ITEM NO. 11

STAFF REPORT

CITY OF OCEANSIDE

DATE: August 29, 2012

TO: Honorable Mayor and City Council Members

FROM: City Manager Office

SUBJECT: **APPROVAL TO ENTER INTO A GRANT OF EASEMENT WITH CITYMARK, LLC, FOR THE PURPOSE OF PROVIDING FOR BOTH INGRESS AND EGRESS FOR AN UNDERGROUND PARKING GARAGE**

SYNOPSIS

Staff recommends the Council approval to enter into a Grant of Easement with CityMark, LLC, for the purpose of providing for both ingress and egress for an underground parking garage.

BACKGROUND

On May 14, 2008, the Commission approved Resolution No. 08-R0320-3 approving 231 condominiums units, 124-unit hotel and 48,000 square feet of visitor serving commercial on five City blocks bounded by Civic Center Drive on the north, Seagaze Drive on the south, Myers Street on the west and Cleveland Street on the east. One of the five city blocks, (Block No. 21) is bounded by Mission Avenue on the north, Seagaze Drive on the south; Myers Street on the west and the railroad tracks, was approved for a 124-unit hotel.

On January 5, 2012, the City approved Substantial Conformity (RSC12-00001) increasing the number of hotel rooms from 124 to 150 rooms while reducing the building height from 80 feet to 67 feet and to allow access through City owned Lot No. 26.

In order to provide vehicular access into the underground parking garage, it is necessary to grant a 47-foot wide access easement located on the northern portion of City owned property (Lot No. 26) at Myers Street and Seagaze Drive (see attached site plan). As part of this easement the underground parking structure will encroach approximately 21 feet into Lot No. 26. In addition, another access easement (approximately 5-feet wide) is also required to allow for said underground parking garage to encroach into the City's right-of-way located on Myers Street between Mission Avenue and Seagaze Drive. Both encroachments Agreements will be administerally approved by City staff.

ANALYSIS

The original concept plan depicted front of the hotel (west side of property) to be the main ingress and egress for the underground parking structure; however, the front of the hotel will now be the drop-off point (with porte-cochere) for hotel and restaurant guests with

valet parking services for the guests convenience. It should be noted that the parking garage will be one-hundred percent valet parking to be operated by Springhill Suite, Marriot. Due to hotel operational issues, a secondary access and loading dock are needed to be added to the south side of the building. Vehicular access to the underground parking structure will be provided via the 47-foot wide access easement located south of the subject site within Lot No. 26. This street access will be similar to the vehicular access for the public parking structure located at Seagaze and Cleveland Streets on the east side of the railroad tracks (see attachment).

The granting of the access easements is necessary to develop the Springfield Suites hotel and restaurant. Staff believes that it is appropriate to grant said easements.

COMMISSION OR COMMITTEE REPORTS

Not applicable.

FISCAL IMPACT

Not applicable.

CITY ATTORNEY'S ANALYSIS

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

RECOMMENDATION

Staff recommends that the Council approval to enter into a Grant of Easement with CityMark, LLC, for the purpose of providing for both ingress and egress for an underground parking garage.

PREPARED BY:

Shan M. Babick
Associate Planner

SUBMITTED BY:

Peter A. Weiss
Executive Director

REVIEWED BY:
Michelle Skaggs Lawrence, Deputy City Manager
Kathy Brann, Downtown Development Manager

EXHIBITS/ATTACHMENTS

1. Grant of Easement
2. Permanent Encroachment
3. Access Easement to Cleveland Street Parking Structure

RECORDING REQUESTED BY

GFP Oceanside Block 21, LLC

AND WHEN RECORDED MAIL TO

GFP Oceanside Block 21, LLC
175 Mercado Street, Suite 240
Durango, Colorado 81301
Attention: Justin Roberts

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N.: Portion of 147-350-16 CITY DOCUMENT NO.

DOCUMENTARY TRANSFER TAX $

Signature of declarant or agent determining tax - Firm name

GRANT OF EASEMENT
FOR INGRESS AND EGRESS
And
UNDERGROUND PARKING GARAGE
(South)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, this Grant of Easement is made by and between the

CITY OF OCEANSIDE, a California Charter City created by its charter and California Statute ("Grantor"), and

GFP Oceanside Block 21, LLC, a Colorado limited liability company ("Grantee") with respect to the following facts:

A. Grantor is the owner of certain real property in the City of Oceanside, County of San Diego, California, more particularly described on Exhibit A attached hereto, made a part hereof and incorporated herein by reference (the "Servient Tenement").

B. Grantee is the owner of certain real property in the City of Oceanside, County of San Diego, California, more particularly described on Exhibit B attached here to, made a part hereof and incorporated herein by reference (the "Dominant Tenement").

C. Grantor desires to grant Grantee an easement over, under, across and through the Servient Tenement, as more particularly set forth herein.

NOW, THEREFORE:

1. **Grant of Easement:** Grantor does hereby grant to Grantee, its successors or assigns, a perpetual, irrevocable, nonexclusive easement and right to use as hereinafter described.

2. **Character of Easement:** The easement imposed herein is appurtenant to the Dominant Tenement.

3. **Location:** The easement shall be located on the Servient Tenement as described on Exhibit C-1 and a sketch thereof marked Exhibit D-1, attached hereto, and made a part hereof and incorporated herein by reference (the "Easement").

4. **Use of Easement:** The Easement shall be used for the following purposes:

a. motorized vehicle and pedestrian ingress and egress by Grantee, its tenants, guests, invitees, patrons, visitors, agents and employees, to the Dominant Tenement, including, without limitation, the underground parking structure constructed beneath the surface of the Dominant Tenement, and reconstruction and restoration of public improvements distrubed during the construction of Grantee's improvements in the Servient Tenement;

b. construction, excavation, establishment, utilization, maintenance, repair, renovation, improvement, development, operation, replacement and equipment of an underground parking structure and appurtenances, constructed in accordance with plans approved by the City Engineer;

all uses collectively referred to as "Permitted Uses." Grantee shall be responsible for all costs of conducting the Permitted Uses.

5. **Conditions of Grant of Easement:** This grant is made and accepted under the following conditions, covenants and provisions:

a. By accepting this grant, Grantee, for itself, its successors and assigns acknowledges and agrees that the Servient Tenement is held in trust for the public and that the public's use and benefit of the Servient Tenement is paramount to Grantee's use thereof. Notwithstanding the preceding, Grantor shall operate and manage the Servient Tenement in a manner that will not impair, hamper, interfere with, or otherwise conflict with the Easement or Grantee's Permitted Uses.

b. Grantor shall not alter the nature of the improvements and uses on the Servient Tenement in a manner that will impair, hamper, interfere with, or otherwise conflict with the Easement or Grantee's Permitted Uses. The grant of said easement shall in no way restrict Grantor's right to use the Servient Tenement to its highest and best public good and benefit, provided that Grantor's use will not impair, hamper, interfere with, or otherwise conflict with the Easement or Grantee's Permitted Uses.

c. Grantor reserves the right and without compensation to Grantee, its successors or assigns, to alter, change, or modify the dimensions and location of said Easement at its

sole discretion provided said alteration, change or modification does not impair, hamper, interfere with or otherwise conflict with the Permitted Uses.

d. In the event that the use for which this Easement is granted to access the Dominant Tenement ceases to exist, this Easement shall be automatically extinguished and terminated and the interests herein conveyed shall upon such event revert to Grantor, its successors or assigns. In such event, Grantee, its successors or assigns, shall deliver to Grantor a quitclaim deed releasing all interest in said Easement from Grantee to Grantor. In the event Grantee shall fail or refuse to deliver said quitclaim deed to Grantor, in recordable form, Grantor shall have the right to file a notice in the Office of the County Recorder of San Diego County of such failure or refusal and said notice shall have the same effect as a quitclaim deed for the extinguishment and termination of said Easement.

e. Grantee shall indemnify, defend, and hold harmless Grantor, its officials, officers, agents, employees and authorized volunteers from and against any and all claims, demands, orders, decrees or judgments for injury or death or damage to any person or property, loss, damage and liability which Grantor may sustain or incur as a result of or related to use of the Easement by Grantee, its officials, officers, agents, employees and authorized volunteers, except only for those claims arising from the sole and active negligence or sole willful misconduct of Grantor, its officers, agents, employees or authorized volunteers. Grantee's indemnification shall include any and all costs, expenses, attorneys' fees and liability incurred by Grantor, its officers, agents, employees or authorized volunteers in defending against such claims, whether the same proceed to judgment or not. Further, Grantee at its own expense shall, upon written request by Grantor, defend any such suit or action brought against the Grantor, its officials, officers, agents, employees or authorized volunteers.

f. All covenants, stipulations, promises, agreements and obligations of the parties hereto contained herein 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 instrument against any member, officer, employee or agent of the parties hereto.

g. The conditions, covenants and provisions contained herein shall inure to the benefit of and shall be binding upon Grantor, Grantee, and their respective successors and assigns.

h. The conditions, covenants and provisions contained herein shall be governed by and construed in accordance with the laws of the State of California. If any one or more of the covenants, stipulations, promises, agreements or obligations provided in this instrument on the part of Grantor or Grantee 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 herein contained.

