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DATE: July 8, 2009

TO: Honorable Mayor and City Councilmembers

FROM: Economic and Community Development Department

SUBJECT: **REAL PROPERTY EXCHANGE WITH CHARLES AND CAROL BUEL FOR THE ENHANCEMENT OF LOMA ALTA CREEK WEST OF SOUTH COAST HIGHWAY, AND BUDGET APPROPRIATION**

**SYNOPSIS**

Staff recommends that the City Council approve the real property exchange with Charles and Carol Buel for the enhancement of Loma Alta Creek west of South Coast Highway; approve a budget appropriation in the amount of \$10,000 from the Unallocated Balance in the General Fund; and authorize the Mayor to execute the agreement and staff to open escrow and conclude the transaction.

**BACKGROUND**

Over the years the City has been acquiring properties on the north side of Loma Alta Creek west of South Coast Highway in an effort to remove businesses from the flood prone area. The first occurred in October 1997 with the acquisition of the MoorCo Building in a settlement of a lawsuit filed for flood damage to the property from storm waters breaching the creek banks a few years earlier. In February 2004, the City acquired the adjacent Ace Welding property and another parcel owned by Charles and Carol Buel (collectively "Buels"). The Buel acquisition was purchased through a flood aversion program funded by the Federal Emergency Management Administration ("FEMA"). There are two privately held parcels remaining along this reach of the creek.

In May 2008, staff received City Council authorization to exchange a panhandle strip of the MoorCo Building site (portion of APN 153-030-32, approximately 0.40 acres) (the "Exchange Property") with Buel for their parcel lying westerly of the former Ace Welding site adjacent to Loma Alta Creek (APN 153-030-16, approximately 0.40 acres) (the "Reciprocal Property"). The portion of the City property involved with this exchange is a 60-foot-wide strip lying behind the carwash, boatyard and auto repair shop on South Coast Highway and north of the MoorCo Building.

**ANALYSIS**

Negotiations with the Buels have resulted in reaching the terms and conditions for an agreement for the exchange of the properties. Under the terms of the agreement, the Buels will have 245 days after the exchange is approved by the City Council in which to

clear their personal property off the Reciprocal Property. After receipt of notice from the Buels that the Reciprocal Property has been cleared, the City will have 30 days to inspect, approve or disapprove the condition of the property. Close of Escrow will occur 90 days after the City approves of the condition of the Reciprocal Property. Each party shall be responsible for its own title insurance and one-half of the escrow fees.

The City shall have the right to repurchase the Exchange Property for \$480,000 should the City desire to do so during the first 3 years following the approval of the agreement. The repurchase price was determined by an independent appraisal of the Reciprocal Property, which would otherwise be paid to the Buels to acquire the property. After said 3-year period, the City shall have the first right of refusal to purchase the Exchange Property should the Buels desire to sell the property under the same terms and conditions the property would be sold on the open market. After receipt of such notice from the Buels of their intent to sell the parcel the City would have 60 days in which to inform them whether the City is interested in buying the property.

The acquisition of the Reciprocal Property will further the City's efforts in assembling the properties along this reach of the Loma Alta Creek and its ultimate goal of enhancing water quality before it is discharged into the Pacific Ocean.

**FISCAL IMPACT**

There is minor fiscal impact related to the proposed property exchange: the City's cost for title insurance and its share of the escrow fees, which are estimated to be less than \$10,000. The funds will be appropriated from the Unallocated Balance in the General Fund (101.3100.0001) which has a current available balance of \$4.1 million. The \$10,000 will be transferred to the Property Management operating account (320000101.5355).

**COMMISSION OR COMMITTEE REPORT**

Does not apply.

**CITY ATTORNEY'S ANALYSIS**

The referenced documents have been reviewed by the City Attorney and approved as to form.

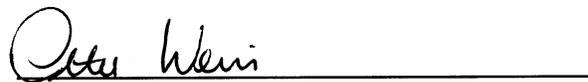
**RECOMMENDATION**

Staff recommends that the City Council approve the real property exchange with Charles and Carol Buel for the enhancement of Loma Alta Creek west of South Coast Highway; approve a budget appropriation in the amount of \$10,000 from the Unallocated Balance in the General Fund; and authorize the Mayor to execute the agreement and staff to open escrow and conclude the transaction.

PREPARED BY:

SUBMITTED BY:

  
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William F. Marquis  
Senior Property Agent

  
\_\_\_\_\_  
Peter A. Weiss  
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Jane McVey, Economic and Community Development Director

Teri Ferro, Financial Services Director

Douglas E. Eddow, Real Property Manager

  
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**REAL PROPERTY EXCHANGE AGREEMENT**  
**[and Joint Escrow Instructions]**

This REAL PROPERTY EXCHANGE AGREEMENT ("Agreement"), dated as of June 1, 2009, solely for identification purposes, is made and entered into by and between the City of Oceanside, a municipal corporation (hereinafter called "City"), and Charles R. Buel and Carol D. Buel, husband and wife, as community property (hereinafter called "Buel"). The effective date of this Agreement shall be the date this Agreement is approved by the Oceanside City Council ("Effective Date")

WHEREAS, City desires to acquire fee interest in a portion of Buel's real property consisting of approximately 0.38 acres or 16,582 square feet for flood subvention and related purposes;

WHEREAS, Buel desires to acquire fee interest in a portion of City's real property consisting of approximately 0.46 acres or 20,400 square feet, more or less, for materials storage; and

WHEREAS, the transaction contemplated under this Agreement is for the benefit of the public and in the furtherance of the public purposes of the City.

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained and for other valuable consideration, the parties hereto agree as follows:

**ARTICLE I**  
**RECITALS**

**101. Description of the Exchange Property.** City is the owner of that certain real property located within the City of Oceanside, County of San Diego, State of California and certain improvements located thereon both of which are more fully described in Exhibit "A" and shown on a sketch thereof marked Exhibit "B", respectively attached hereto and incorporated herein. For the purposes of this Agreement said real property and the improvements thereon are collectively referred to as the "Exchange Property".

**102. Description of Reciprocal Property.** Buel is the owner of real property located within the City of Oceanside, County of San Diego, State of California and certain improvements located thereon both of which are more fully described in Exhibit "C" and shown on a sketch thereof marked Exhibit "D", respectively attached hereto and incorporated herein. For the purposes of this Agreement said real property and the improvements thereon are collectively referred to as the "Reciprocal Property".

**103. Status and Powers of Buel.** Buel is the legal and lawful owner of the Reciprocal Property pursuant to the laws of the State of California and is authorized by the laws of the State of California to transfer the Reciprocal Property to the City and perform the actions and duties of Buel as more particularly described herein.

