; thence North 89°45'33" West 60.20 feet; thence North 00°14'27" East 18.00 feet to the **Point of Beginning**.

Parcel #8 (Oil Facilities Easement)

A parcel of land described as follows:

Commencing at a point on the Easterly line of Parcel 4 of said Grant Deed distant thereon North 00°14'27" East 1372.03 feet from the southerly terminus of said easterly line; thence at right angles North 89°45'33" West 114.44 feet to the **True Point of Beginning**; thence

North 90°00'00" West 62.39 feet; thence North 16°14'06" West 60.34 feet; thence North 75°28'28" East 59.72 feet to the beginning of a non-tangent curve, concave westerly, with a radius of 400.00 feet, a radial line to said curve bears South 68°09'22" West; thence southerly along said curve through a central angle of 10°56'28" an arc distance of 76.12 feet to the **Point of Beginning**.

Parcel #9 (Oil Facilities Easement)

A parcel of land described as follows:

Beginning at a point the end point of strip #18 described in said Exhibit C-1; thence South 89°35'39" West 31.49 feet; thence North 00°24'21" West 37.72 feet; thence North 89°35'39" East 74.16 feet; thence South 00°24'21" East 37.72 feet; thence South 89°35'39" West 42.67 feet to the **Point of Beginning**.

Parcel #10 (Oil Facilities Easement)

A parcel of land described as follows:

Commencing at a point on the Easterly line of Parcel 4 of said Grant Deed distant thereon North 00°14'27" East 1525.02 feet from the southerly terminus of said easterly line; thence at right angles North 89°45'33" West 405.83 feet to the **True Point of Beginning**; thence South 89°46'23" West 253.93 feet to the beginning of a non-tangent curve concave northwesterly and having a radius of 18.00 feet, a radial line bears North 01°13'37" West; thence northeasterly along said curve through a central angle of 88°18'37" an arc distance of 28.06 feet; thence North 00°27'46" East 38.61 feet to the beginning of a curve concave easterly and having a radius of 150.00 feet; thence northerly along said curve through a central angle of 26°15'55" an arc distance of 68.77 feet to the beginning of a compound curve concave southeasterly and having a radius of 50.00 feet; thence northeasterly along said curve through a central angle of 63°16'25" an arc distance of 55.22 feet; thence South 89°59'54" East 175.01 feet; thence South 00°00'00" East 149.22 feet to the **Point of Beginning**.

Parcel #11 (Oil Facilities Easement)

A parcel of land described as follows:

Beginning at a point the end point of strip #30 described in said Exhibit C-1; thence North 90°00'00" West 29.99 feet; thence North 00°00'00" East 14.64 feet; thence South 90°00'00" East 36.00 feet; thence South 00°00'00" East 14.64 feet; thence North 90°00'00" West 6.01 feet to the **Point of Beginning**.

Parcel #12 (Oil Facilities Easement)

A parcel of land described as follows:

Commencing at a point on the centerline of strip #27 described in said Exhibit C-1, distant thereon North 00°14'27" East 52.75 from Point "W" described in said Exhibit C-1; thence at right angles South 89°45'33" East 7.00 feet to the **True Point of Beginning**; thence North

90°00'00" East 57.05 feet to the beginning of a non-tangent curve concave westerly and having a radius of 55.00 feet, a radial line bears South 59°54'58" West; thence southerly along said curve through a central angle of 63°28'50" an arc distance of 32.06 feet; thence South 00°00'00" West 64.50 feet to the easterly line of strip #27 described in said Exhibit C-1; thence along said easterly line North 00°14'27" East 30.75 feet to the **Point of Beginning**.

Parcel #13 (Oil Facilities Easement)

A parcel of land described as follows:

Beginning at a point the end point of strip #29 described in said Exhibit C-1; thence North 00°00'00" West 4.00 feet; thence North 90°00'00" East 14.45 feet; thence South 00°00'00" East 49.74 feet; thence South 90°00'00" West 14.45 feet; thence North 00°00'00" West 45.74 feet to the **Point of Beginning**.

Parcel #14 (Oil Facilities Easement)

A parcel of land described as follows:

Commencing at a point a point on the centerline of strip #27 described in said Exhibit C-1 distant thereon North 37°43'37" West 379.95 feet from Point "U" described in said Exhibit C-1; thence at right angles North 52°16'23" East 7.00 feet to the **True Point of Beginning**; thence North 00°00'00" East 80.96 feet; thence North 90°00'00" West 24.35 feet to the easterly line of said strip #27; thence along said easterly line South 00°14'27" West 49.22 feet; thence continuing along the northeasterly line of said strip #27 South 37°43'37" East 40.13 feet to the **Point of Beginning**.

Parcel #15 (Oil Facilities Easement)

A parcel of land described as follows:

Beginning at a point the southwesterly corner of strip #15 described in said Exhibit C-1; thence along the southerly line of said strip #15 South 89°45'33" East 28.92 feet; thence South 00°14'27" West 56.33 feet; thence North 89°45'33" West 28.92 feet; thence North 00°14'27" East 56.33 feet to the **Point of Beginning**.

Parcel #16 (Oil Facilities Easement)

A parcel of land described as follows:

Beginning at a point the southwesterly corner of strip #14 described in said Exhibit C-1; thence North 90°00'00" West 8.69 feet; thence North 00°00'00" West 31.93 feet; thence South 90°00'00" East 8.69 feet; thence South 00°00'00" East 31.93 feet to the **Point of Beginning**.

Parcel #17 (Oil Facilities Easement)

A parcel of land described as follows:

Beginning at a point the northwesterly corner of strip #13 described in said Exhibit C-1; thence South 00°00'00" West 40.69 feet; thence North 90°00'00" West 13.13 feet; thence North 00°00'00" East 40.69 feet; thence South 90°00'00" East 13.13 feet to the **Point of Beginning**.

Parcel #18 (Oil Facilities Easement)

A parcel of land described as follows:

Beginning at the end point of strip #28 described in said Exhibit C-1; thence North 01°12'38" East 44.09 feet to the westerly prolongation of the most southerly line of strip #9 described in said Exhibit C-1; thence along said westerly prolongation South 89°45'33" East 160.29 feet to the westerly line of strip #22 described in said Exhibit C-1; thence along said westerly line South 00°14'27" West 92.09 feet to the northerly line of strip #23 described in said Exhibit C-1; thence along said northerly line North 88°47'22" West 161.82 feet; thence North 01°12'38" East 45.27 feet to the **Point of Beginning**.

Parcel #19 (Oil Facilities Easement)

A parcel of land described as follows:

Beginning at the end point of strip #25 described in said Exhibit C-1; thence North 00°14'27" East 17.23 feet; thence South 89°45'33" East 44.34 feet; thence South 00°14'27" West 44.10 feet; thence North 89°45'33" West 44.34 feet; thence North 00°14'27" East 26.38 feet to the **Point of Beginning**.