IN WITNESS WHEREOF, this grant is made this ____ day of _____, 2012.

City of Oceanside, a California Charter City
created by its charter and California Statute

_____
Jim Wood, Mayor

EXHIBIT "A"

Servient Tenement

Being a portion of the Atchison, Topeka And Santa Fe Railway Company's 500-foot wide Oceanside Station Grounds in the City of Oceanside, County of San Diego, State of California, as described in deed dated February 19, 1887 to California Southern Railroad Company (predecessor in interest to said Railway Company) recorded February 23, 1887 in Book 78 of Deeds at Page 390 of Official Records of said County, lying in the Northwest Quarter of Section 26 in Township 11 South, Range 5 West, San Bernardino Meridian, more particularly as follows:

Parcel One as described in grant deed to the Oceanside Community Development Commission recorded December 18, 1989 as Document No. 89-683346, also being a portion of Parcel D as described in quitclaim deed to City of Oceanside recorded March 22, 2011 as Document No. 2011-0151616; all of Official Records of said County.

A.P.N. 147-350-16

EXHIBIT B
DOMINANT TENEMENT

Real property in the City of Oceanside, County of San Diego, State of California, described as follows:

A PARCEL OF LAND IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, BEING A PORTION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY'S 500-FOOT WIDE OCEANSIDE STATION GROUNDS AS DESCRIBED IN DEED DATED FEBRUARY 19, 1887 TO CALIFORNIA SOUTHERN RAILROAD COMPANY (PREDECESSOR IN INTEREST TO SAID RAILWAY COMPANY), RECORDED FEBRUARY 23, 1887 IN BOOK 78 OF DEEDS AT PAGE 390, RECORDS OF SAID COUNTY, LYING IN THE NORTHWEST QUARTER OF SECTION 26 IN TOWNSHIP 11 SOUTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHEASTERLY LINE OF FOURTH STREET (80 FEET WIDE) AS SHOWN ON MAP OF OCEANSIDE, FILED AS MAP NO. 310, ON OCTOBER 13, 1883, IN RECORDS OF SAID COUNTY, WITH THE SOUTHWESTERLY LINE OF MYERS STREET, (60 FEET WIDE) AS ESTABLISHED BY DEED RECORDED IN BOOK 751 OF DEEDS, PAGE 282 OF SAID COUNTY;

THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE OF MYERS STREET, 720 FEET TO THE PROLONGATION OF THE CENTERLINE OF MISSION AVENUE, (FORMERLY SECOND STREET) 100.00 FEET WIDE, AS DESCRIBED IN EASEMENT DATED NOVEMBER 11, 1988, TO CITY OF OCEANSIDE, RECORDED DECEMBER 20, 1988 AS INSTRUMENT NO. 88-653383 OF OFFICIAL RECORDS OF THE RECORDS OF SAID COUNTY AND THE TRUE POINT OF BEGINNING;

THENCE SOUTHEASTERLY CONTINUING ALONG SAID SOUTHWESTERLY LINE OF MYERS STREET, 340 FEET TO INTERSECTION WITH THE NORTHWESTERLY LINE OF FIRST STREET (80 FEET WIDE) AS SHOWN ON SAID MAP NO. 310;

THENCE NORTHEASTERLY ALONG THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF FIRST STREET, 213 FEET TO INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT SOUTHWESTERLY 37 FEET, MEASURED AT RIGHT ANGLES FROM THE CENTERLINE OF SAID RAILWAY COMPANY'S WESTERN REGION, SAN DIEGO SUBDIVISION, MAIN TRACK;

THENCE NORTHWESTERLY ALONG SAID PARALLEL LINE, 340 FEET TO INTERSECTION WITH SAID CENTERLINE OF MISSION AVENUE;

THENCE SOUTHWESTERLY ALONG SAID CENTERLINE OF MISSION AVENUE, 213 FEET TO POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MINERALS CONTAINED IN THE ABOVE-DESCRIBED LAND, INCLUDING, WITHOUT LIMITING THE GENERALITY THEREOF, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS WELL AS METALLIC OR OTHER SOLID MINERALS, PROVIDED THAT SANTA FE SHALL NOT HAVE THE RIGHT TO GO UPON OR USE THE SURFACE OF SAID LAND, OR ANY PART THEREOF, FOR THE PURPOSE OF DRILLING FOR, MINING, OR OTHERWISE REMOVING, ANY OF SAID MINERALS. SANTA FE MAY, HOWEVER, AND HEREBY RESERVES THE RIGHT TO, REMOVE ANY OF SAID MINERALS FROM SAID LAND BY MEANS OF WELLS, SHAFTS,

TUNNELS, OR OTHER MEANS OF ACCESS TO SAID MINERALS WHICH MAY BE CONSTRUCTED, DRILLED OR DUG FROM OTHER LAND, PROVIDED THAT THE EXERCISE OF SUCH RIGHTS BY SANTA FE SHALL IN NO WAY INTERFERE WITH OR IMPAIR THE USE OF THE SURFACE OF THE LAND HEREBY CONVEYED OR OF ANY IMPROVEMENTS THEREON, AS RESERVED IN A DEED RECORDED FEBRUARY 18, 1992 AS INSTRUMENT NO. 1992-0085422 OF OFFICIAL RECORDS.

APN: 147-350-21-00

EXHIBIT "C-1"

Access Easement

Being a portion of the Atchison, Topeka And Santa Fe Railway Company's 500-foot wide Oceanside Station Grounds in the City of Oceanside, County of San Diego, State of California, as described in deed dated February 19, 1887 to California Southern Railroad Company (predecessor in interest to said Railway Company) recorded February 23, 1887 in Book 78 of Deeds at Page 390 of Official Records of said County, lying in the Northwest Quarter of Section 26 in Township 11 South, Range 5 West, San Bernardino Meridian, more particularly as follows:

The Northwesterly 47.00 feet of Parcel One as described in grant deed to the Oceanside Community Development Commission recorded December 18, 1989 as Document No. 89-683346, also being a portion of Parcel D as described in quitclaim deed to City of Oceanside recorded March 22, 2011 as Document No. 2011-0151616; all of Official Records of said County.

Excepting therefrom that portion lying within Myers Street (60 feet wide), as established by deed recorded in Book 751 of Deeds at Page 282 of Official Records of said County.

Containing 7,183 square feet or 0.16 acre, more or less.

This legal description was prepared by me or under my direction in conformance with the Land Surveyors' Act.