**104. Status and Powers of City.** City is a municipal corporation organized and existing pursuant to the Constitution and statutes of the State of California and is the legal and lawful owner of the Exchange Property. Pursuant to the authority of its City Council, City is authorized to enter into this Agreement, transfer the Exchange Property to Buel and perform the actions and duties of the City as more particularly described herein.

**105. Purpose of Agreement.** Buel desires to trade the Reciprocal Property for the Exchange Property, and City desires to trade the Exchange Property for the Reciprocal Property, on the terms and conditions in this Agreement.

**106. Public Benefit.** This Agreement is for the benefit of the public and is in furtherance of the public purposes of City. The City desires to acquire the Reciprocal Property for flood subvention and for other public purposes of City. City is authorized to acquire property for public purposes, including, without limitation, for the purposes stated herein.

## **ARTICLE II DEFINITIONS AND GENERAL PROVISIONS**

**201. Agreement.** For good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as set forth herein.

**202. Definitions in General.** The terms defined in Exhibit "E" attached hereto and by this reference incorporated herein, as used and capitalized herein, shall, for all purposes of this Agreement, have the meanings ascribed to them in said Exhibit "E", unless the context clearly requires some other meaning. In addition, the term "Agreement" as used herein means this *Real Property Exchange Agreement*.

**203. Rules of Construction.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Unless the context otherwise indicates, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement.

## **ARTICLE III EXCHANGE OF PROPERTY**

**301. Exchange of Property.** Buel agrees to trade the Reciprocal Property and City agrees to trade the Exchange Property on the terms and conditions in this Agreement.

**302. Purchase Price.** Buel and City are conveying their respective property to each other and acquiring each other's respective property, and to this regard there is no sellout of either the Exchange Property or the Reciprocal Property.

## **ARTICLE IV CONDITIONS PRECEDENT**

**401. Conditions Precedent to Closing.** Buel's obligation to trade the Reciprocal Property to City and City's obligation to trade the Exchange Property to Buel are subject to the following conditions precedent ("Conditions Precedent"). Subject to each other's rights under Article VII "ESCROW", if any of the Conditions Precedent have not been fulfilled within the applicable time periods the party for whose benefit such condition exists may:

- (a) Waive the condition or disapproval and close escrow in accordance with this Agreement;

- (b) Cure the failure of the condition or representation and be reimbursed by the other party in the amount equal to the cost to cure; or
- (c) Terminate this Agreement by written notice to the other party.

**402. Title.** Unless otherwise specified in this Agreement, Buel shall convey fee title to the Reciprocal Property to City by Grant Deed free and clear of all liens and encumbrances, except as provided in Section 403 of this Agreement. Likewise, City shall convey fee title in the Exchange Property to Buel by Grant Deed free and clear of all liens and encumbrances, except as provided in Section 403 of this Agreement.

**403. Preliminary Title Report.** Upon ordering the Escrow, preliminary title reports shall be requested for the Exchange Property and the Reciprocal Property ("Preliminary Reports") issued by Lawyers Title Insurance Company or another title insurance company approved by City ("Title Company") and containing such exceptions as the Title Company would specify in a California Land Title Association ("CLTA") standard policy of title insurance, together with copies of all exceptions and plotted easements and the documents supporting the exceptions (hereinafter collectively called "supporting documents").

Within fifteen days after receipt of legible copies of the Preliminary Report and supporting documents, Buel and City each shall give written notice to the other party of its disapproval, if any, of the respective Preliminary Report, any part thereof, or of any exceptions, or of the condition of title reflected in the Preliminary Report or the supporting documents. If either party gives written notice of disapproval as provided in this paragraph, the other party shall remove or otherwise cure, in a manner reasonably satisfactory to the disapproving party, the disapproved item or items at or before the Close of Escrow. The other party may elect not to remove or cure any disapproved item or items by delivering written notice thereof to the disapproving party within ten (10) days following the date of written notification of the disapproval. If either party elects not to remove or cure any disapproved item or items, the disapproving party may terminate this agreement by delivering a written notice of termination to the other party within five days after the date that the disapproving party actually receives notice of the other party's election not to remove or cure any disapproved item.

Buel with regard to the Reciprocal Property and City with regard to the Exchange Property (if applicable) shall be obligated to pay all current property taxes and assessments to the date of closing. The parties recognize that certain monetary encumbrances such as existing deeds of trust, tax liens, assessment liens, and the like will be discharged through Escrow as provided in this Agreement. Notwithstanding the giving of any notice or any failure to give any notice with respect to these items, they shall be discharged through Escrow as provided in this Agreement.

From and after the effective date of the Preliminary Report, neither City nor Buel shall alter the condition of title without the express written consent of the other party.

**404. Title Policies.** On or before the Close of Escrow, Buel and City shall have received evidence that Title Company is ready, willing, and able to issue, upon payment of the Title Company's regularly scheduled premium separate California Land Title Association (CLTA) standard policies of title insurance, in the amount of Four Hundred Eighty Thousand Dollars (\$480,000.00), showing title to the Exchange Property vested in the name of Buel and title to the Reciprocal Property vested in the City of Oceanside subject only to:

- (a) Non-delinquent general, special, and supplemental property taxes or assessments constituting a lien at Close of Escrow;

- (b) The matters described in the printed form portion of the Policy of Title Insurance to the extent that such matters do not conflict with the provisions of this Agreement;
- (c) Covenants, conditions, reservations, restrictions, easements or other matters appearing as exceptions in the Preliminary Report as approved by City or Buel pursuant to this Agreement; and
- (d) Any lien voluntarily imposed by City on the Reciprocal Property or by Buel on the Exchange Property as of the Close of Escrow.

**405. Physical Condition of the Property.**

(a) Buel hereby covenants and agrees that, within two hundred forty-five (245) calendar days after the Effective Date of this Agreement, Buel shall, at its sole cost and expense, remove and/or lawfully dispose of all personal property and effects from and vacate all persons (if any) residing on or about the Reciprocal Property. Within thirty (30) calendar days following receipt of written notice by Buel that all personal property and effects and persons (if any) have been removed from the Reciprocal Property, City shall inspect, review and approve or disapprove of the physical condition of the Reciprocal Property. Buel shall not cause the physical condition of the Reciprocal Property to deteriorate or adversely change after the date of the inspection, normal wear and tear excepted, without the prior written consent of City. In the event City disapproves of the physical condition after receipt of written notice from Buel that the Reciprocal Property has been cleared, City shall give Buel written notice of such disapproval and remedial actions necessary to place the Reciprocal Property in an acceptable condition. Buel shall, within ten (10) working days following receipt of such notice of disapproval, remove or cause the removal of any personal property and effects remaining on the Reciprocal Property or any other remedial action required to place the Reciprocal Property in an acceptable condition as set forth in said notice from City. If Buel fails or refuses to clear the Reciprocal Property within said time periods, City may elect to terminate this Agreement upon written notice of such election to Buel.