Parcel #20 (Oil Facilities Easement)

A parcel of land described as follows:

Beginning at a point in the centerline of strip #32 described in said Exhibit C-1, distant thereon South 01°57'32" West 125.18 from Point "X" described in said Exhibit C-1; thence South 89°34'33" East 56.95 feet; thence South 00°25'27" West 30.14 feet; thence North 89°34'33" West 61.88 feet; thence North 00°25'27" East 30.14 feet; thence South 89°34'33" East 4.93 feet to the **Point of Beginning**.

Parcel #21 (Oil Facilities Easement)

A parcel of land described as follows:

Beginning at a point in the centerline of strip #31 described in said Exhibit C-1; thence North 01°26'26" West 46.87 feet; thence South 89°45'17" East 16.11 feet; thence South

01°26'26" East 58.89 feet; thence North 89°34'33" West 16.11 feet; thence North 01°26'26" West 11.98 feet to the **Point of Beginning**.

Parcel #22 (Oil Facilities Easement)

A parcel of land described as follows:

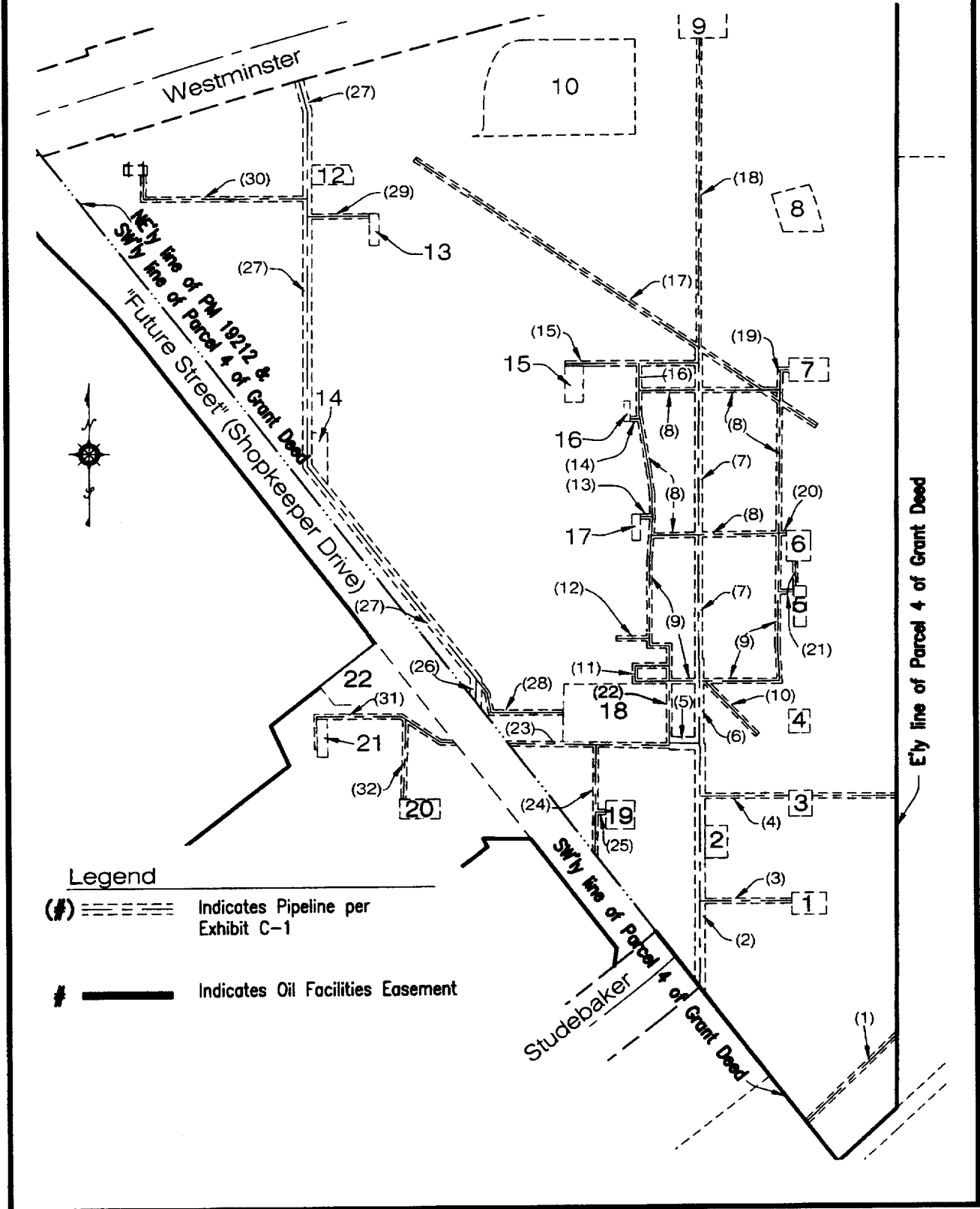
Beginning at a point in the northerly line of Parcel 3 of said Lot Line Adjustment shown on said Lot Line Adjustment as having a bearing and distance of "North 52°12'40" East 205.49 feet", distant thereon North 52°16'23" East 98.36 feet from the southerly terminus thereof; thence continuing along said northerly line and the northerly prolongation thereof North 52°16'23" 109.92 feet to the southerly line of that certain street designated on Parcel Map No. 19212 filed in book 260 pages 93 through 94 inclusive of Parcel Maps, as "future street"; thence along said southerly line South 37°43'54" East 51.69 feet; thence South 52°16'23" West 94.85 feet; thence North 89°45'17" West 26.46 feet; thence North 37°43'37" West 35.41 feet to the **Point of Beginning**.