8-14-12

GARY L. HUS — DATE
LS 7019

LICENSED LAND SURVEYOR
GARY L. HUS
NO. 7019
Exp. date 6-30-14
STATE OF CALIFORNIA

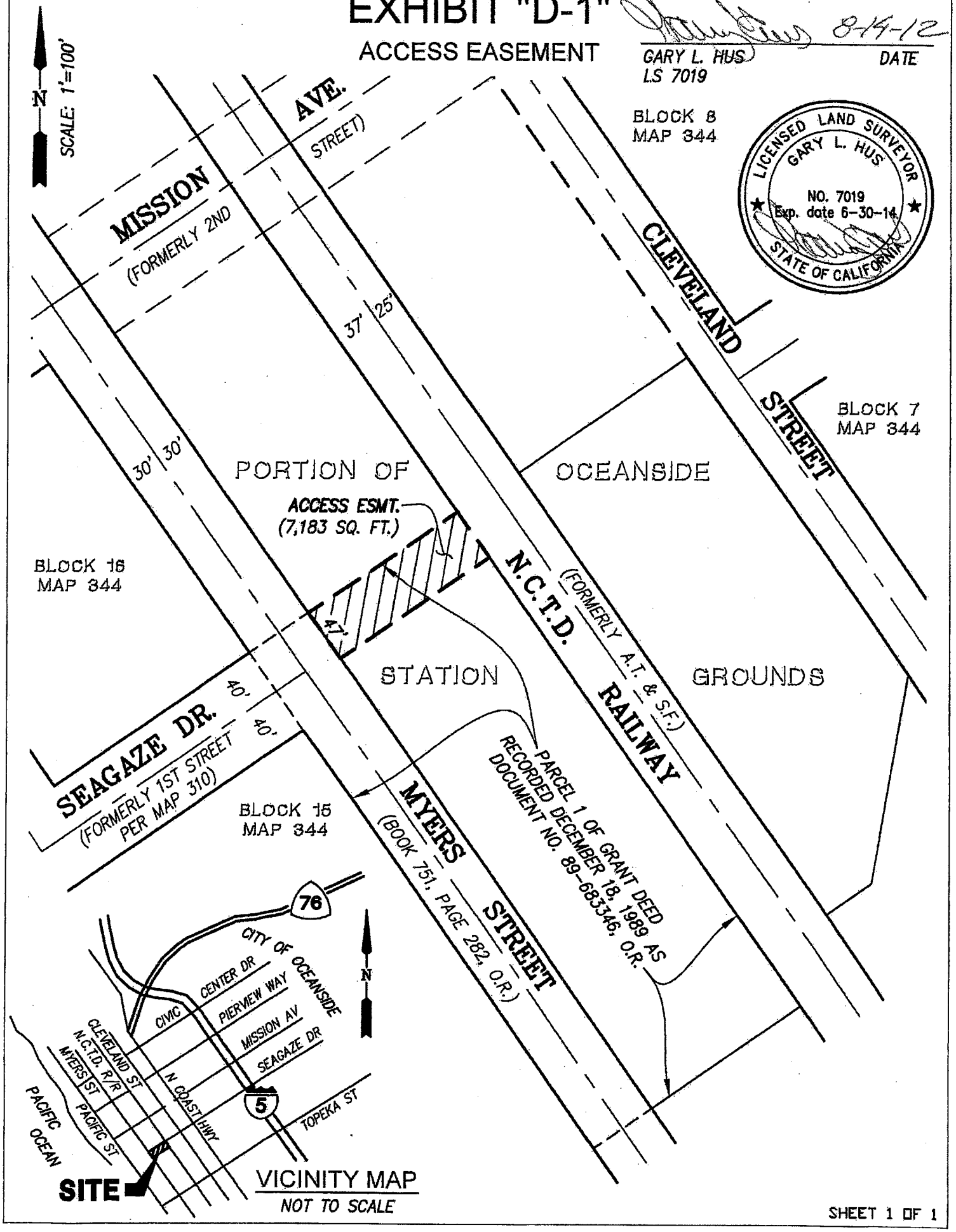
EXHIBIT "D-1"

ACCESS EASEMENT

GARY L. HUS
LS 7019

8-14-12
DATE

LICENSED LAND SURVEYOR
GARY L. HUS
NO. 7019
Exp. date 6-30-14
STATE OF CALIFORNIA



VICINITY MAP
NOT TO SCALE

SHEET 1 OF 1

RECORDING REQUESTED BY:

CITY OF OCEANSIDE

AFTER RECORDING RETURN TO

DRAFT DRAFT

CITY CLERK
CITY OF OCEANSIDE
300 NORTH COAST HIGHWAY
OCEANSIDE, CA 92054

SPACE ABOVE FOR RECORDERS USE ONLY

APN: 147-350-21 City Clerk Doc#

DOCUMENTARY TRANSFER TAX $ None

(, City of Oceanside)
Signature of declarant or agent determining tax - Firm name

ENCROACHMENT AGREEMENT
ENCROACHMENT CONSTRUCTED ON RIGHT-OF-WAY
(ERA12-00003)

THIS ENCROACHMENT REMOVAL AGREEMENT (hereinafter called "AGREEMENT") dated solely for identification this _____, day of _____, 2012, by and between the **CITY OF OCEANSIDE**, a municipal corporation, (hereinafter called the "CITY"), and, **GFP Oceanside Block 21, LLC,** a Colorado limited liability company (hereinafter called the "OWNER").

OWNER is the owner of that certain real property located at **110 N. Myers Street** in the City of Oceanside, County of San Diego, State of California, (herein after called the "PROPERTY"), more particularly described as follows:

See attached Exhibit A

WHEREAS, OWNER has requested that CITY allow OWNER to maintain an underground parking structure and appurtenances, (hereinafter called the " ENCROACHMENT" for the use and benefit of said owner's PROPERTY, in, on, over, across, and through south **Myers Street,** a **60 foot wide** right-of-way, (hereinafter called the "RIGHT-OF-WAY"), which said ENCROACHMENT and RIGHT-OF-WAY are shown on Exhibit "B", attached hereto and incorporated herein.

NOW, THEREFORE, in consideration of CITY granting permission for the ENCROACHMENT to be constructed within the RIGHT-OF-WAY, OWNER covenants and agrees as follows:

(1) The ENCROACHMENT shall be constructed and installed in a good workman like manner in substantial conformance with the plans and specifications therefor on file in the CITY'S Public Works Department, and as described briefly on Exhibit "B".

(2) OWNER and its heirs, successors and/or assigns in interest shall maintain the permitted ENCROACHMENT at all times in a decent, safe and sanitary condition in accordance with general prevailing standards of maintenance, and pay all cost and

DRAFT

DRAFT

expenses incurred in doing so. However, nothing herein shall be construed to require OWNER to maintain, replace or repair any CITY owned facility such as pipeline, conduit, or cable located in or under said ENCROACHMENT, except as otherwise provided herein.

(3) If CITY or other public facilities or improvements are damaged by the installation or presence of the permitted ENCROACHMENT, as determined by the reasonable opinion of the City Engineer, OWNER shall be responsible for the cost of repair.

(4) If any of the ENCROACHMENT(s) actually built or installed during construction vary from the permitted ENCROACHMENT(s) approved herein, such changes or variations must be approved in advance by the City and shall be shown on **as-built** plans.

(5) OWNER shall at all times relieve, indemnify, protect, defend and hold harmless the CITY and its boards, officers, agents, and employees against any and all claims, liabilities, demands, actions, proceedings, losses, liens, costs, attorney and expert fees, judgments, civil fines, and penalties of any nature whatsoever relating to the ENCROACHMENT or this agreement including but not limited to claims in regards to or resulting from the construction, maintenance, state of use, repair or presence of the ENCROACHMENT permitted hereunder, and death, injury, or damage that may be caused directly or indirectly by:

a. Condition. Physical presence of the ENCROACHMENT, or any unsafe or defective condition in or on the RIGHT-OF-WAY of any nature whatsoever, which may exist by reason of any act, omission, neglect, or any use or presence of the OWNER and its ENCROACHMENT and/or

b. Operation. Any operation, use, or occupation conducted on the RIGHT-OF-WAY by OWNER or any third party, directly or indirectly related to or caused by the presence of the ENCROACHMENT; and/or

c. Negligence. Any act, omission, or negligence on the part of OWNER, its employees, agents, sub lessees, invitees, and/or licensees; and/or

d. Compliance. Any failure by OWNER to comply or secure compliance with any of the terms or conditions of this Agreement.

(6) [Intentionally Deleted.]

(7) The CITY shall have no responsibility or liability for, and OWNER agrees to hold the CITY harmless from, any damage to the ENCROACHMENT from any cause, including but not limited to damage resulting from the construction, maintenance, state of use, repair, and presence of CITY facilities, operation or occupation within the RIGHT-OF-WAY.

(8) [Intentionally Deleted.]

(9) Whatever rights were acquired by CITY with respect to the RIGHT-OF-WAY shall remain and continue in full force and effect and in no way be affected by CITY'S grant of permission contained in this Agreement.

(10) Any construction performed prior to the CITY'S final approval is at the

OWNER'S risk and may be subject to removal, fines and penalties.

(11) This Agreement and all the obligations contained therein shall constitute covenants running with the land and shall be binding on and for the benefit of OWNER, its transferees, successors and assigns, and any other present or future interest holders or estate holders of any portion or all of the PROPERTY. This Agreement shall be recorded against the property by the City Clerk at OWNER'S expense.

IN WITNESS WHEREOF, the parties hereto for themselves, their heirs, executors, administrators, successors, and assigns do hereby agree to the full performance of the covenants herein contained and have caused this Agreement to be executed by setting hereunto their signatures on the day and year respectively written herein below.