(b) Within thirty (30) calendar days after the date of this Agreement, Buel shall inspect, review and approve or disapprove of the physical condition of the Exchange Property. City shall not cause the physical condition of the Exchange Property to deteriorate or change after the date of the inspection, normal wear and tear excepted, without the prior written consent of Buel. Buel further agrees that the Exchange Property is being traded in its "As-Is", "Where-Is" and "All-Faults" condition. Buel is obligated to investigate, inspect and analyze the physical condition of the Exchange Property and the effect of any zoning, map, permits, reports, engineering data, regulations, ordinances, and laws effecting Buel's intended use of Exchange Property to its own satisfaction and expressly agrees that in entering into this Agreement it is relying on its own investigation as to the condition of the Exchange Property.

(c) Buel hereby consents to entry upon the Reciprocal Property by City or its officers, employees, contractors and agents for the purpose of conducting physical inspections and tests. City agrees to defend, indemnify and hold Buel harmless from all liabilities, costs and expenses resulting directly from City's inspections and tests. If City alters the physical condition of the Reciprocal Property and Escrow does not close, City shall restore the Reciprocal Property to the condition existing before City's inspections or tests.

(d) City hereby consents to entry upon the Exchange Property by Buel or its officers, employees, contractors and agents for the purpose of conducting physical inspections and tests. Buel agrees to defend, indemnify and hold City harmless from all liabilities, costs and expenses resulting directly from Buel's inspections and tests. If Buel alters the physical conditions of the Exchange Property and Escrow does not close, Buel shall restore the Exchange Property to the condition existing before Buel's inspections or tests.

**406. Property Documents.**

(a) Within ten (10) calendar days after the date of this Agreement, Buel shall deliver to City current copies of all permits, soils reports, licenses, maintenance contracts, utility contracts, operating contracts, leases, service contracts, and other contracts pertaining to the Reciprocal Property ("Reciprocal Property Documents"). Within fifteen (15) calendar days after receipt of the Reciprocal Property Documents, City shall review and approve or disapprove each Reciprocal Property Document. On or before the Close of Escrow, Buel shall assign to City all of Buel's rights and remedies under the Reciprocal Property Documents, to the extent assignable and related to the respective property, pursuant to an assignment of contracts, warranties, guarantees, and other intangible property in form and substance as mutually acceptable to the parties. At the request of City, the assignment of contracts shall exclude Buel's rights under any Reciprocal Property Documents designated by City. At request of City, Buel shall use good faith efforts to obtain the consent to assignment of any other parties to the Reciprocal Property Documents as specified by City. At the request of City, if permissible under such document, Buel shall terminate any Reciprocal Property Document designated by City by delivering notices to the other party under the Reciprocal Property Document in sufficient time to terminate the Reciprocal Property Document prior to the Close of Escrow.

(b) Within ten (10) calendar days after the date of this Agreement, City shall deliver to Buel current copies of all permits, soils reports, licenses, maintenance contracts, utility contracts, operating contracts, leases, maintenance contracts, service contracts, and other contracts pertaining to the Exchange Property ("Exchange Property Documents"). Within fifteen (15) calendar days after receipt of the Exchange Property Documents, Buel shall review and approve or disapprove each Exchange Property Document. On or before the Close of Escrow, if applicable, City shall assign to Buel all of City's rights and remedies under the Exchange Property Documents, to the extent assignable, pursuant to an assignment of contracts, warranties, guarantees, and other intangible property in form and substance mutually acceptable to the parties. At the request of Buel, the assignment of contracts shall exclude City's rights under any Exchange Property Documents designated by Buel. At request of Buel, City shall use good faith efforts to obtain the consent to assignment of any other parties to the Exchange Property Documents as specified by Buel. At the request of Buel, if permissible under such document, City shall terminate any Exchange Property Document designated by Buel by delivering notices to the other party under the Exchange Property Document in sufficient time to terminate the Exchange Property Document prior to the Close of Escrow.

**407. Nonforeign Affidavit.** If applicable, on or before the Close of Escrow, Buel shall execute and deliver to City a nonforeign affidavit as required by the Foreign Investment In Real Property Tax Act (FIRPTA) [42 USC § 1445].

**408. Buel's Obligations.** Buel is obligated to the performance of every material covenant, agreement, and promise to be performed by Buel pursuant to this Agreement and the related documents executed or to be executed by Buel.

**409. Buel's Representations.** Buel represents the truth and accuracy of all its representations and warranties as set forth in this Agreement or in documents provided by Buel under this Agreement.

**410. City's Obligations.** City is obligated to the performance of every material covenant, agreement, and promise to be performed by City pursuant to this Agreement and the related documents executed or to be executed by City.

**411. City's Representations.** City represents the truth and accuracy of all its representations and warranties as set forth in this Agreement or in documents provided by City under this Agreement.

## **ARTICLE V CITY AND BUEL'S REPRESENTATIONS AND WARRANTIES**

**501. Time.** The representations and warranties by City and Buel in this Article are made as of the date of this Agreement and as of the Close of Escrow.

**502. Title.**

(a) Buel is the legal and equitable owner of the Reciprocal Property, with full right to convey. Buel has not previously conveyed title to the Reciprocal Property to any other person. Buel has not granted any options or rights of first refusal or rights of first offer to third parties to purchase or otherwise acquire an interest in the Reciprocal Property. Buel has obtained a Preliminary Title Report indicating that the Reciprocal Property is free and clear of all liens, encumbrances, claims, demands, easements, leases, agreements, covenants, conditions, or restrictions of any kind, except for the exceptions set forth in the Preliminary Report and in Section 402 of this Agreement. To the knowledge of Buel there are no leases, license agreements or other encumbrances affecting the Reciprocal Property. Buel has obtained (or will obtain as of Close of Escrow) all required consents, permissions or releases to convey good and marketable title to City.

(b) City is the legal and equitable owner of the Exchange Property, with full right to convey. City has not previously conveyed title to the Exchange Property to any other person. City has not granted any options or rights of first refusal or rights of first offer to third parties to purchase or otherwise acquire an interest in the Exchange Property. The Exchange Property is free and clear of all liens, encumbrances, claims, demands, easements, leases, agreements, covenants, conditions, or restrictions of any kind, except for the exceptions set forth in the Preliminary Report and in Section 402 of this Agreement. City has obtained (or will obtain as of Close of Escrow) all required consents, permissions or releases to convey good and marketable title to Buel.

**503. Hazardous substances.**

(a) To Buel's actual knowledge the Reciprocal Property is free from Hazardous Substances and is not in violation of any Environmental Laws. Buel has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Reciprocal Property is or has been in violation of any Environmental Law, or informing Buel that the Reciprocal Property is subject to investigation or inquiry regarding Hazardous Substances on the Reciprocal Property or the potential violation of any Environmental Law.