Description was prepared by me or under my direction

_____ Date: _____
Larry V. Case
LS. 5411
Reg. Exp. _____

EXHIBIT "D-1"
DEPICTION OF EXCLUSIVE USE EASEMENTS

EXHIBIT "D-1"



Legend

- (#) - - - - - Indicates Pipeline per Exhibit C-1
- # - - - - - Indicates Oil Facilities Easement

EXHIBIT E-1

City Property Documents

1. Rent Roll. Rent roll, as of 4/1/2010, including a schedule of all tenant deposits, credits and fees.
2. Delinquency Report. Current Delinquency Report.
3. Service Contracts. Service contracts relating to the City Property.
4. Tax Bills. Copies of ad valorem tax statements (including copies of all notices of valuation or tax protests) relating to the City Property for the current year and for the two preceding calendar years.
5. Operating and Financial Statements. Copies of annual financial statements for the City Property for the years 2008, 2009, together with 4 months January – April of operating statements for 2010, plus the budget for the year 2010.
6. Leases. All leases for the tenants shown on the Rent Roll for the City Property.
7. Plans. Copies of any architectural and construction plans and specifications in the City's possession.
8. Surveys. Copies of Existing City Property Survey(s) in the City's possession.
9. Environmental. Copies of the documents listed in Exhibit F-1.
10. Permits. A copy of all readily available certificates of occupancy and copies of all current governmental permits, licenses and approvals concerning the City Property.
11. Lease Form. Copy of the City's standard lease form in use at the City Property.
12. Service Contracts. Copies or a list (together with access to copies) of all service, supply, equipment rental, parking and similar contracts related to the operation of the City Property.
13. Maintenance Records. Access to all available maintenance work orders for the 12 months preceding this Agreement.
14. Utility Bills. Copies of all owner paid utility bills for the twelve (12) months preceding this Agreement.
15. ADA Reports. Any written reports, results of inspections or surveys of the City Property related to compliance with the Americans with Disabilities Act or other laws relating to access in the City's possession; and
16. Governmental Notices. Any written notices, reports, citations, correspondence or memoranda within the past 24 months from any government agency, unit, division or department (federal, state, county or municipal) concerning the City Property and not covered in any of the categories above.

17. Historical Building. Any reports, summaries or other documents regarding the presence of a historical structure on the City Property.

18. Other. Any non-proprietary reports (physical reviews, appraisals, etc.) that are not confidential trade secrets of the City prepared by any third party consultants in connection with any refinancing or otherwise during the past three years, shall be made available for review by LCW at the City's offices, without warranty as to accuracy or completeness, and upon which no reliance shall be placed by LCW.

EXHIBIT E-2

LCW Property Documents

1. Tax Bills. Copies of ad valorem tax statements (including copies of all notices of valuation or tax protests) relating to the Properties for the current year and for the two preceding calendar years.
2. Surveys. Copies of Existing LCW Property Survey(s) in LCW's possession.
3. Environmental. Copies of existing environmental inspections, reports, tests, studies, including asbestos studies or audits, in LCW's or Jeff Berger's or Tom Dean's possession.

Exhibit F-1

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

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. [to follow]

Exhibit G

ASSIGNMENT AND ASSUMPTION OF LEASES AND SECURITY DEPOSITS

THIS ASSIGNMENT AND ASSUMPTION OF LEASES AND SECURITY DEPOSITS ("**Assignment**") is made as of _____, 2010, by and between the City of Long Beach, a municipal corporation ("**Assignor**"), and LCW Partners, LLC, a Delaware limited liability company ("**Assignee**").

RECITALS:

A. Assignor and Assignee entered into that certain Real Estate Exchange Agreement, dated April 28, 2010 ("**Exchange Agreement**"), pursuant to which Assignor agreed to convey to Assignee the real property located at 901 West Anaheim St., Long Beach, California (the "**Property**").

B. Pursuant to the Exchange Agreement, Assignor has agreed to assign to Assignee all leases encumbering the Property.

NOW, THEREFORE, in consideration of the foregoing premises, of the mutual covenants set forth in this Assignment, and of other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Assignor and Assignee hereby agree as follows:

1. **Assignment.** Assignor hereby assigns, without recourse, to Assignee all of its right, title and interest as lessor in, to and under all leases, subleases, licenses, concessions and similar agreements for the use or occupancy of all or any part of the Property and described on Exhibit A (collectively, "**Existing Leases**"), together with any and all security deposits and guaranties and other collateral of any type or nature securing the obligations of the tenants and subtenants under the Existing Leases. Assignor shall indemnify, defend, protect, and hold harmless Assignee from any and all claims and liabilities arising prior to the date of this Assignment on account of any of the Existing Leases.

2. **Assumption.** Assignee hereby assumes and agrees to perform all obligations of Assignor as lessor under the Existing Leases that accrue on or after the date of this Assignment. In addition, Assignee hereby assumes all obligations of Assignor to tenants under Existing Leases with respect to security deposits. Assignee shall indemnify, defend, protect, and hold harmless Assignor from any and all claims and liabilities arising from and after the date of this Assignment on account of any of the Existing Leases.

3. **Notice to Tenants.** Following the execution and recordation of the deed to the Property as provided for in the Exchange Agreement, Assignor shall give notice to the tenants under the Existing Leases that Assignee has acquired the Property and owns the lessor's interest in the Existing Leases.

4. **Miscellaneous**

(a) **Binding Effect and Assignment.** This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors, assigns, and legal representatives.

(b) **Severability.** If any term or provision of this Assignment shall be held invalid or unenforceable, the remainder of this Assignment shall not be affected.

(c) **Waivers.** No waiver or breach of any covenant or provision shall be deemed a waiver of any other covenant or provision, and no waiver shall be valid unless in writing and executed by the waiving party.

(d) **Construction.** Headings are solely for the parties' convenience, are not a part of this Assignment, and shall not be used to interpret this Assignment. The singular form shall include plural and vice versa. This Assignment shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared the it. Unless otherwise indicated, all references to sections are to this Assignment.

(e) **Counterparts.** This Assignment may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

(f) **Amendment.** This Assignment may not be amended or altered except by a written instrument executed by Assignor and Assignee.

(g) **Further Assurances.** Whenever requested to do so by the other party, each party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents, and any further instruments or documents that are necessary or proper to complete the assignments contemplated by this Assignment, and/or to carry out the intent and purpose of this Assignment.

(h) **Third-Party Rights.** Nothing in this Assignment, express or implied, is intended to confer upon any person, other than the parties and their respective successors and assigns, any rights or remedies.

(i) **Attorney Fees.** In the event of any litigation between Assignor and Assignee arising out of the obligations of Assignor or Assignee under this Assignment or concerning interpretation of any of its provisions, the losing party shall pay the prevailing party's costs and expenses of the litigation, including reasonable attorney fees.

(j) **Governing Law.** This Assignment shall be governed and construed in accordance with California law.

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment under seal as of the date first above written.

<p>Assignee:</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: _____ Jeffrey A. Berger, President</p>	<p>Assignor:</p> <p>City of Long Beach a municipal corporation</p> <p>By _____ City Manager</p>
--	--

Exhibit A

Schedule of Existing Leases

1. Letter agreement between the City of Long Beach and Harbor Diesel and Equipment, Inc., dated December 18, 2008
2. Right of Entry Agreement between the City of Long Beach and the South Coast Air Quality Management District dated as of February 16, 2007

Exhibit H

BILL OF SALE

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the City of Long Beach, a municipal corporation ("**Seller**"), hereby sells, assigns, transfers and conveys to LCW Partners, LLC, a Delaware limited liability company ("**Buyer**"), all personal property, located or used at that certain real property located at 901 West Anaheim St., Long Beach, California, and legally described in Exhibit 1, attached hereto (the "**Personal Property**"), but not including personal property located on the Premises covered by that certain Lease Agreement dated _____ by and between Seller, as tenant, and Buyer, as landlord, covering a portion of such real property. The Personal Property includes, without limitation, accounts, deposit accounts, contracts, chattel paper, goods, general intangibles, inventory, investment property, other semi-intangibles, machinery, furniture, fixtures and other equipment, leasehold improvements, and government licenses and permits.