Owner:
GFP Oceanside Block 21, LLC,
a Colorado limited liability company

By:_____
Name, Title

Dated: _____

By: _____

Dated:_____

City:
City of Oceanside

By: _____
City Engineer

Dated: _____

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: _____
City Attorney Dated

OWNER'S SIGNATURE MUST BE NOTARIZED
(PLEASE ATTACH CALIFORNIA ALL-PURPOSE NOTARY ACKNOWLEGMENT)

EXHIBIT A
PROPERTY

Real property in the City of Oceanside, County of San Diego, State of California, described as follows:

A PARCEL OF LAND IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, BEING A PORTION OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY'S 500-FOOT WIDE OCEANSIDE STATION GROUNDS AS DESCRIBED IN DEED DATED FEBRUARY 19, 1887 TO CALIFORNIA SOUTHERN RAILROAD COMPANY (PREDECESSOR IN INTEREST TO SAID RAILWAY COMPANY), RECORDED FEBRUARY 23, 1887 IN BOOK 78 OF DEEDS AT PAGE 390, RECORDS OF SAID COUNTY, LYING IN THE NORTHWEST QUARTER OF SECTION 26 IN TOWNSHIP 11 SOUTH, RANGE 5 WEST, SAN BERNARDINO MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE SOUTHEASTERLY LINE OF FOURTH STREET (80 FEET WIDE) AS SHOWN ON MAP OF OCEANSIDE, FILED AS MAP NO. 310, ON OCTOBER 13, 1883, IN RECORDS OF SAID COUNTY, WITH THE SOUTHWESTERLY LINE OF MYERS STREET, (60 FEET WIDE) AS ESTABLISHED BY DEED RECORDED IN BOOK 751 OF DEEDS, PAGE 282 OF SAID COUNTY;

THENCE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE OF MYERS STREET, 720 FEET TO THE PROLONGATION OF THE CENTERLINE OF MISSION AVENUE, (FORMERLY SECOND STREET) 100.00 FEET WIDE, AS DESCRIBED IN EASEMENT DATED NOVEMBER 11, 1988, TO CITY OF OCEANSIDE, RECORDED DECEMBER 20, 1988 AS INSTRUMENT NO. 88-653383 OF OFFICIAL RECORDS OF THE RECORDS OF SAID COUNTY AND THE TRUE POINT OF BEGINNING;

THENCE SOUTHEASTERLY CONTINUING ALONG SAID SOUTHWESTERLY LINE OF MYERS STREET, 340 FEET TO INTERSECTION WITH THE NORTHWESTERLY LINE OF FIRST STREET (80 FEET WIDE) AS SHOWN ON SAID MAP NO. 310;

THENCE NORTHEASTERLY ALONG THE NORTHEASTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF FIRST STREET, 213 FEET TO INTERSECTION WITH A LINE PARALLEL WITH AND DISTANT SOUTHWESTERLY 37 FEET, MEASURED AT RIGHT ANGLES FROM THE CENTERLINE OF SAID RAILWAY COMPANY'S WESTERN REGION, SAN DIEGO SUBDIVISION, MAIN TRACK;

THENCE NORTHWESTERLY ALONG SAID PARALLEL LINE, 340 FEET TO INTERSECTION WITH SAID CENTERLINE OF MISSION AVENUE;

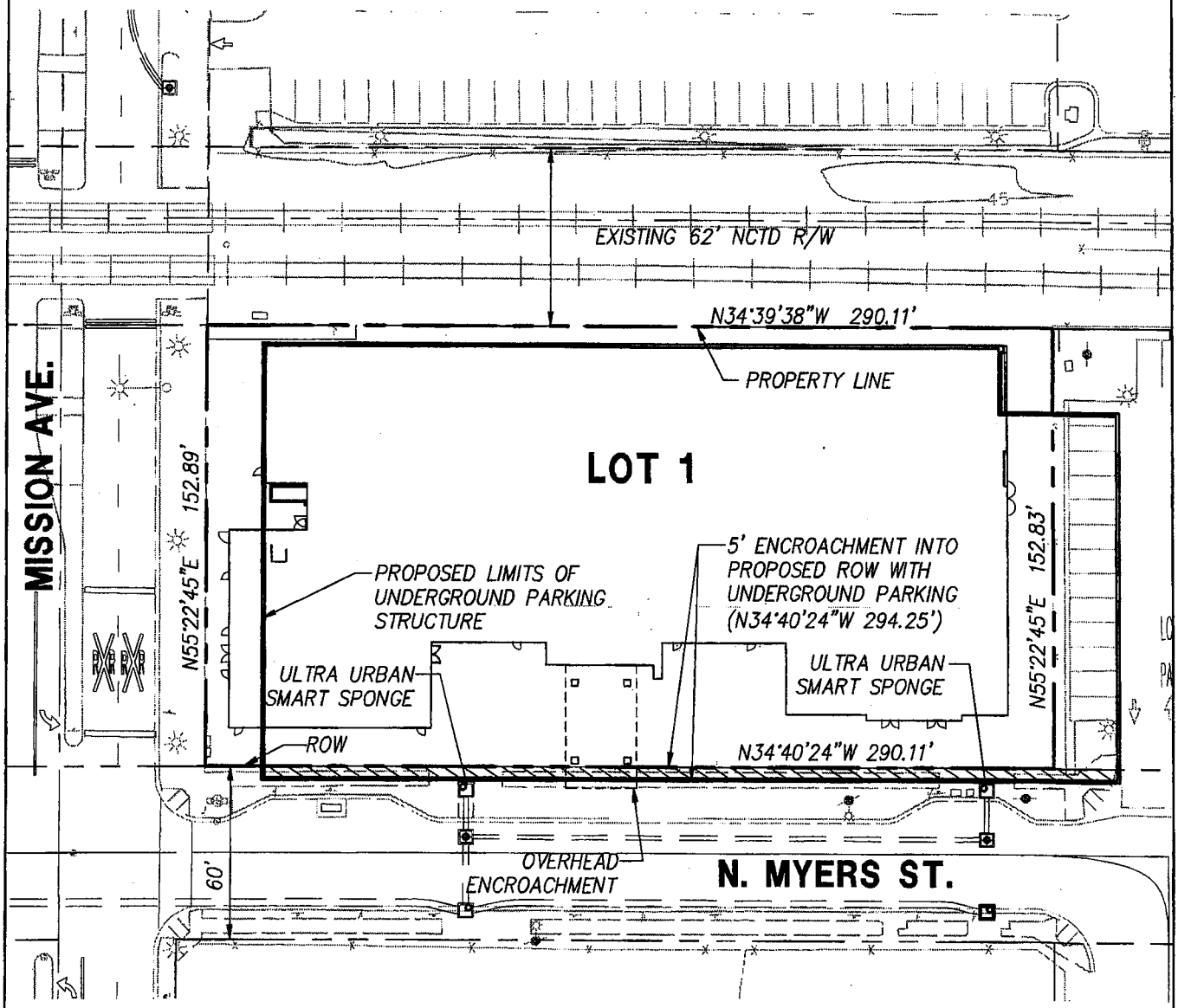
THENCE SOUTHWESTERLY ALONG SAID CENTERLINE OF MISSION AVENUE, 213 FEET TO POINT OF BEGINNING.

EXCEPTING THEREFROM ALL MINERALS CONTAINED IN THE ABOVE-DESCRIBED LAND, INCLUDING, WITHOUT LIMITING THE GENERALITY THEREOF, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES, AS WELL AS METALLIC OR OTHER SOLID MINERALS, PROVIDED THAT SANTA FE SHALL NOT HAVE THE RIGHT TO GO UPON OR USE THE SURFACE OF SAID LAND, OR ANY PART THEREOF, FOR THE PURPOSE OF DRILLING FOR, MINING, OR OTHERWISE REMOVING, ANY OF SAID MINERALS. SANTA FE MAY, HOWEVER, AND HEREBY RESERVES THE RIGHT TO, REMOVE ANY OF SAID MINERALS FROM SAID LAND BY MEANS OF WELLS, SHAFTS,

TUNNELS, OR OTHER MEANS OF ACCESS TO SAID MINERALS WHICH MAY BE CONSTRUCTED, DRILLED OR DUG FROM OTHER LAND, PROVIDED THAT THE EXERCISE OF SUCH RIGHTS BY SANTA FE SHALL IN NO WAY INTERFERE WITH OR IMPAIR THE USE OF THE SURFACE OF THE LAND HEREBY CONVEYED OR OF ANY IMPROVEMENTS THEREON, AS RESERVED IN A DEED RECORDED FEBRUARY 18, 1992 AS INSTRUMENT NO. 1992-0085422 OF OFFICIAL RECORDS.