(b) To City's actual knowledge the Exchange Property is free from Hazardous Substances and is not in violation of any Environmental Laws. City has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Exchange Property are or have been in violation of any Environmental Law, or informing City that the Exchange Property is subject to investigation or inquiry regarding Hazardous Substances on the Exchange Property or the potential violation of any Environmental Law.

**504. Violation of Law.**

(a) To Buel's actual knowledge, no condition on the Reciprocal Property violates any health, safety, fire, environmental, building, zoning or other federal, state, or local law, code, ordinance, or regulation.

(b) To City's actual knowledge, no condition on the Exchange Property violates any health, safety, fire, environmental, building, zoning or other federal, state, or local law, code, ordinance, or regulation.

**505. Litigation.**

(a) To Buel's actual knowledge there is no pending or threatened litigation, administrative proceeding, or other legal or governmental action with respect to the Reciprocal Property or which may adversely affect Buel's ability to fulfill the obligations of this Agreement.

(b) To City's actual knowledge there is no pending or threatened litigation, administrative proceeding, or other legal or governmental action with respect to the Exchange Property or which may adversely affect City's ability to fulfill the obligations of this Agreement.

**506. Bankruptcy.** No filing or petition under the United States Bankruptcy Law or any insolvency laws, or any laws for composition of indebtedness or for the reorganization of debtors has been filed with regard to Buel.

**507. No defaults.**

(a) To Buel's actual knowledge, Buel is not in default of Buel's obligations or liabilities pertaining to the Reciprocal Property. To Buel's actual knowledge, there are no facts, circumstances, conditions or events, which after notice or lapse of time would constitute default. Buel has not received any notice of any default and has no reason to believe that there is likely to be any breach or default of any of Buel's obligations or liabilities pertaining to the Reciprocal Property.

(b) To City's actual knowledge, City is not in default of City's obligations or liabilities pertaining to the Exchange Property. To City's actual knowledge, there are no facts, circumstances, conditions or events, which after notice or lapse of time would constitute default. City has not received any notice of any default and has no reason to believe that there is likely to be any breach or default of any of City's obligations or liabilities pertaining to the Exchange Property.

**508. Special Studies Zone.** Neither the Exchange Property nor the Reciprocal Property are within a special studies zone under the Alquist-Priolo Geologic Hazard Act [Pub. Res. Code §§ 2621.9 et seq.] (which generally requires sellers to inform purchasers if property is within a special studies zone, which zones are generally near potentially or recently active earthquake faults).

**509. Foreign Investment Real Property Tax Act.** Buel is not a "foreign person" within the meaning of 42 USC § 1445(f)(3). Buel understands and agrees that the certification made in this Section 509 may be disclosed to the Internal Revenue Service by City and that any false statement contained herein could be punished by fine, imprisonment or both. This certification is made under penalty of perjury under the laws of the State of California.

**510. Disclosure.**

(a) Any information that Buel has delivered to City either directly or through Buel's agents or employees, is complete and accurate to the best of Buel's actual knowledge. Buel has disclosed to City all material facts with respect to the Reciprocal Property to which Buel has access.

(b) Any information that City has delivered to Buel either directly or through City's agents or employees, is complete and accurate to the best of City's actual knowledge. City has disclosed to Buel all material facts with respect to the Exchange Property to which City has access.

**ARTICLE VI  
COVENANTS**

**601. Power to Enter Into Agreements.**

(a) Buel is duly authorized to enter into this Agreement. The provisions of this Agreement are and will be the valid and legally enforceable obligations of Buel in accordance with their terms and the terms of this Agreement.

(b) City is duly authorized to enter into this Agreement. The provisions of this Agreement are and will be the valid and legally enforceable obligations of City in accordance with their terms and the terms of this Agreement.

**602. No Violation of Other Agreements.**

(a) Buel hereby represents that neither the execution and delivery of this Agreement, nor the fulfillment of and compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of terms or violation of any other agreement to which Buel is a party or by which Buel is bound, or constitutes a default under any of the foregoing.

(b) City hereby represents that neither the execution and delivery of this Agreement, nor the fulfillment of and compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of terms or violation of any other agreement to which City is a party or by which City is bound, or constitutes a default under any of the foregoing.

**603. Payment of Obligations.** Buel and City, as applicable, shall discharge all obligations and liabilities under the Reciprocal Property Documents or the Exchange Property Documents before the Close of Escrow, as required by the Agreement.

**604. Brokers.** Buel and City mutually covenant that no brokerage or real estate agent fees or commissions shall be due and payable on account of this transaction, and each party shall hold the other harmless from any claims for such fees or commissions claimed by a broker or real estate agent claiming through the party.

**605. Litigation.**

(a) Buel shall immediately notify City of any lawsuits, condemnation proceedings, rezoning, or other governmental order or action, or any threat thereof, of which Buel has actual knowledge which might affect the Reciprocal Property, or any interest of City with respect to the Reciprocal Property.

(b) City shall immediately notify Buel of any lawsuits, condemnation proceedings, rezoning, or other governmental order or action, or any threat thereof, of which City has actual knowledge, which might affect the Exchange Property, or any interest of Buel with respect to the Exchange Property.

**606. Indemnification.**

(a) Buel shall indemnify, defend and hold City harmless from all liability, loss, or claim for damages, and any costs and reasonable attorney's fees associated therewith, arising from breach of Buel's covenants under this Agreement, or from Buel's false representations under this Agreement, except for any liability, loss, or claims for damages to the extent resulting from the sole and active negligence or willful misconduct of City or City's officers or employees.

(b) City shall indemnify, defend and hold Buel harmless from all liability, loss, or claim for damages, and any costs and reasonable attorney's fees associated therewith, arising from breach of City's covenants under this Agreement, or from City's false representations under this Agreement, except for any liability, loss, or claims for damages to the extent resulting from the sole negligence or willful misconduct of Buel or Buel's officers or employees.

The provisions of this Section 606 shall survive the Close of Escrow.

**ARTICLE VII  
ESCROW**

**701. Establishment of Escrow.** Within Seven (7) days after the date this Agreement is approved by the Oceanside City Council, Buel and City shall establish an Escrow for the close of the trade of the Exchange Property and the Reciprocal Property with the escrow department of the Title Company ("Escrow Agent"). If the Escrow Agent is unwilling or unable to perform, City shall designate another escrow agent. Escrow Agent shall notify both parties in writing of the specific date on which the Escrow has opened. This Agreement shall constitute Escrow Instructions, provided however, that Escrow Agent shall prepare general instructions as may be deemed necessary by the Escrow Agent for the fulfillment of this Agreement and deliver those general instructions to Buel and City. Buel and City shall each execute the general instructions, or propose changes thereto, within Five (5) days after receipt of the instructions. If there is any conflict between the terms of the general instructions and this Agreement, the provisions of this Agreement shall prevail unless the conflicting provision is specifically identified as an amendment to this Agreement.