Seller covenants, warrants and represents to Buyer that: Seller is the lawful owner of the Personal Property; Seller has the right to transfer and convey the Personal Property; Seller has good and marketable title to the Personal Property; and the Personal Property is free from all liens, claims, encumbrances, or security interests. Seller further agrees that Seller shall defend Buyer's title to the Personal Property against the demands of anyone claiming through Seller. Buyer acknowledges that Buyer shall be acquiring the Personal Property "as is" with all faults and defects, and in its existing condition.

Dated as of _____, 2010.

Seller:

City of Long Beach
a municipal corporation

By _____
City Manager

Exhibit 1

Legal Description of the S.F. Yard Property

Exhibit I

ASSIGNMENT AND ASSUMPTION OF CONTRACTS

THIS ASSIGNMENT AND ASSUMPTION OF CONTRACTS ("**Assignment**") is entered as of _____, 2010, by and between the City of Long Beach, a municipal corporation ("**Assignor**"), and LCW Partners, LLC, a Delaware limited liability company ("**Assignee**").

Recitals

A. Assignor and Assignee entered into that certain Real Estate Exchange Agreement, dated April 28, 2010 ("**Exchange Agreement**"), pursuant to which Assignor agreed to convey to Assignee the real property located at 901 W. Anaheim St., Long Beach, California (the "**Property**").

B. Pursuant to the Exchange Agreement, Assignor has agreed to assign to Assignee, and Assignee has agreed to assume, all Approved Contracts (as such term is defined in this Assignment). In addition, Assignor has agreed to assign to Assignee, all rights, warranties, guaranties, utility contracts, approvals (governmental or otherwise, but only to the extent such are assignable), surveys, and plans and specifications affecting the Property.

NOW, THEREFORE, for good and valuable consideration, Assignor and Assignee agree as follows:

1. **Assignment.** Effective as of the date Assignee acquires title to the Property (the "**Closing Date**"), Assignor assigns to Assignee all of Assignor's rights (to the extent assignable) in:

(a) Those certain contracts (the "**Contracts**") described in Schedule 1, attached hereto and incorporated herein by this reference;

(b) All warranties and guaranties made by or received from any third party for any building, building component, structure, fixture, machinery, equipment, or material situated on or contained in any building or other improvement situated on or comprising a part of the Property (collectively, "**Warranties and Guaranties**"); and

(c) All governmental permits or licenses now or in the future owned by Assignor in connection with the Property or any improvements or personal property located on the Property or other rights relating to the ownership, use or operation of the Property ("**Intangibles**"), but not including personal property located on the Premises covered by that certain Lease Agreement dated _____ by and between Assignor, as tenant, and Assignee, as landlord, covering a portion of the Property.

2. **Assumption.** Effective as of the Closing Date, Assignee assumes and agrees to perform all the Contracts which are described in Schedule 1, attached hereto, accruing from and after the Closing Date.

3. **Indemnity.** Assignor agrees to indemnify, defend, protect and hold harmless Assignee for any claim, loss, cost, liability or expense, including attorney fees and court costs, relating to Assignor's acts or omissions under the Contracts described in Schedule 1 and

accruing prior to the Closing Date. Assignee agrees to indemnify, defend, protect and hold harmless Assignor for any claim, loss, cost, liability or expense, including attorney fees and court costs, relating to Assignee's acts or omissions under the Contracts described in Schedule 1 and accruing from and after the Closing Date.

4. Miscellaneous.

(a) Severability. If any term or provision of this Assignment shall be held invalid or unenforceable, the remainder of this Assignment shall not be affected.

(b) Waivers. No waiver or breach of any covenant or provision shall be deemed a waiver of any other covenant or provision, and no waiver shall be valid unless in writing and executed by the waiving party.

(c) Construction. Headings are solely for the parties' convenience, are not a part of this Assignment, and shall not be used to interpret this Assignment. The singular form shall include the plural and vice versa. This Assignment shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this Assignment.

(d) Counterparts. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

(e) Amendment. This Assignment may not be amended or altered except by a written instrument executed by Assignor and Assignee.

(f) Further Assurances. Whenever requested to do so by the other party, each party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents, and any further instruments or documents that are necessary or proper to complete the assignments contemplated by this Assignment, and/or in order to carry out the intent and purpose of this Assignment.

(g) Third-Party Rights. Nothing in this Assignment, express or implied, is intended to confer upon any person, other than the parties and their respective successors and assigns, any rights or remedies.

(h) Attorney Fees. In the event of any litigation between Assignor and Assignee arising out of the obligations of Assignor under this Assignment or concerning interpretation of any of its provisions, the losing party shall pay the prevailing party's costs and expenses of the litigation, including reasonable attorney fees.

(i) Governing Law. This Assignment shall be governed and construed in accordance with California law.

IN WITNESS WHEREOF, the Parties have executed this Agreement under seal as of the date first above written.

<p>Assignor</p> <p>City of Long Beach a municipal corporation</p> <p>By _____ City Manager</p>	<p>Assignee:</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: _____ Jeffrey A. Berger, President</p>
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Exhibit A

Legal Description of the Property

Schedule 1

Contracts

Exhibit J [Leaseback Lease]

LEASE

1. **Parties.** This Lease, dated as of _____, 2010, for reference purposes only, is made by and between LCW Partners, 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 ___ 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 42 months, commencing on _____, 2010 (the "**Commencement Date**") and ending on _____, (the "**Termination Date**") (unless sooner terminated pursuant to any provisions hereof), which Termination Date is the last day of the calendar month that is 42 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 42nd 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.

4. **Rent.**

4.1 **Base Rent.**

(a) Subject to the provisions of Paragraph 51, Tenant shall pay to Landlord as base rent for the Premises, monthly payments in the applicable amount set forth below, in advance, without deduction or offset, on the first day of each month of the term hereof. Subject to the provisions of Paragraph 51, Tenant shall pay Landlord, as base rent, the sum of _____ (\$_____) per month (based on a rate of 10 cents per square foot per month of land area comprising the Premises). Rent for any period during the term hereof which is for less than one (1) month shall be a prorated portion of the monthly installment based on a 30 day month. Base rent due for any partial month before the first full calendar month for which base rent shall be due shall itself be due upon the commencement of such partial month. Rent 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.