APN: 147-350-21-00

EXHIBIT "B"



LEGEND:

PROPERTY LINE
EASEMENT LINE
ROW RIGHT-OF-WAY

REGISTERED PROFESSIONAL ENGINEER
GREGORY M. SHIELDS
No. 42951
Exp. 03-31-14
CIVIL
STATE OF CALIFORNIA

N

0 50

T-203-2006

OWNER: GFP OCEANSIDE BLOCK 21 LLC, SUITE 240. DURANGO, CO 81301	**CITY OF OCEANSIDE**
SITE ADDRESS: 110 N. MYERS ST. OCEANSIDE, CA 92054	ENGINEERING DIVISION
ENGINEER: PROJECT DESIGN CONSULTANTS 701 B STREET, SUITE 800. SAN DIEGO, CA 92101	RIGHT OF WAY ENCROACHMENT
APN# 147-350-21 / PLAN # ERA 12-00003	DATE: 08-14-2012 SHEET 1 OF 1

Seagaze & Cleveland Parking

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING CHAPTER 35 OF THE OCEANSIDE CITY CODE REGARDING THE REGULATION OF TAXICABS

WHEREAS, the City Council of the City of Oceanside desires to amend Chapter 35 of the Oceanside City Code to protect the public health, safety, and welfare in regard to taxicab transportation service rendered in vehicles designed for carrying not more than eight persons, excluding the driver, that are operated within the jurisdiction of the City;

WHEREAS, the City Council of the City of Oceanside further desires to amend Chapter 35 of the Oceanside City Code to provide protection for the public health, safety, and welfare by adopting additional requirements for taxicabs to operate within the City;

WHEREAS, the City Council of the City of Oceanside finds that many residents of the City, including senior citizens and veterans, are disabled and require transportation in wheelchair accessible vehicles and that it would therefore benefit the public to require taxicab operators to furnish at least one taxicab that is wheelchair accessible within the meaning of the Americans with Disabilities Act (ADA);

WHEREAS, the City Council of the City of Oceanside finds that requiring taxicab certificate holders to have a minimum of ten (10) taxicabs in their fleet will benefit the public by encouraging the provision of responsible, regulated and permitted city-wide coverage; and

WHEREAS, it is the intent of the City Council of the City of Oceanside that, to the fullest extent allowed by law, the provisions of this ordinance, including those provisions relating to mandatory controlled substance and alcohol testing as required by Government Code section 53075.5, be made applicable to all certificate holders, franchisees and carriers currently operating in the city.

NOW, THEREFORE, the City Council of the City of Oceanside does ordain that Chapter 35 is hereby amended as follows:

SECTION 1. Chapter 35 of the Oceanside City Code is amended in its entirety to read

as follows:

ARTICLE I. IN GENERAL

Sec. 35.1. Definitions.

For the purpose of this chapter the following words and phrases shall have the meanings respectively ascribed to them by this section:

Carrier. "Carrier" means every person, corporation, cooperative, partnership, joint venture, or other form of business organization, receivers or trustees, engaged in operating, or causing to be operated, taxicabs, or any other vehicle as defined in this section.

Certificate. "Certificate" means a certificate of public convenience and necessity issued pursuant to this chapter.

City Manager. "City manager" means the city manager of the City of Oceanside and includes his or her designee.

Compensation. "Compensation" means any money, thing of value, payment, consideration, reward, tip, donation, gratuity or profit paid to, accepted or received by the driver of any vehicle in exchange for transportation of persons whether paid upon solicitation, demand or contract, or voluntarily, or intended as a gratuity or donation.

Cooperative. "Cooperative" means a corporation duly organized under the California Consumer Cooperative Law, California Corporations Code section 12200 et seq.

Driver. "Driver" means a person who drives or is in actual physical control of any passenger-carrying or motor-propelled vehicle as regulated by this chapter, including a taxicab.

Driver's permit. "Driver's permit" means a currently valid taxicab driver's identification card as defined in, and issued pursuant to the provisions of, Title 2, Division 1, Chapter 3 of San Diego County Code of Regulatory Ordinances, section 21.301 et seq.

Motor vehicle or *vehicle.* "Motor vehicle" or "vehicle" means every motor-propelled vehicle used for the transportation of persons over the public streets for compensation.

Owner. "Owner" means every person who is the registered owner of any passenger-carrying or motor-propelled vehicle.

Petitioner. "Petitioner" means any person who files a petition for a certificate pursuant

to sections 35.7 though 35.9 of this chapter.

Person. "Person" means any individual, partnership, association, corporation, cooperative, or other organization owning, operating, or proposing to operate any taxicab, or other motor vehicle as herein defined.

Public Convenience and Necessity. "Public convenience and necessity" means fitting or suited to the public need; there is both a present and future apparent reasonable need for use of the service, and the public highways and public health, safety and welfare are not unduly burdened by such service.

Street. "Street" means any place commonly used for the purpose of public travel.

Taxicab. "Taxicab" means every vehicle bearing a distinctive color or colors and bearings signs, markings or other identifying markings or symbols commonly associated with taxicabs, and operated at rates per mile or for wait time or for both, used for the transportation of passengers for hire over the public streets of the city and not over a defined route and irrespective of whether the operation thereof extends beyond the boundary limits of the city, and such vehicle is routed under the direction of such passenger or passengers or of such persons hiring same. All taxicabs must be equipped with meters as hereinafter provided. No taxicab shall have a seating capacity, excluding the driver, in excess of eight (8) passengers.

Taxi stand. "Taxi stand" means a place on a public street designated by the council or the city manager for the use, while awaiting employment, of any taxicab covered by this chapter.

Sec. 35.2. Insurance requirements.

Before a certificate is issued by the city manager, the petitioner shall deliver to the city manager a valid policy of insurance executed by a company duly authorized under the laws of this state to carry on an insurance business in this state, which shall be for a combined single limit bodily injury and property damage liability of not less than one million dollars ($1,000,000) combined single limit (CSL) with no self-insured limit (SIR) or deductible, and shall be approved by the city attorney.

Sec. 35.3. Enforcement generally.

Upon the granting of any certificate to any carrier as provided by section 35.4, a copy of

such certificate and a listing of rates shall be filed with the business license section of the Financial Services Department. The chief of police or any other duly authorized agents of the city shall thereupon be charged with the duty of enforcement of such rates and the provisions of this chapter and other ordinances pertaining to the operation of taxicabs and other vehicles as herein defined.

ARTICLE II. CERTIFICATE TO OPERATE

Sec. 35.4. Required—generally.

No person shall drive, operate or cause to be operated, nor shall any person employ, enter into a lease agreement, permit or allow another to drive, operate or cause to be operated, any vehicle over any street of the city for the purpose of transporting a passenger for compensation, regardless of whether such operation extends beyond the boundary limits of the city, nor shall any person solicit, induce, persuade, invite or procure such transportation of passengers for compensation, or accept compensation therefor, without a certificate first having been obtained from the city authorizing such operations and acts.

Sec. 35.5. Same—exceptions.

The following vehicles are exempt from the terms of section 35.4:

(a) A vehicle which is lawfully transporting a passenger from a point outside the city to a destination within the city. Any person or carrier who exceeds five (5) compensated transports within a thirty (30) day period from a point outside the city to a destination within the city shall be subject to the terms of section 35.4.

(b) A vehicle which is lawfully transporting a passenger from a point outside the city to a point outside the city.

(c) A vehicle being operated pursuant to the public utilities commission of the state, excluding any vehicle which is operated pursuant to a charter party carrier certificate where the operation of such a vehicle has been excluded from the applicability of such sections of the Public Utilities Code.

(d) A vehicle being used as an ambulance and being operated pursuant to authority granted by, and in accordance with, other ordinances or laws.

(e) A vehicle rented or leased for self operation by a person using such vehicle under a plan commonly known as a "U-Drive", but not when transporting other persons for compensation.

Sec. 35.6. Prerequisite to soliciting.

Except as provided in section 35.5, no person shall solicit or accept a passenger in the city for any compensation or consideration whatsoever, for transportation by taxicab to any destination either inside or outside the city, unless that person is authorized to do so pursuant to this chapter.

Sec. 35.7. Petition—filing.

Any person desiring permission to operate vehicles covered by this chapter shall file a petition therefor, containing the information required by sections 35.8 and 35.9, in accordance with the procedures set forth below:

(a) Initial submission to the business license section with the appropriate fees, as set forth in the schedule of fees established by resolution of the city council.

(b) The business license section shall only accept a completed petition. Upon receipt of a complete petition the business license section shall, within ten (10) business days, provide the petition to the police department for review.

(c) The police department shall have thirty (30) days from the date of receipt to review the petition and return it to the business license section.

(d) The business license section, upon receipt of the petition from the police department as specified in subsection (c) above, shall forward the petition to the city manager within three (3) business days.

(e) The city manager shall, within forty-five (45) days of receipt of the petition, review the petition and render a decision.

Sec. 35.8. Same—verification.

The petition provided for in the preceding section shall be verified by oath of the petitioner, if a natural person; or by oath of an officer or partner of the petitioner, if petitioner be a corporation, partnership, association, unincorporated company, or cooperative.

Sec. 35.9. Same—contents, investigation fee.

The petition provided for in section 35.7 shall set forth the following information:

(a) The name, address, with cross streets, of the petitioner, if a natural person;

(b) If a corporation, its name, date and place of incorporation, address, with cross streets, of its principal place of business, and the names of all its officers together with their respective addresses;

(c) If a partnership, association, unincorporated company, or cooperative, then the names of the natural persons comprising the partnership, association, company or the cooperative shall be included in the petition, together with their addresses, and the addresses and cross streets of the principal place of business;

(d) The trade name or style, if any, under which the petitioner proposes to operate, colors and trade name must not be in conflict or existing with any current operator;

(e) The extent, character, and quality of operations, which shall include, but not be limited to:

(1) Description of how the operation works, number of years in business;

(2) The area to be covered;

(3) Kind and extent of service, other areas of service;

(4) A complete declaration of all rates and fees to be charged;

(5) Proof of insurance pursuant to section 35.2;

(6) Copies of any lease or subcontract arrangements for operation for file information;

(f) The number, type, model, model year, capacity, state license number and condition of each vehicle proposed to be operated;

(g) A full statement of the petitioner's assets and liabilities;

(h) The name of the legal and registered owner of each such vehicle;

(i) A statement establishing the existence of public convenience and necessity;

(j) A statement of whether the petitioner has a mandatory controlled substance and alcohol testing certification program pursuant to Government Code section 53075.5, and if so,

submit a copy of the same; and

(k) The name of each driver who will operate a taxicab pursuant to this chapter, along with a copy of his or her driver's permit, and the results from controlled substance and alcohol tests that have been completed within the preceding 30 days pursuant to the provisions of Government Code section 53075.5(b)(3).