**702. Closing.** The Grant Deeds shall be recorded and the Exchange Property transferred from City to Buel and the Reciprocal Property transferred from Buel to City ("Close of Escrow") after City and Buel, as applicable, each has either approved or waived each Condition Precedent, and then on or before Ninety (90) days thereafter Close of Escrow shall occur ("Closing Deadline"). Unless the Close of Escrow is extended by written agreement of the parties, Escrow shall close no later than the Closing Deadline.

**703. Closing Deposits.** On or before the Close of Escrow, Buel and City shall deposit with Escrow Agency the following documents and shall close Escrow as follows:

- (a) Buel shall deposit with Escrow Agent the following:
  - (i) The executed and acknowledged original of the Grant Deed conveying the Reciprocal Property from Buel to City;
  - (ii) The original Nonforeign Affidavit executed by Buel;
  - (iii) The originals of all Reciprocal Property Documents;
  - (iv) The original assignment of all contracts or leases and the original or true copies of all contracts or leases assigned;
  - (v) A certificate acknowledging that all conditions to the Close of Escrow that City was to satisfy or perform have been satisfied and performed, and that Buel's representations, covenants, and warranties made in or pursuant to this Agreement are correct as of the Close of Escrow;
  - (vi) Any funds necessary to pay Buel's share of closing costs as set forth in this Agreement or the escrow instructions; and
  - (vii) Any other documents or funds required of Buel to close Escrow in accordance with this Agreement.
- (b) City shall deposit with Escrow Agent the following:
  - (i) An original executed and acknowledged Grant Deed conveying the Exchange Property from City to Buel;
  - (ii) The originals of all Exchange Property Documents, except for those documents which by law City must keep in its custody;
  - (iii) The original assignment of all contracts or leases and the original or true copy of all contracts or leases assigned;
  - (iv) Any funds necessary to pay City's share of closing costs as set forth in this Agreement or the escrow instructions;
  - (v) A certificate executed by City providing that all conditions to Close of Escrow that Buel was to satisfy or perform have been satisfied and performed and City's representations, covenants, and warranties made in and pursuant to this Agreement are correct as of the Close of Escrow; and
  - (vi) Any other document or funds required of City to close Escrow in accordance with this Agreement.

**704. Acceptance Certificate.** Prior to the Close of Escrow and the recording of the Grant Deeds, City shall affix a duly executed Certificate of Acceptance to the original Grant Deed

acknowledging the acceptance of the Reciprocal Property. In the event Buel deposits said Grant deed into Escrow without said certificate, the Escrow Agent is hereby instructed to forward the original of the Grant Deed to City so that the certificate may be affixed thereto prior to the recording of the Grant Deed, within five (5) business days after receipt of the Grant Deed from the Escrow Agent, City shall return the original Grant Deed (with the certificate affixed).

**705. Closing Costs.**

(a) Buel shall pay all of the real property transfer taxes and documentary transfer taxes payable upon recordation of the Grant Deed conveying title to the Exchange Property from City to Buel, and any sales, use or ad valorem taxes connected with the Close of Escrow on the Exchange Property.

(b) City shall pay all of the real property transfer taxes and documentary transfer taxes (if any) payable upon recordation of the Grant Deed conveying title to the Reciprocal Property from Buel to City, and any sales, use or ad valorem taxes connected with the Close of Escrow on the Reciprocal Property.

(c) Buel and City shall each pay one-half of the Escrow Agent's normal and customary fees. Each party shall be responsible for any special or extraordinary escrow fees for services benefiting or provided at the request of the respective party. Buel and City shall each pay their respective title insurance premium and the cost of recording the respective Grant Deed, if any.

**706. Property Taxes and Prorations.** Buel shall be solely responsible for bringing the Reciprocal Property's real property taxes current as of the Close of Escrow and City shall have no liability for payment of taxes. City shall be responsible for providing notice to the appropriate taxing agency or agencies of the acquisition of the Reciprocal Property and for filing the appropriate request for cancellation of real property taxes.

**707. Possession.** Right to possession of the Exchange Property by Buel and to the Reciprocal Property by City shall transfer at Close of Escrow.

**ARTICLE VIII  
MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS**

**801. Eminent Domain/Relocation.** Buel and City agree that this Agreement is entered into in lieu of acquisition of the Reciprocal Property by the City through the exercise of its power of eminent domain. If Buel and City had not voluntarily entered into this Agreement for the acquisition of the Reciprocal Property, City would institute proceedings to acquire the property by eminent domain. The threat of the exercise of the power of eminent domain is an inducement for Buel to enter into this Agreement. Buel agrees that this property trade includes any and all payments for relocation expenses as may be required by State or Federal Law and that Buel shall defend and indemnify City from any claim by Buel or any person claiming through Buel for relocation assistance as a result of City's acquisition of the Reciprocal Property.

**802. Further Assurances.** Whenever requested by the other party, each party shall execute, acknowledge, and deliver any further conveyances, assignments, confirmations, satisfactions, releases, instruments of further assurance, approvals, consents and any other instrument or document as may be necessary, expedient or proper to complete the transaction contemplated by this Agreement, and to do any other acts and to execute, acknowledge, and deliver any requested document to carry out the intent and purpose of this Agreement.

**803. Assignment.**

(a) Buel shall have no right, power, or authority to assign or mortgage this Agreement or any portion of this Agreement, or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily, or by operation of law, without the prior written consent of City.

(b) City hereby reserves the right, power, or authority to assign or mortgage this Agreement or any portion of this Agreement to another governmental agency with the power to acquire the property under the same terms and conditions as City, or to delegate any duties or obligations arising under this Agreement, voluntarily, involuntarily or by operation of law without Buel's prior written approval.

**804. Preservation and Inspection of Documents.** Documents received by Buel or City under the provisions of this Agreement shall be retained in their respective possessions and shall be subject at all reasonable times to the inspection of the other party hereto and its assigns, agents and representatives, any of whom may make copies thereof.

**805. Parties of Interest.** Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or party other than Buel and City any rights, remedies or claims under or by reason of this Agreement or any covenants, condition or stipulation hereof; and all covenants, stipulations, promises and agreements in this Agreement made by or on behalf of Buel or City shall be for the sole and exclusive benefit of Buel and City.

**806. No Recourse Under Agreement.** All covenants, stipulations, promises, agreements and obligations of the parties hereto contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the parties hereto, respectively, and not of any member, officer, employee or agent of the parties hereto in an individual capacity, and no recourse shall be had for any claim based on or under this Agreement against any member, officer, employee or agent of the parties hereto.