(b) Within 30 days after the Commencement Date, 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

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. If prior to the expiration of such 30 day period neither party elects to have a civil engineer confirm or redetermine the area of the Premises, then no party shall thereafter have the right to challenge the base rent based upon a redetermination of the area of the Premises.

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.

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 _____, 2010, between the City of Long Beach and LCW Partners, 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 or destruction to the Premises, or any part thereof, due to any casualty (including destruction required by any authorized public authority following the casualty), then neither Landlord nor Tenant shall have any duty to repair or restore the Premises (except as provided in the penultimate sentence of this Paragraph 9.1), and Tenant shall have the option to elect to terminate this Lease. Subject to Paragraph 9.2, such election shall be made, if at all, by Tenant providing written notice to Landlord of such election within 90 days after the date of the casualty. The effective date of termination shall be no sooner than 90 days after the date the notice is actually or deemed delivered pursuant to Paragraph 23, and no later than 180 days after the date such notice is actually or deemed delivered pursuant to Paragraph 23. Pending any election, 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 Damage Near End of Term. If, at any time during the last 12 months of 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 sooner than 30 days after the date the notice is actually or deemed delivered pursuant to Paragraph 23, and 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 expiration date of the term.

9.3 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 payable hereunder (including base rent) shall in all events continue without abatement. In that regard, if Tenant has elected to terminate this Lease in accordance with Paragraphs 9.1 or 9.2, rent (including base rent) 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.

9.4 **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.

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 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 _____, at _____, _____, California _____, Attention: _____ (and also given by facsimile to _____), 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 Tenant, but only with Landlord's written consent (which consent may be withheld in Landlord's sole discretion), remains in possession of the Premises or any part thereof after the expiration of the term hereof or the Option Term, then such occupancy shall be a tenancy from month to month upon all the provisions of this Lease pertaining to the obligations of Tenant, except at a rent equal to one hundred fifty percent (150%) of the sum of the rents otherwise due under Paragraphs 4.1, 36, and 37, if and as applicable, immediately prior to the expiration of the term hereof, but all options and rights of first refusal, if any, granted under the terms of this Lease shall be deemed terminated and be of no further effect during said month to month tenancy. 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 expiration or sooner termination of the term.

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" signs on or about the Premises, and may, at any time during the last 270 days of the term hereof, place any ordinary "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 ___% (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 _____% (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.

50. **Addendum.** Attached hereto is an addendum or addenda containing Paragraphs 51 through 53 which constitutes a part of this Lease.

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:

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

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

TENANT:

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

City of Long Beach

By _____
Its: City Manager

ADDENDUM TO LEASE
Between
LCW Partners, LLC, a Delaware limited liability company
as Landlord
and
City of Long Beach, a municipal corporation
as Tenant

51. **Excused Rent.** Landlord hereby conditionally waives Tenant's obligations (the "**Rent Abatement**") to pay monthly base rent for each of the first six (6) full calendar months of the term (the "**Excused Rent Period**"). However, Tenant shall pay all other sums and charges payable under the Lease during the Excused Rent Period. Tenant understands and agrees that the Rent Abatement is conditioned upon Tenant's performing each and every one of its other obligations to be performed under the Lease. Accordingly, (a) upon the occurrence of any default under the Lease prior to the commencement of the Excused Rent Period that is not cured within any applicable notice and cure period, the Rent Abatement shall be null and void and Tenant shall pay base rent during the Excused Rent Period as such base rent would have become due and payable in the absence of the Rent Abatement provisions, and (b) upon the occurrence of any default during the Excused Rent Period that is not cured within any applicable notice and cure period, the remaining Rent Abatement shall be null and void, and the base rent which, in the absence of the Rent Abatement provisions, would thereafter be payable during the Excused Rent Period shall be paid by Tenant during the remainder of the Excused Rent Period as such base rent would have become due and payable in the absence of the Rent Abatement provisions.

52. **Options.**

52.1 **Option to Extend.** Landlord hereby grants to Tenant one (1) option (the "**Option**") to extend the Lease term for a period of 18 months (the "**Option Term**"), the Option commencing upon the expiration of the initial term, upon each and all of the following terms and conditions:

(a) Tenant must give to Landlord and Landlord must have received written notice of the exercise of the Option no earlier than 365 days and no later than 180 days prior to the end of the initial term, time being of the essence. If timely notification of the exercise of the Option is not so given and received, then the Option shall automatically expire and there shall be no further right to extend the Lease term.

(b) All of the terms and conditions of this Lease, except as specifically modified herein and not including the Option, shall apply during the Option Term.

(c) The provisions of Paragraph 52.2 are conditions of the Option.

(d) Base rent during the first lease year of the first Option Term shall be in an amount equal to the greater of (i) the Then-Prevailing Effective Rental Rate for the Premises (as defined in Paragraph 52.3), and (ii) 110% of the monthly base rent payable with respect to the last full month of the initial term, without giving effect to any abatement, offset or credit.

52.2 **Conditions to Options.**

(a) The Option is not assignable separate and apart from this Lease, and it may not be separated from this Lease in any manner, either by reservation or otherwise. In the event this Lease has been assigned or sublet (as defined in Paragraph 12.1), the Option may not be exercised (whether exercise occurs before or after such assignment or sublet); it being expressly agreed that the Option is personal to the originally herein-named Tenant and may only be exercised by the originally herein-named Tenant if and for so long as the originally herein-named Tenant continues actually to occupy the entire Premises. Any assignment or subletting shall automatically render the Option void, whether or not yet exercised and regardless of whether the originally herein-named Tenant continues actually to occupy the entire Premises following such sublet or assignment, if the Option Term has not yet commenced.

(b) Tenant shall have no right to exercise the Option (i) during the time commencing from the date Landlord gives to Tenant a notice of default and continuing until the non-compliance alleged in said notice of default is cured (but only if such default is susceptible to being cured and such cure is accomplished prior to the expiration of the applicable grace period, if any), or (ii) during the period of time commencing on the day after a monetary obligation to Landlord is due from Tenant and remains unpaid (without any necessity for notice thereof to Tenant) and continuing until the obligation is paid, or (iii) if Tenant has committed any non-curable breach of this Lease or is otherwise in default of this Lease, or (iv) if this Lease has been terminated.

(c) The period of time within which the Options may be exercised shall not be extended or enlarged by reason of Tenant's inability to exercise such right because of the provisions of this Paragraph.

(d) At Landlord's sole election, the Options shall each terminate and be of no further force or effect, notwithstanding Tenant's due and timely exercise thereof, if, after such exercise but prior to the commencement of the Option Term or the term under the New Lease, as applicable, (i) Tenant is in default of any of the terms, covenants or conditions of this Lease beyond the applicable grace period, if any, to cure such default, or (ii) this Lease has been terminated.