The petition shall be filed with the business license section of the Financial Services department, and shall be accompanied by a nonrefundable application fee as set forth in the schedule of fees established by resolution of the city council.

Sec. 35.10 Grounds for denying petition and/or refusing to issue a certificate.

Any of the following reasons shall be sufficient for denial of a petition to obtain a certificate required by this chapter:

(a) That the petition is not in the form, and/or does not contain the information required to be contained therein by this chapter;

(b) That the vehicles described therein are inadequate or unsafe for the purposes for which they are to be used or do not conform to the requirements of this chapter;

(c) That the color scheme, name, monogram or insignia to be used upon such automobiles shall be in conflict with or imitate any color scheme, name, monogram or insignia used by any person in such manner as to be misleading or tend to deceive or defraud the public;

(d) That the petitioner does not have a mandatory controlled substance and alcohol testing certification program pursuant to either Government Code section 53075.5 or any other applicable state law; or that any of petitioner's proposed drivers or, if a natural person, petitioner him or herself, has tested positive for a controlled substance or alcohol as specified in Government Code section 5307.5(b)(3);

(e) That the petitioner has, at some prior time, had a license permit, certificate franchise, agreement, or other authority or permission to operate a taxi or similar service suspended or revoked;

(f) That it appears to the city manager that there are sufficient taxicabs for hire in the city to fully serve the public, and that the public interest, convenience, and necessity do not

require the issuance of such certificate;

(g) That the schedule of fares or rates does not appear to be fair and equitable;

(h) That the petition is for less than ten (10) vehicles;

(i) That at least one (1) of the vehicles proposed to be operated is not wheelchair accessible in compliance with the standards set forth in the Americans with Disabilities Act (ADA);

(j) That petitioner does not make an affirmative showing of the existence of public convenience and necessity; or

(k) For any of the reasons set forth in section 35.18.

Sec. 35.11. Appeal of denial of petition or refusal to grant certificate.

Within ten (10) calendar days after receipt of the decision of the city manager is deposited in the U.S. Mail postage pre-paid addressed to the person filing the petition, the petitioner may file with the city clerk a written request for a hearing before the city council. Fees for appeal shall be established by resolution of the city council. Upon the filing of such a request and payment of fees, the city clerk shall set the matter for a hearing and shall notify the petitioner of the date, time and place of such hearing at least five days before the hearing date. At the hearing, any person may present evidence in opposition to, or in support of, petitioner's case. At the conclusion of the hearing, the city council shall either grant or deny the appeal, and the decision of the city council shall be final.

Sec. 35.12. Same—facts to be considered.

The council, in determining whether or not such facts as set forth in section 35.10 exist, shall take into consideration the public demand for such service, the adequacy or inadequacy of service being rendered by other carriers, the effect of such service upon traffic, the financial responsibility of the petitioner, the character of equipment proposed to be furnished, and any and all other facts which the council may deem relevant.

Sec. 35.13. Scope.

(a) A certificate shall only be issued for ten (10) or more vehicles, each bearing a consecutive number. At least one of these ten vehicles must be wheelchair accessible in

compliance with the standards set forth in the Americans with Disabilities Act (ADA). The size and location of the numbers will be permanently affixed and prominently displayed on the vehicle as determined by the business license section. Each number and vehicle must be assigned to a specified driver. The certificate holder must inform the city manager in writing within twenty-four (24) hours if a vehicle is assigned to a different driver. The number of vehicles shall only be increased by authority of the city manager pursuant to the procedure provided in subsection (b) below.

(b) Once a certificate is issued, the procedures listed below shall be followed in order to increase the number of vehicles:

(1) Certificate holder shall file a petition, containing all of the items set forth in section 35.9, requesting an increase to the city manager. The city manager may waive any of the requirements of section 35.9 to the extent that this information is on file and current.

(2) The city manager shall, within forty-five (45) days of receipt of the petition, review the petition and make a decision, pursuant to section 35.10.

(3) If petition is denied, the certificate holder has 30 days to file an appeal pursuant to the provisions of section 35.11.

Sec. 35.14. Amended certificate for additional vehicles.

In the event that the city manager determines to grant an additional number of vehicles to be operated by a carrier, then an amended certificate shall be issued to such carrier specifying the total number of vehicles to be operated by such carrier.

Sec. 35.15. Period covered.

The certificate may, at the pleasure of the city manager, be for a prescribed period or for an indefinite period.

Sec. 35.16. Effect; fee.

When issued, a certificate shall constitute evidence of compliance with the terms of this chapter and shall authorize the certificate holder to operate vehicles under the conditions specified in this chapter; subject, however, to the requirements, obligations and limitations imposed by other applicable laws, ordinances and orders of the council, and shall become

effective only upon payment of the fees required by this chapter.

Sec. 35.17. Revocation, suspension or modification—provision for.

The city manager shall have power to modify, suspend or revoke any certificate granted under the provisions of this chapter for the reasons set forth in section 35.18.

Sec. 35.18. Same—grounds.

The city manager may modify, suspend, or revoke any certificate when he or she finds, based on substantial evidence, that any taxicab is inadequate or unsafe, or that the holder of any certificate, or if not a natural person, any of certificate holder's partners, directors, officers, agents, managers, or members:

(a) Has or have obtained the certificate by fraud or misrepresentation, or failed to comply with the terms of the certificate, the provisions of this chapter, this Code, or any other city codes and/or ordinances, or any State or Federal laws that relate to the operation of taxicabs;

(b) Has or have been convicted of, or plead guilty or no contest to, a felony or a crime involving moral turpitude which is substantially related to the business activity for which the certificate is issued;

(c) Fails to have at least ten (10) vehicles that are fully compliant with the provisions of this chapter available to be dispatched at all times;

(d) Fails to have at least one wheelchair accessible vehicle pursuant to section 35.13 available to be dispatched at all times;

(e) Employs a person as a taxicab driver, or maintains an independent contracting relationship with a taxicab driver, or enters into a lease, partnership or cooperative agreement with, or otherwise allows a person to operate a taxicab pursuant to the certificate, if that person:

(1) Does not have a valid driver's permit, or has his or her state issued drivers license suspended or revoked;

(2) Fails to comply with any of the provisions of this chapter, or fails to promptly obey all lawful orders or instructions of any peace officer or fire department official;

(3) Tests positive for a controlled substance or alcohol as set forth in section

35.52.1;

(4) Has registered, or is required to register, as a sex offender pursuant to Penal Code section 290;

(5) Has been convicted of, or plead guilty or no contest to, an offense requiring registration for violation of the Uniform Controlled Substances Act pursuant to Health & Safety Code section 11590;

(6) Has been convicted of, or plead guilty or no contest to, any of the following motor vehicle offenses within the preceding five (5) years: operating a motor vehicle under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, reckless driving, vehicular manslaughter, fleeing from or evading a police officer, or failing to fulfill the duty required after being involved in a motor vehicle accident involving property damage, injury or death; or

(7) Has been convicted of, or plead guilty or no contest to, murder, manslaughter, assault, battery or other crime of violence within the preceding five (5) years.

Sec. 35.19. Same—right to hearing; notification.

Before modification, revocation or suspension of a certificate, the certificate holder shall be entitled to a hearing before the city council, and shall be notified thereof.

Sec. 35.20. Same—notice of hearing; form; service.

Notice of hearing on such suspension, or revocation, shall be in writing, and shall be served at least ten (10) days prior to the date of the hearing thereon, service to be upon the holder of the certificate, or its manager, or agent, and which notice shall state the grounds of complaint against the holder of the certificate, and shall also state the time when, and the place where, such hearing will be held.

In the event the holder of the certificate cannot be found, or service of such notice cannot be made upon it, or him, in the manner provided in this section, then a copy of the notice shall be mailed, postage prepaid, addressed to such carrier at its last-known address, at least ten (10) days prior to the date of such hearing.

Any hearing conducted under this section shall be based on a preponderance of the

evidence standard. The decision of the city council shall be final.

Sec. 35.21. Transferability of certificates.