**807. Notices.** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or deposited in the United States mail in certified form with postage fully prepaid:

If to City:

CITY OF OCEANSIDE  
Property Management Division  
300 North Coast Highway  
Oceanside, CA 92054

Copy to:

CITY OF OCEANSIDE  
Attn: City Attorney  
300 North Coast Highway  
Oceanside, CA 92054

If to Buel:

Charles R. Buel  
1315 South Cleveland Street  
Oceanside, CA 92054

Copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The parties hereto, by notice given hereunder, may, respectively designate different addresses to which subsequent notices, certificates or other communications will be sent.

**808. Binding Effect.** Without waiver of Section 803, this Agreement shall inure to the benefit of and shall be binding upon Buel, City, and their respective successors and assigns.

**809. Severability.** If any one or more of the covenants, stipulations, promises, agreements or obligations provided in this Agreement on the part of Buel or City to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant, stipulation, promise, agreement or obligation shall be deemed and construed to be severable from the remaining covenants, stipulations, promises, agreements and obligations herein contained and shall in no way affect the validity of the other provisions of this Agreement.

**810. Headings.** Any headings preceding the text of the several Articles and Sections hereof, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience or reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

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

**812. Buel and City Representatives.** Whenever under the provisions of this Agreement the approval of Buel or City is required, or Buel or City are required to take some action at the request of the other, such approval of such request may be given for Buel by an Authorized Officer/Representative of Buel and for City by an Authorized Officer of City, and any party hereto shall be authorized to rely upon any such approval or request.

**813. Form of Certificate of Officers.** Every certificate with respect to compliance with a condition or covenant provided for in this Agreement and which is precedent to the taking of any action under this Agreement shall include:

(a) A statement that the person making or giving such certificate has read such covenant or condition and the definitions herein relating thereto;

(b) A brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate are based;

(c) A statement that, in the opinion of the signer, signer has made or caused to be made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) A statement as to whether, in the opinion of the signer, such condition or covenant has been complied with.

A certificate may be based, insofar as its relates to legal matters, upon a certificate or opinion of or representations by counsel, unless the persons providing the certificate know that the certificate or representations with respect to the matters upon which the certificate may be based are erroneous, or in the exercise of reasonable care should have known that the same were erroneous.

**814. Amendment.** This Agreement may be amended, modified, or changed only in writing as mutually agreed to and duly executed by the parties hereto.

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

**816. Time of the Essence.** Time is of the essence in this Agreement and every provision contained in this Agreement.

**817. Integration.** This Agreement, and all attachments and exhibits hereto constitute the entire agreement of the parties. There are no oral or written agreements which are not expressly set forth in the Agreement or the related documents being executed in connection with this Agreement.

**818. Waivers.** No waiver or breach of any provision shall be deemed a waiver of any other provision, and no waiver shall be valid unless it is in writing and executed by the waiving party. No extension of time for performance of any obligation or act shall be deemed an extension of time for any other obligation or act.

**819. Attorney Fees, Litigation Costs and Related Matters.** If any legal action or other proceeding, including arbitration or an action for declaratory relief, is brought to enforce this Agreement or because of a dispute, breach, default, or misrepresentation in connection with this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and other costs in addition to any other relief. Venue for enforcement of this Agreement shall be in the Superior Court of San Diego County. The parties agree that before either party commences any legal or equitable action, action for declaratory relief, suit, proceeding, or arbitration that the parties shall first submit the dispute to mediation through a mutually acceptable professional mediator in San Diego County, or if a mediator cannot be agreed upon, by a mediator appointed by the JAMS in San Diego County. The cost of mediation shall be shared equally by the parties.

**820. Exhibits.** All exhibits referred to in this agreement and attached hereto are made a part hereof and are incorporated herein by this reference.

**821. Survival.** Buel's representations and warranties, City's representations and warranties, all covenants and obligations to be performed at a time or times after Close of Escrow, and indemnities shall survive the Close of Escrow and delivery and recordation of the Grant Deeds.

**822. Execution of Agreement.** This Agreement is executed in two (2) duplicate copies, each of which is deemed to be an original. This Agreement includes pages 1 through 16, and Exhibit A through Exhibit C, which constitutes the entire understanding and agreement of the parties.

**823. Advice of Legal Counsel.** The parties have had the opportunity to seek the advice of independent legal counsel prior to executing this Agreement. The parties acknowledge that no party, agent or attorney of any party has made a promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter of this Agreement to induce the other party to execute this Agreement. Each party acknowledges that it has not executed this Agreement in reliance upon any promise, representation or warranty not contained herein.

**824 Signatories.** Each individual signing below represents and warrants that he/she has the authority to execute this Agreement on behalf of and bind the party he/she purports to represent.

**ARTICLE IX  
SPECIAL PROVISIONS**

**901. City's Right to Reacquire the Exchange Property.** City hereby reserves the right to reacquire the Exchange Property at any time within the first three (3) years following the approval of this Agreement by the Oceanside City Council upon City giving notice to Buel within such time period of it election to reacquire the parcel, at the purchase price of Four Hundred Eighty Thousand Dollars (\$480,000.00). In the event City reacquires the Exchange Property, it shall be reconveyed by Buel to City in the same or better condition as existed when acquired by Buel. During said three (3) year period Buel shall be prohibited from making any total or partial sale or transfer of the Exchange Property to any third party or voluntary successor in interest of Buel without prior written approval by City, which approval shall not unreasonably be withheld. In the event City reacquires the Exchange Property as provided under the provisions of this Section 901, Buel shall clear the Exchange Property of all personal property and effects within the same time and manner as set forth in Section 405(a), above. If Buel fails or refuses to clear the Exchange Property within said time periods, City may elect to cause the work to be done and deduct the costs thereof from the purchase price.

**902. City's Right of First Refusal.** In the event Buel desires to sell the Exchange Property after the expiration of the three (3) year period set forth in Section 901 of this Agreement, Buel shall notify City in writing setting forth the price, terms and conditions upon which Buel wishes to sell the same. City upon receiving such notice, City shall have a period of sixty (60) days thereafter to notify Buel in writing that City wishes to purchase the Exchange Property on the terms and conditions as submitted. Failure of City to give Buel written notice of its election to purchase the Exchange Property within said sixty (60) day period shall be deemed a determination not to purchase the Exchange Property, in which event Buel shall be free for a period of one hundred eighty (180) days thereafter to sell the Exchange Property at the price and on the terms and conditions set forth in such written offer made to City. Should such conveyance not be consummated within such time period, the original offer shall be deemed revoked and the same procedure shall thereafter be followed should Buel wish to continue its efforts to sell the Exchange Property. In the event City exercises its right of first refusal to purchase the Exchange Property as provided herein, Buel shall clear the Exchange Property of all personal property and effects within the same time and manner as set forth in Section 405(a), above. If Buel fails or refuses to clear the Exchange Property within said time periods, City may elect to cause the work to be done and deduct the costs thereof from the purchase price.