52.3 Effective Rental Rate. As used above, the phrase "**Then-Prevailing Effective Rental Rate for the Premises**" means the rental amount determined as follows. Landlord shall notify Tenant, at least 90 days prior to commencement of an Option Term if Tenant has timely exercised the Option Term, of the amount Landlord believes to be the fair market rental rate for monthly base rent for a new lease of similar duration for the Premises ("**Landlord's Determination**"). If Tenant does not dispute Landlord's Determination within 30 days after Landlord's notice, Landlord's Determination shall constitute the Then-Prevailing Effective Rental Rate for the Premises. If Tenant disputes Landlord's Determination, Tenant must do so, within such 30 day period, by written notice setting forth Tenant's own determination of the amount Tenant believes to be the fair market rental rate for monthly base rent for a new lease of similar duration for the Premises ("**Tenant's Determination**") (Landlord's Determination or Tenant's Determination, each, a "**Determination**"). Tenant's failure to do so shall conclusively be deemed Tenant's agreement with Landlord's Determination. If Landlord and Tenant are unable to agree upon such fair market rental within 10 days after Tenant's notice to Landlord of Tenant's Determination, then Landlord and Tenant, within an additional 10 days, shall each select an independent real estate appraiser that is MAI certified with at least 10 years experience appraising comparable land and improvements in the South Bay area of Southern California, and within 10 business days after both have been so selected, each shall submit to

the other his or her estimate of such fair market rental, on the basis of the foregoing and the following criteria. If either appraiser fails to timely submit his or her estimate, such estimate shall be disregarded and the one (1) timely estimate shall be the Then-Prevailing Effective Rental Rate for the Premises. If each broker provides a timely estimate and the higher of the two (2) is within five percent (5%) of the lower, the two (2) shall be averaged with each other and the resulting average shall itself be averaged with whichever Determination shall be closest to such resulting average, and the result of this second averaging shall be the Then-Prevailing Effective Rental Rate for the Premises. If the two (2) estimates are not so within five percent (5%), the two (2) appraisers shall within an additional 10 business days select a third qualified appraiser meeting the above qualifications, who shall submit his or her estimate to the other two (2) brokers within 10 business days after he or she is selected, and the two (2) closest estimates shall be averaged with each other, and the resulting average shall itself be averaged with whichever Determination shall be closest to such resulting average, and the result of this second averaging shall be the Then-Prevailing Effective Rental Rate for the Premises. If either party fails timely to select its appraiser as provided above, the other party's Determination shall be the Then-Prevailing Effective Rental Rate for the Premises. If the two (2) appraisers selected by Landlord and Tenant are unable to timely agree upon a third appraiser, or if the third appraiser fails to timely submit his or her estimate, the third appraiser (or a replacement therefor in the event the third appraiser selected by the first two (2) has failed to timely submit his or her estimate) shall be selected by the Landlord. Each party shall pay the fees and costs of its appraiser and fifty percent (50%) of the fees and costs of the third appraiser (if one is required). In determining the Then-Prevailing Effective Rental Rate, Landlord and Tenant, and all appraisers, if any are needed, shall look to the net effective rent payable (with, to the extent available, greater weight given to space recently leased) on leases for comparable space in buildings of comparable size, quality and location (and, to the extent available, for similar use) with due regard to the initial base rent and subsequent adjustments thereto during the Option Term, and to the then-prevailing base year or other method of calculating and charging for costs of operation, but valuing the existing improvements, if any, in the subject space on the basis of renting to a tenant for whom said improvements are acceptable as adequate. No adjustment shall be made for customary or other broker's fees, legal expenses, or other expense which may be saved, or for tenant improvement allowances and/or tenant improvement construction time which may be saved or for any percentage rent that may be required to be paid.

53. **Relocation Payment.** Landlord hereby agrees to pay Tenant's actual costs of relocating furniture, fixtures and equipment (the "FF&E") from the Premises to a new public service yard location in the City of Long Beach after the end of the Lease term, subject to the following terms and conditions:

53.1 Subject to adjustment as set forth in Paragraph 53.3, Landlord shall not be liable for more than \$500,000 in costs incurred by Tenant in relocating the FF&E from the Premises (the "**Maximum Relocation Payment**");

53.2 Landlord shall pay the amount due to Tenant within 30 days after receipt of such reasonable documentation supporting the actual costs incurred by Tenant to third parties in connection with the relocation of the FF&E to the new location, which supporting documentation shall include copies of paid invoices from third parties;

53.3 The amount of the Maximum Relocation Payment shall be reduced, on a dollar for dollar basis, by the amount by which the greater of: (A) the City of Long Beach (or its affiliates) receives as consideration, directly or indirectly (or the value of other indirect or direct consideration it receives), with respect to the transfer of the LCW Property (as defined below) to

the Los Cerritos Wetlands Authority (or another public or quasi-public entity) (the "**LCWA Consideration**"), or (B) the fair market value of the LCW Property, as determined by an appraisal prepared by a qualified MAI appraiser (which MAI appraiser shall be accepted and approved by the Tenant and Landlord), exceeds the sum of \$7.4 million. For purposes hereof, the term "**LCW Property**" means that certain real property described in Exhibit A of that certain Real Estate Exchange Agreement dated as of _____, 2010. (If the relocation payment should be due before the determination of the LCWA Consideration, then the fair market value of the LCW Property alone shall be the basis for determining the reduction, if any, in the Maximum Relocation Payment.); and

53.4 This obligation shall be a personal obligation of the named Landlord herein (i.e., only LCW Partners, LLC), and shall not be an obligation of any Landlord Mortgagee or any successor landlord to LCW Partners, LLC.

Exhibit A

[Site Plan for the Premises]

[See Attached]

Exhibit B

Legal Description of Entire Property Owned by Landlord

Exhibit A.