The certificates heretofore or hereafter issued are not assignable or transferable.

Sec. 35.22. Permission to make changes in mode of operation.

In the event that any certificate holder desires to change the schedule of rates and charges or the color scheme, name, monogram or insignia used on its taxicabs, or to substitute any vehicle for and in place of a vehicle described in the petition, certificate holder shall first make application for permission to do so from the city manager, which permission shall be granted if, in the discretion of the city manager, he or she deems the public interest, necessity and convenience will be served by such change, and if the certificate holder has complied with all provisions of this chapter.

Sec. 35.23. Validity on termination of business.

In the event that any certificate holder sells its business or otherwise ceases to operate its business, the certificate herein granted shall be null and void.

In the event that the certificate holder is a corporation or cooperative, any transfer or transfers of its outstanding stock, individually or in the aggregate, amounting to more than ninety (90) percent of its outstanding stock shall constitute a termination of the business and the certificate herein granted shall be null and void; provided, however, that any certificate holder being a corporation or cooperative may apply for a transfer of the certificate setting forth the terms of the stock transfer transaction, supplying all of the information and meeting all of the requirements of this chapter as is required of an original petition for a certificate. Each additional stockholder/shareholder shall be subject to the fees as set forth in the schedule of fees established by resolution of the city council.

Sec. 35.24. Transferee to obtain new certificate.

In the event that any certificate holder desires to sell its business, the proposed buyer shall file an original petition for a certificate as prescribed in section 35.9 and/or 35.23 as applicable, and he or she shall have a preferential right to obtain the same, if otherwise qualified, over any other application then being processed by the city.

ARTICLE III. LICENSES

Sec. 35.25. Right to business license.

The certificate required by section 35.4 shall entitle the holder thereof, and each driver authorized by the certificate, to obtain a business license to engage in the business described in the certificate. A certificate holder and each driver shall obtain a separate business license pursuant to chapter 15 prior to operating a taxicab in the city.

Sec. 35.26. Fees.

The amount or rate of any license or other fees to operate each taxicab in the city shall be established and/or modified by resolution of the city council, payable in advance along with a current copy of each driver's permit on an annual basis; provided, that if petition is made and a certificate granted, such license fee may be prorated to the first day of the month in which the certificate is granted. The schedule for such fees shall remain on file. Fees shall be reviewed at least once annually by the business license section and shall, with the approval of the city manager, recommend changes to the council when appropriate.

Sec. 35.27. License year.

The license year shall begin on the first day of July of each year and run through the thirtieth day of June of the succeeding year.

Sec. 35.28. Penalty for delinquency.

In the event that license fees are not paid as prescribed in section 35.26, the business license section shall add a penalty thereto of ten (10) percent of the amount due on the tenth day of each month during the period that the amount remains unpaid. Upon reaching 120 days past the original due date the certificate is revoked.

ARTICLE IV. OPERATING REGULATIONS

Sec. 35.29. Availability of service.

Taxicab service shall be available at all times by telephone call, by engagement of the taxicab when standing at a regularly assigned stand, or when properly hailed from the street or curb.

Sec. 35.30. Refusal to convey passengers unlawful.

No person as herein defined or driver of a taxicab shall refuse or neglect to transport any orderly person upon request anywhere in the city when a taxicab is standing in a regularly assigned taxi stand; and such service shall be rendered immediately upon request, unless it is readily apparent the prospective or actual person to be transported poses a safety hazard to the driver.

Sec. 35.31. Loitering prohibited; radio dispatch and GPS required.

It shall be unlawful for any driver of a taxicab, while driving such vehicle, to loiter, or stop on a public street for the purpose of soliciting passengers other than at a taxi stand.

All taxicabs operated by certificate holders shall be radio-equipped and computer-dispatched with the ability to dispatch taxicabs via a global positioning system (GPS) which allows the dispatcher to dispatch the closest vehicle to the requesting party.

Sec. 35.32. Accepting employment.

It shall be lawful for a taxicab while proceeding to a regularly assigned taxi stand or to the carrier's principal place of business, to accept employment when hailed from the street or curb.

Sec. 35.33. Improper loading places.

It shall be unlawful for a driver to accept or discharge passengers at any of the following places:

Crosswalks. In any marked or unmarked crosswalk.

Bus stop. At any regularly established bus stop.

In street. At any place in a street except alongside a curb.

Safety zone. Alongside any curb opposite a regularly established and marked traffic safety zone.

Sec. 35.34. To take most direct route.

Every driver of a taxicab who is engaged in carrying passengers shall take the most direct route possible that will carry the passengers safely and expeditiously to their destinations, unless otherwise directed by a passenger.

Sec. 35.35. First occupants to have exclusive use of taxicab during engagement.

When a taxicab is engaged, the person engaging such taxicab shall have the exclusive right to the full and complete use of the passenger compartment; and it shall be unlawful for any person as herein defined, or driver, of the taxicab to solicit, or carry, additional passengers therein.

Sec. 35.36. Passenger limit.

The number of passengers which may be carried in any vehicle covered by this chapter shall be limited to the seating capacity of such vehicle as specified by the manufacturer; provided, that in no event shall the seating capacity of such vehicle exceed eight (8) passengers, excluding the driver.

Sec. 35.37. Proper seating required.

No person shall be carried in any vehicle who is required to share in any way the seating space occupied by another; nor shall any person be carried who is required to occupy any space in or on such vehicle which does not provide a seat.

Sec. 35.38. Taxi stands—establishment.

The city council or the city manager may establish taxi stands upon the streets of the city and their times of operation.

Sec. 35.39. Same—change of location.

The city council or the city manager may, at any time, change the location or time of operation of any taxi stand if in their discretion public necessity and convenience require such change.

Sec. 35.40. Same—determination; marking.

Such taxi stands or spaces shall be painted a distinct color, such color to be determined by the superintendent of streets, and such spaces shall be marked "For Taxi Cabs Only" and may indicate the hours of operation, if applicable.

Sec. 35.41. Same—reservation.

The taxi stands granted in the preceding sections of this article are hereby reserved for the use of vehicles operated pursuant to a valid certificate issued under this chapter.

Sec. 35.42. Same—unauthorized use.

It shall be unlawful for any person to stop, park or stand any motor vehicle upon a taxi stand during the designated hours of operation of the taxi stand, unless that person is operating:

(a) A taxi pursuant to a valid certificate issued under this chapter; or

(b) An "authorized emergency vehicle" as defined by the Vehicle Code.

Sec. 35.43. Stopping for passengers.

It shall be lawful to stop a taxicab along the curb of any public street only for the purpose of discharging passengers therefrom, or to accept passengers for hire when hailed from the street or a curb, in accordance with the provisions of section 35.32.

Sec. 35.44. Fire extinguishers.

Every taxicab shall be equipped at all times with a standard type fire extinguisher in good working condition.

Sec. 35.45. Sanitary condition.

No taxicab shall be operated unless the passenger compartment is kept clean and in sanitary condition.

Sec. 35.46. Age of vehicle.

No taxicab shall be operated which is older than seven (7) years from the model year as dictated by the manufacturer of that vehicle. When a vehicle listed in the certificate exceeds seven (7) years of age, the certificate holder shall follow the procedures set forth in section 35.58 to replace and re-number the vehicle.

Sec. 35.47. Credit cards

Every taxicab shall be equipped with an ability to accept and process credit cards.

ARTICLE V. DRIVERS

Sec. 35.48. Who may drive.

Vehicles covered by this chapter shall be operated only by the certificate holder or by a person authorized by the certificate holder pursuant to the provisions of this chapter. No person shall drive or operate any taxicab covered by this chapter for the purpose of transporting a passenger for compensation, nor shall any person solicit, induce, persuade, invite or procure such transportation of passengers for compensation, or accept compensation therefor, unless:

(a) That person holds a valid driver's permit as defined in this chapter; and

(b) That person is listed as a driver on the certificate.

Sec. 35.49. Driver relationship to carrier.

Drivers may be employed by or be lessees of a certificate holder or, if certificate holder is a cooperative, may be a member of that cooperative.

Sec. 35.50. Driver obligations.

No person shall drive or operate any vehicle covered by this chapter while carrying passengers unless the following are on display in the vehicle:

(a) The driver's permit;

(b) A copy of the driver's city business license; and

(c) A copy of the carrier's taxicab certificate.

Sec. 35.51. Use of another's license; permit, certificate.

No driver operating, or in charge of, any vehicle covered by this chapter shall display a business license, driver's permit, or certificate issued to another, except as provided for in section 35.49.

Sec. 35.52. Using driver without license and driver's permit prohibited.

No certificate holder shall permit any vehicle covered by this chapter to be operated by any person while carrying passengers unless that person has a valid driver's license and a valid driver's permit.

Sec. 35.52.1. Driver mandatory drug and alcohol testing.