**903. Liquidated Damages by Reason of Default by Buel. IN THE EVENT BUEL FAILS OR REFUSES TO COMPLY WITH THE PROVISIONS OF SECTIONS 901 AND 902 OF THIS AGREEMENT, CITY SHALL HAVE THE RIGHT TO INVALIDATE AND VOID ANY SALE, TRANSFER OR CONVEYANCE OF THE EXCHANGE PROPERTY MADE CONTRARY TO SAID PROVISIONS AND, IF NECESSARY, SEEK DECLARATORY RELIEF AND/OR INJUNCTION THROUGH A COURT OF COMPETENT JURISDICTION TO INVALIDATE AND VOID ANY SUCH SALE, TRANSFER OR CONVEYANCE BY BUEL AND IN SUCH EVENT, CITY MAY REENTER AND REPOSSESS THE EXCHANGE PROPERTY AND RECOVER FROM BUEL ALL COURT COSTS, ATTORNEY FEES AND ANY OTHER AMOUNTS FIXED BY THE COURT. BY INITIALING THIS SECTION 903, BUEL AND CITY AGREE THAT IN THE EVENT OF DEFAULT BY BUEL, IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES BY REASON OF DEFAULT BY BUEL, AND THE REPOSSESSION BY CITY OF EXCHANGE PROPERTY, BY REASON OF DEFAULT BY BUEL, SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF CITY AND THAT THE REPOSSESSION OF THE EXCHANGE PROPERTY IS NOT**

INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT INSTEAD, IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO CITY PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE.

CS, CB  
[Initials of Buel]

  /    
[Initials of City]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names by their duly authorized officers as of, but not necessarily on, the Effective Date of this Agreement.

CITY  
City of Oceanside, a municipal corporation

BUEL  
Charles R. Buel and Carol D. Buel, husband and wife, as community property

By: \_\_\_\_\_  
Mayor

By: Charles Buel  
Charles R. Buel

Date: 6-9-09

APPROVED AS TO FORM:  
City ATTORNEY'S OFFICE

By: Burt J. Smith, ASST.  
City Attorney

By: Carol Buel  
Carol D. Buel

Date: 6-9-09

**BUEL'S SIGNATURE(S) MUST BE NOTARIZED  
NOTARY USE CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

State of California )  
County of San Diego )<sup>SS.</sup>

On 6/9/09 before me, Curtis Jackson, Notary Public  
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared Charles Buel and Carol Buel  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is~~/are subscribed to the within instrument and acknowledged to me that ~~he~~/~~she~~/they executed the same in ~~his~~/~~her~~/their authorized capacity(ies), and that by ~~his~~/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



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

WITNESS my hand and official seal.

[Signature]  
Signature of Notary Public

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: Real Property Exchange Agreement

Document Date: 6/9/09 Number of Pages: 24

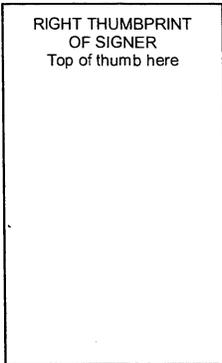
Signer(s) Other Than Named Above: NA

**Capacity(ies) Claimed by Signer**

Signer's Name: Charles Buel and Carol Buel

- Individual
- Corporate Officer – Title(s): \_\_\_\_\_
- Partner –  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



## EXHIBIT "A"

### Description of the Exchange Property

That certain real property situated in the City of Oceanside, County of San Diego, State of California, being that portion of Parcel "A" as described in Certificate of Compliance recorded October 21, 1997, as Document No. 1997-0526337 of Official Records, described as follows:

#### PARCEL 1:

Being the Westerly 60.00 feet of Parcel 2 of Parcel Map No. 13409, in the City of Oceanside, County of San Diego, State of California, filed in the Office of the County Recorder of San Diego County August 3, 1984, as File No. 84-296828 of Official Records.

#### PARCEL 2:

An easement and right of way for road purposes to be used in common with others over a strip of land 40.00 feet in width lying within Block 14 of South Oceanside, in the City of Oceanside, County of San Diego, State of California, according to Map thereof No. 622, filed in the Office of the County Recorder of San Diego County, February 7, 1890, the centerline of said 40.00 foot strip being described as follows:

Commencing at the most Southerly corner of Matfields 4.32 acre Parcel of land as shown on said Map No. 622;

Thence, along the Southwesterly prolongation of the Southeasterly line of said Parcel of land, South 54°48'00" West, 80.00 feet to an intersection with a line which is parallel with and 100.00 feet Northeasterly at right angles to the center line of the main line of the Atchison, Topeka and Santa Fe Railroad;

Thence along said parallel line South 35°12'00" East, 385.00 feet to the most Southerly corner of land described in Deed to Stuart Charles Law, recorded September 4, 1956, in Book 6243, Page 263 of Official Records;

Thence along the Southeasterly line of said Law's Land, North 54°47'00" East, 300.00 feet to the true point of beginning;

Thence, North 72°59'30" East (North 72°31'37" East, per Parcel Map 12743, filed in the Office of the County Recorder of San Diego County, June 1, 1983, as File No. 83-183559 of Official Records), 43.94 feet;

Thence, North 60°36'00" East, 310 feet to the Southwesterly line of Coast Highway (formerly Hill Street).

The sidelines of said strip should be prolonged or shortened so as to terminate on the Northeast at the South westerly line of Coast Highway and on the Southwest at a line which bears North 35°09'40" West through the true point of beginning.

Together with that portion of Parcel 4 of said Parcel Map No. 12743 described as follows:

**EXHIBIT "A"**  
**(Cont.)**

Beginning at the Southwesterly corner of Parcel 1 above described, said point also being the Northwesterly corner of said Parcel 4;  
Thence, North 72°59'30" East, 43.94 feet (North 72°31'37" East, 43.36 feet per Parcel Map 12743);  
Thence, North 60°36'00" East, to the Southeasterly corner of said Parcel 1;  
Thence along the Southerly line of said Parcel 1 and the Northerly Line of said Parcel 4 South 68°53'33" West, 61.86 feet to the point of beginning.

PORTION OF APN: 153-030-32



## EXHIBIT "C"

### Description of the Reciprocal Property

All that certain real property situated in the City of Oceanside, County of San Diego, Stat of California, described as follows:

#### PARCEL 1:

That portion of Block 14 of South Oceanside, in the City of Oceanside, County of San Diego, State of California, according to Map thereof No. 622, filed in the Office of the County Recorder of San Diego County, February 7, 1890, described as follows:

Commencing at the most Southerly corner of Matfields 4.32 acre Parcel of land as shown on said Map No. 622;

Thence, along the Southwesterly prolongation of the Southeasterly line of said Parcel of land, South 54°48'00" West, 80.00 feet to an intersection with a line which is parallel with and 100.00 feet Northeasterly at right angles to the center line of the main line of the Atchison, Topeka and Santa Fe Railroad;

Thence, along said parallel line South 35°12'00" East, 385.00 feet to the most Southerly corner of land described in Deed to Stuart Charles Law, recorded September 4, 1956, in Book 6243, Page 263 of Official Records;

Thence, along the Southeasterly line of said Law's Land, North 54°47'00" East, 140.00 feet to the true point of beginning;

Thence, continuing along said Southeasterly line, North 54°47'00" East, 65.00 feet;

Thence, South 35°09'40" East, 245.11 feet to the Northwesterly line of land described in Deed to Chrysler Realty Corporation recorded September 15, 1967 as Instrument No. 150373;

Thence, along said Northwesterly line South 37°40'53" West, 68.03 feet to an intersection with a line which bears South 35°09'40" East from the true point of beginning;

Thence, along said line North 35°09'40" West, 265.11 feet to the true point of beginning.