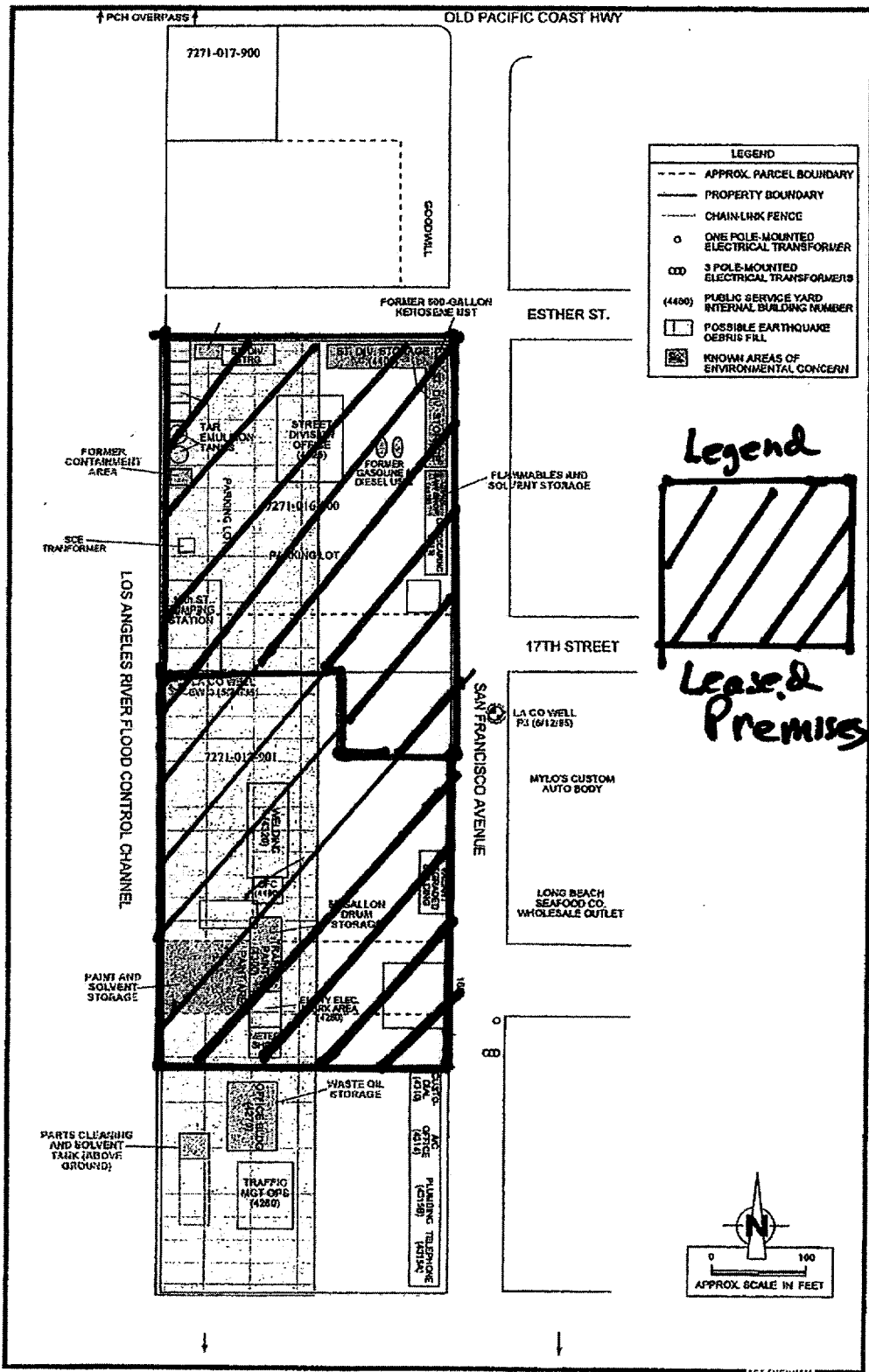


Figure 2. Sketch Map of Site, Northern Portion of the Property.

Exhibit K-1

**ENVIRONMENTAL INDEMNITY AND ACCESS AGREEMENT
[San Francisco Yard Property]**

THIS ENVIRONMENTAL INDEMNITY AND ACCESS AGREEMENT ("**Agreement**") is made and entered into as of _____, 2010 (the "**Effective Date**") between the City of Long Beach ("**City**") and LCW Partners, LLC, a Delaware limited liability company ("**LCW**").

RECITALS

A. City and LCW have entered into a transaction whereby the City is conveying fee title to certain real property comprised of approximately 13.4-acres and described in the attached Exhibit "A" (the "**Property**") to LCW in exchange for LCW'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: _____

Long Beach, CA 90802
e-mail: _____

with a copy to: _____

Long Beach, CA 9080_
e-mail: _____

To LCW: Thomas Dean
3626 Long Beach Boulevard
Long Beach CA 90807
e-mail: _____

with a copy to: _____

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 _____

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

EXHIBIT A
Legal Description of the Property

EXHIBIT B
List of Environmental Reports

Exhibit K-2
ENVIRONMENTAL INDEMNITY AND ACCESS AGREEMENT
[Oil and Gas Property]

THIS ENVIRONMENTAL INDEMNITY AND ACCESS AGREEMENT ("**Agreement**") is made and entered into as of _____, 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 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.

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.

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) "**City's Intended Use**" shall mean the City's and its successors' and assigns' intended use of the fee interest in the Property as public open space and wildlife habitat, which may include restoration of portions of the Property to a variety of habitats, including seasonal ponds, freshwater, brackish and saltwater wetlands, and uplands to benefit endangered and threatened species, migratory shorebirds, waterfowl, seabirds, and coastal fish and aquatic species.

(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 at the Property.

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

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

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

(l) **"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.

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

(n) **"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.

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

(p) **"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) LCW's conduct of Response Actions on the Property, or
- (iii) 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 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)(iii) above, to the extent not excluded in Sections 3(b)(i) through 3(b)(v), 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)(v) 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 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 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 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 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, (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 the City's Intended Use.

4. **Term.** 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.

5. **Release.** 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, 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).

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 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. Additionally, if a restoration plan exists for the City's Intended Use, any such excavation shall be consistent with such restoration 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 for the City's Intended Use.