No person shall drive or operate a taxicab in the city unless that person:

(a) Participates in periodic testing for controlled substances and alcohol as set forth in Government Code section 53075.5(b)(3) not less than once per year;

(b) Provides the results thereof as specified in Government Code section 53075.5(b)(3) to the carrier for which he or she drives, or, if self employed, directly to the city manager; and

(c) Tests negative for drugs and alcohol as required by Government Code section 53075.5(b)(3).

Sec. 35.52.2. Duty to update certificate to add new drivers.

If a certificate holder desires to add a driver to the certificate, the certificate holder must provide all of the information specified in section 35.9(k) to the city manager along with the assigned number of the taxicab that the driver will be operating. No certificate holder shall permit or authorize any person to drive or operate a taxicab as required by this chapter unless that person is first listed on the certificate.

ARTICLE VI. SPECIFICATIONS AND EQUIPMENT

Sec. 35.53. Unauthorized name or service.

No certificate holder shall conduct any operation under a name other than the name authorized by the certificate, or give any service other than the service authorized by the certificate granted by the city manager in accordance with the provisions of sections 35.54 to 35.56.

Sec. 35.54. Operation of vehicle under unauthorized name.

No certificate holder shall operate, or cause to be operated, any vehicle under any name other than the name for which the certificate has been granted by the city manager.

Sec. 35.55. Numbering of taxicabs.

Each taxicab operated pursuant to the terms of this chapter shall be numbered to correspond with the number appearing on the certificate. The numbers shall be painted upon the body of the taxicab in numerals not less than four (4) inches or more than six (6) inches in height in a position approved from time to time by the business license section. Each taxicab shall be assigned to a specified driver

Sec. 35.56. Misleading appearance of vehicle.

No certificate shall be granted to any certificate holder to operate any vehicle covered by this chapter whose color scheme, name, trade name, monogram or insignia shall be in conflict with, or in imitation of, any color scheme, name, trade name, monogram or insignia used by any other certificate holder, and which shall be of such character and nature as to be misleading or deceptive to the public.

Sec. 35.57. Duty to permit inspection; vehicle maintenance; copies of other inspections.

(a) The certificate holder or authorized member of a cooperative shall allow the city manager, the chief of police, or any duly authorized agents, officers, or authorized city staff to inspect any of certificate holder's or authorized member of a cooperative's vehicles at any time to ascertain that the same are in safe mechanical condition, to ensure vehicle(s) are operational without danger to the public, and to determine whether or not such vehicle complies with all the provisions of this chapter and any applicable laws, ordinances and resolutions, including but not limited to, the California Vehicle Code.

(b) The safe operation and maintenance of each vehicle is the sole responsibility of certificate holder or authorized member of a cooperative.

(c) Vehicles inspected pursuant to subsection (a) and found to be in an unsafe condition shall be withdrawn from service until proof of completed repair, by a state certified licensed mechanic, is given to the chief of police or the city manager.

(d) Results of vehicle inspections made of a certificate holder's or authorized member of a cooperative's vehicles by a non-city agency shall be forwarded to the city manager within seven (7) working days of such inspection. The report of the inspection shall include the name of the inspecting agency, inspector's name and title, reason for inspection, scope and result of inspection, and the vehicle(s)' certificate number.

Sec. 35.58. Transfer of number upon replacement of vehicle.

If certificate holder desires to substitute any vehicle or vehicles for one or more vehicles operating under the provisions of this chapter, certificate holder shall first make a report thereof to the city manager and obtain from the city manager a consent in writing to the transfer of the number which was borne by the discontinued vehicle. No such consent shall be given by the city manager until he or she has caused a safety inspection to be made of the proposed substitute vehicle or vehicles.

ARTICLE VII. FARES

Sec. 35.59. Notice of increase in rates; establishment of rate ceiling by council permitted.

(a) Certificate holder shall give sixty (60) days written notice to the city manager of any increase in rates subsequent to the rates listed in certificate holder's petition. The certificate

holder shall also publish a notice of the rate change in a newspaper of general circulation in the City. The increased rate may not exceed any ceiling established by the city council pursuant to subsection (c).

(b) If the increased rate exceeds the ceiling amount, the council may, after notice to certificate holder and a hearing, revoke a permit.

(c) The council hereby reserves the right to set by resolution, after a public hearing, a ceiling on taxicab rates as may be necessary to protect the public interest and welfare.

Sec. 35.60. Taximeters required; general meter requirements; investigation of inaccurate taximeters.

It shall be unlawful for any owner or driver to operate any taxicab in the city unless such vehicle is equipped with a taximeter designed to calculate fares upon the basis of a combination of mileage travel and time elapsed, and when operative with respect to fare indication, the fare-indicating mechanism shall be actuated by the mileage mechanism whenever the vehicle is in motion at such a speed that the rate of mileage revenue equals or exceeds the time rate, and may be actuated by the time mechanism whenever the vehicle speed is less than this and when the vehicle is not in motion. Means shall be provided for the vehicle operator to render the time mechanism either operative or inoperative with respect to the fare-indicating mechanism. The taximeter shall also be of a style and design approved by the city manager. Waiting time shall include all time when a taxicab occupied or engaged by a passenger is not in motion or traveling at a speed which is slow enough for the time rate to exceed the mileage rate; and the time consumed while standing at the direction of the passenger or person who has engaged such taxicab. It shall be the duty of every owner of a taxicab to keep such taximeter in perfect condition so that such taximeter will, at all times, correctly and accurately indicate the correct charge for the distance traveled and waiting time, and such taximeter shall be at all times subject to inspection by an inspector of the city manager, or any peace officer, and such inspector or any peace officer is hereby authorized at his insistence or upon complaint of any person to investigate or cause to be investigated such taximeter, and upon discovery of any inaccuracy in the taximeter, or if the taximeter is unsealed, to remove or cause to be removed

such vehicle equipped with such taximeter from the streets of the city until such time as the taximeter shall have been correctly adjusted, or sealed.

Sec. 35.61. Flag to indicate when taxicab in use.

It shall be unlawful for any driver of a taxicab while carrying passengers to display the flag or device attached to such taximeter in such a position as to denote that such vehicle is for hire, or is not employed, or to have such flag or other attached device in such a position as to prevent the taximeter from operating, and it will be unlawful for any driver to throw such flag into a position which causes the taximeter to record when such vehicle is not actually employed, or to fail to throw the flag or other device on such taximeter into a non-recording position at the termination of each and every service.

Sec. 35.62. Concealment of taximeter dial prohibited.

The taximeter shall be so placed in the taxicab that the reading dial showing the amount to be charged shall be well lighted and readily discernible by any passenger riding in such taxicab.

Sec. 35.63. Charges other than lawful rates prohibited.

It shall be unlawful for any owner, driver, or operator of a vehicle covered by this chapter to demand of a passenger a charge for hire other than the current applicable rate on file with the chief of police for that particular carrier.

Sec. 35.64. Rates to be conspicuously displayed in vehicle.

Information to be posted in taxicabs. In every taxicab there shall be a sign of heavy material, not smaller than six inches by four inches, (or such other specified by the city manager) securely attached and clearly displayed in view of the passenger at all times, providing in letters as large as the size of the sign will reasonably allow, all of the following information:

(a) The name, address, and telephone number of the police department;

(b) The name, address, and telephone number of the carrier licensed under this chapter;

(c) The name or trade name of the certificate holder;

(d) The taxicab number; and

(e) A schedule of rates and charges.

Every person making an inquiry regarding the rates charged by the operator shall be furnished with a copy of such printed rates upon request and at no charge.

SEC. 35.65. Refusal to pay fare unlawful.

No person shall refuse to pay the authorized fare of any of the vehicles mentioned in this chapter after having employed the same; and no person shall hire any vehicle defined in this chapter with intent to defraud the person from whom it is hired or engaged, of the value of such service.

Sec. 35.66. Receipt to be given on request of passenger.

No driver of any vehicle covered in this chapter, upon receiving full payment for the fare, shall refuse to give a receipt upon the request of any passenger making such payment.

SECTION 2. Severability.

If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and adopted this ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 3. The City Clerk of the City of Oceanside is hereby directed to publish this ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen (15) days after its passage in the North County Times, a newspaper of general circulation published in the City of Oceanside.

SECTION 4. This ordinance shall take effect and be in force on the thirtieth (30th) day from and after its final passage.

///

///

///

INTRODUCED at a regular meeting of the City Council of the City of Oceanside, California, held on the ___ day of _____, 2012, and, thereafter,

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Oceanside California, held on the ____ day of _____, 2012, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

_____

MAYOR OF THE CITY OF OCEANSIDE

ATTEST:

APPROVED AS TO FORM:

SDCA

_____

CITY CLERK

CITY ATTORNEY

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING CHAPTER 35 OF THE OCEANSIDE CITY CODE REGARDING THE REGULATION OF TAXICABS