#### PARCEL 2:

An easement and right of way for road purposes to be used in common with others over a strip of land 40.00 feet in width lying in Block 14 of South Oceanside, in the city of Oceanside, County of San Diego, State of California, according to Map thereof No. 622, filed in the Office of the County Recorder of San Diego County, February 7, 1890, the center line of said 40.00 foot strip being described as follows:

Commencing at the most Southerly corner of Matfields 4.32 acre Parcel of land as shown on said Map No. 622;

Thence, along the Southwesterly prolongation of the Southeasterly line of said Parcel of land, South 54°48'00" West, 80.00 feet to an intersection with a line which is parallel with and 100.00 feet Northeasterly at right angles to the center line of the main line of the Atchison, Topeka and Santa Fe Railroad;

**EXHIBIT "C"**  
**(Cont.)**

Thence, along said parallel line South 35°12'00" East, 385.00 feet to the most Southerly corner of land described in Deed to Stuart Charles Law, recorded September 4, 1956, in Book 6243, Page 263 of Official Records;

Thence along the Southeasterly line of said Law's Land, North 54°47'00" East, 300.00 feet to the true point of beginning;

Thence, North 72°59'30" East, 43.94;

Thence, North 60°36'00" East, 310 feet to the Southwesterly line of Coast Highway (formerly Hill Street).

The sidelines of said strip should be prolonged or shortened so as to terminate on the Northeast at the South westerly line of Coast Highway and on the Southwest at a line which bears North 35°09'40" West through the true point of beginning.

**PARCEL 3:**

An easement and right of way for road purposes to be used in common with others over a strip of land 40.00 feet in width lying in Block 14 of South Oceanside, in the city of Oceanside, County of San Diego, State of California, according to Map thereof No. 622, filed in the Office of the County Recorder of San Diego County, February 7, 1890, the center line of said 40.00 foot strip being described as follows:

Commencing at the most Southerly corner of Matfields 4.32 acre Parcel of land as shown on said Map No. 622;

Thence, along the Southwesterly prolongation of the Southeasterly line of said Parcel of land, South 54°48'00" West, 80.00 feet to an intersection with a line which is parallel with and 100.00 feet Northeasterly at right angles to the center line of the main line of the Atchison, Topeka and Santa Fe Railroad;

Thence, along said parallel line South 35°12'00" East, 385.00 feet to the most Southerly corner of land described in Deed to Stuart Charles Law, recorded September 4, 1956, in Book 6243, Page 263 of Official Records, being the true point of beginning;

Thence along the Southeasterly line of said Law's Land, North 54°47'00" East, 300.00 feet.

Excepting therefrom that portion lying Southwesterly of the Northeasterly line of Parcel 1 above described.

APN: 153-030-16



## EXHIBIT "E"

### DEFINITIONS

**City.** The term "City" means the City of Oceanside, California.

**Buel.** The term "Buel" means Charles R. Buel and Carol D. Buel, husband and wife.

**Authorized Officer.** The term "Authorized Officer", when used with respect to City, means the City Manager of City, for the purposes of this Agreement the City Manager delegates authority to the Real Property Manager of City or any employee designated by the Real Property Manager. The term "Authorized Officer", when used with respect to Buel, means Charles R. Buel or any other person or entity that is designated by Charles R. Buel as an Authorized Officer.

**Environmental Laws.** The term Environmental Laws means all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any government authority regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Substance, or pertaining to occupational health or industrial hygiene, to the extent that such relate to matters on, under, or about the Property, occupational or environmental conditions on, under, or about the Property, as now in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) [42 USC § 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 (RCRA) [42 USC § 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution control Act (FWPCA) [33 USC § 1251 et seq.]; the Hazardous Materials Transportation Act (HMTA) [49 USC § 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC § 136 et seq.]; the Superfund Amendments and Reauthorization Act [42 USC § 6901 et seq.]; the Clean Air Act [42 USC § 7401 et seq.]; the Safe Drinking Water Act [42 USC § 300f et seq.]; the Surface Mining Control and Reclamation Act [30 USC § 1201 et seq.]; the Emergency Planning and Community Right to Know Act [42 USC § 11001 et seq.]; the Occupational Safety and Health Act [29 USC § 655 and 657]; the California Underground Storage of Hazardous Substances Act [Health and Safety Code § 25280 et seq.]; the California Hazardous Substances Account Act [Health and Safety Code § 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [Health and Safety Code § 24249.5 et seq.]; the Porter-Cologne Water Quality Act [Water Code § 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state, or local law, statute, ordinance, or regulation now in effect that pertains to the protection of the environment as such apply to matters on, under, or about the Property.

**Hazardous Substances.** The term "Hazardous Substances" includes without limitation:

(a) Those substances included within the definitions of "hazardous substance," "hazardous waste," "hazardous material," "toxic substance," "solid waste." or "pollutant or contaminant" in any Environmental Law;

(b) Those substances listed in the United States Department of Transportation Table [49 CFR 172.101], or by the Environmental Protection Agency, or any successor agency, as hazardous substances [40 CFR Part 302];

(c) Other substances, materials, and wastes that are regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and

**EXHIBIT "E"**  
**(Cont.)**

(d) Any material, waste, or substance that is a petroleum or refined petroleum product, asbestos, polychlorinated biphenyl, designated as a hazardous substance pursuant to 33 USC § 1321 or listed pursuant to 33 USC § 1317, a hazardous substance or toxic material designated pursuant to any State Statute, a flammable explosive or a radioactive material.

**Property.** The term "Exchange Property" means that certain real property within the City of Oceanside, California (sometimes referred to herein as the "Land"), together with the improvements located thereon (sometimes referred to herein as the "Improvements") all as more fully described in Exhibit "A" attached hereto.

The term "Reciprocal Property" means that certain real property within the City of Oceanside, California (sometimes referred to herein as the "Land"), together with the improvements located thereon (sometimes referred to herein as the "Improvements") all as more fully described in Exhibit "C" attached hereto.

**State.** The term "State" means the State of California.