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: _____

Long Beach, CA 90802
Attention: City Manager

with a copy to: _____

Long Beach, CA 90802
e-mail: _____

To LCW: Thomas Dean
3626 Long Beach Boulevard
Long Beach CA 90807
e-mail: _____

with a copy to: _____

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

EXHIBIT A
Legal Description of the Property

EXHIBIT B
List of Env'tl Reports

EXHIBIT "C"
Insurance Policy & Endorsement

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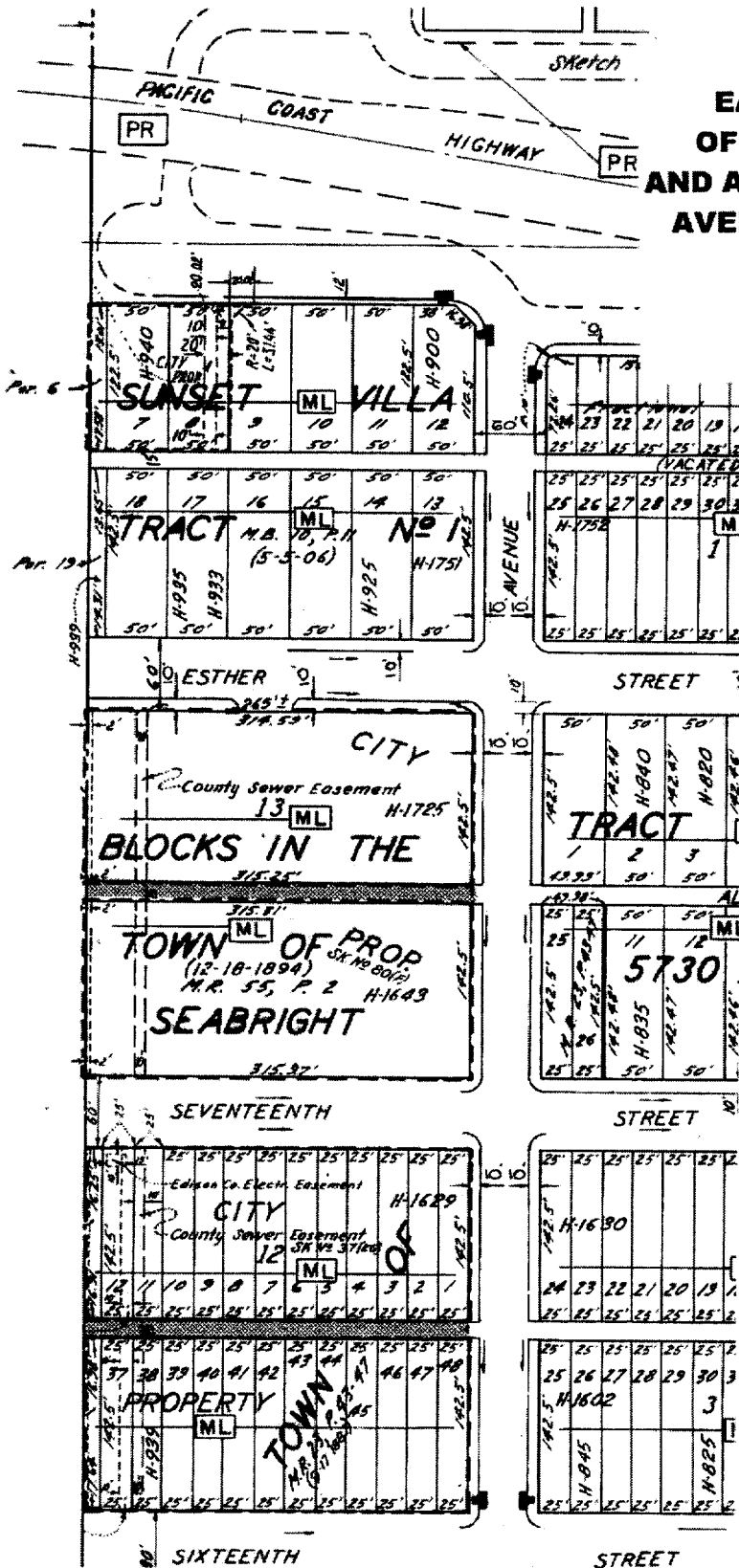
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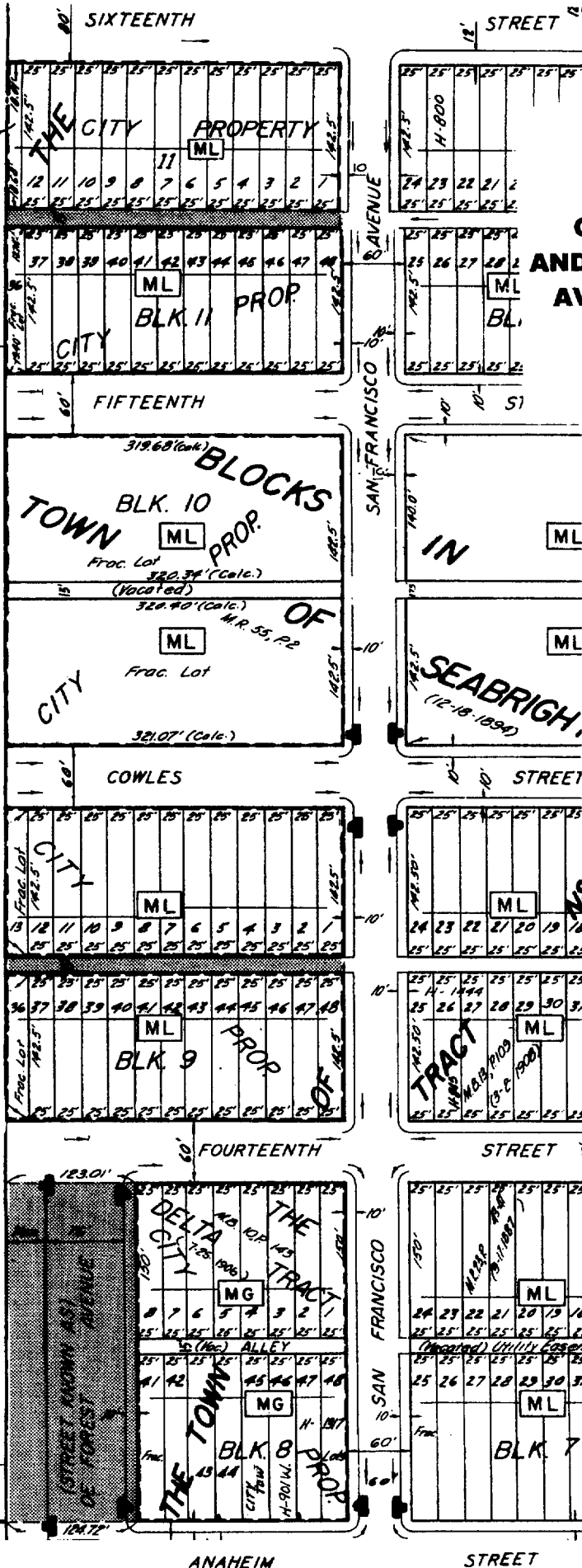
SKETCH SHOWING THE EAST-WEST ALLEYS WEST OF SAN FRANCISCO AVENUE AND A PORTION OF DEFOREST AVENUE BETWEEN ANAHEIM AND ESTHER STREETS, TO BE VACATED BY THE CITY OF LONG BEACH

SHOWS AREA TO BE VACATED

LA RIVER (LACFCD RIGHT-OF-WAY)



LA RIVER (LACFCD RIGHT-OF-WAY)



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SKETCH SHOWING THE EAST-WEST ALLEYS WEST OF SAN FRANCISCO AVENUE AND A PORTION OF DEFOREST AVENUE BETWEEN ANAHEIM AND ESTHER STREETS, TO BE VACATED BY THE CITY OF LONG BEACH



SHOWS AREA TO BE VACATED