ITEM NO. 7

STAFF REPORT

CITY OF OCEANSIDE

Date: October 17, 2012

To: Honorable Mayor and City Councilmembers

From: Property Management Department

Subject: **PURCHASE AND SALE AGREEMENT WITH HALLMARK COMMUNITIES, INC., FOR CITY-OWNED PROPERTY AT THE NORTHEAST CORNER OF CLEVELAND STREET AND WASHINGTON STREET**

SYNOPSIS

Staff recommends that the City Council approve a Purchase and Sale Agreement with Hallmark Communities, Inc., a California corporation, for the sale of City-owned property located at the northeast corner of Cleveland Street and Washington Street for the purchase price of $450,000 for the purpose of constructing residential units; authorize the Mayor to execute the agreement and the grant deed conveying the property; and direct staff to open escrow and consummate the transaction.

BACKGROUND

The property is located at the northeast corner of Cleveland Street and Washington Street ("Property"). The Property was originally acquired on April 13, 1942 and has historically been used for various commercial activites prior to being cleared to a vacant lot. The Property consists of one parcel of real property owned by the City, and is currently in an unimproved condition. The Property is a 10,000-square-foot corner lot (.23 Acres).

The zoning of the Property is Urban High Density Residential (RH-U). Potential development could include 6-9 units with a maximum vertical building height of 35 feet per the 1986 Local Coastal Plan. The Property is included in the Oceanside Coast Highway Vision and Strategic Plan, which if approved, could increase the density to 25-43 units per acre, or up to 10 units on the lot.

ANALYSIS

By entering into a Purchase and Sale Agreement ("Agreement") with Hallmark Communities, Inc. ("Buyer"), the City is in a position to generate revenue from a City-owned parcel of land that has been declared as surplus. Additionally, by selling the Property to Buyer for the development of residential units, the sale will put the Property back onto the real property tax rolls.

The essential terms of the Agreement are generally described as follows:

1. The purchase price for the Property is $450,000 for .23 gross acres.
2. Escrow will open seven calendar days after the Agreement is approved by the City Council and Buyer will be required to place a $20,000 deposit into escrow, which shall be applied towards the purchase price.
3. Escrow shall close on the earlier of sixty days from the date the Agreement is approved by the City Council, or -
4. Buyer shall have the right to purchase two 30-day extensions by paying into escrow the non-refundable amount of $10,000 per extension.

FISCAL IMPACT

The revenue from the sale of the Property will be $450,000 less closing costs, estimated to be approximately $10,000. The revenue will be placed in the El Corazon Silica Reclamation Account No. 912880500501.4501. By replenishing that account, there will be much needed revenue for the reclamation of El Corazon as a former mining site. Reclamation of El Corazon is necessary for the eventual development of the site for such uses as the multi-use athletic fields.

The sale of the Property would also provide an annual maintenance expense savings to the City by eliminating the weed abatement of the Property. By not having this responsibility in the future, the City would save about $1,000 annually. Additionally, the City will receive revenue from real property taxes once the Property is put back on the San Diego County tax rolls.

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 a Purchase and Sale Agreement with Hallmark Communities, Inc., a California corporation, for the sale of City-owned property located at the northeast corner of Cleveland Street and Washington Street for the purchase price of $450,000 for the purpose of constructing residential units; authorize the Mayor to execute the agreement and the grant deed conveying the property; and direct staff to open escrow and consummate the transaction.

PREPARED BY:

Curtis M. Jackson
Property Agent

SUBMITTED BY:

Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Douglas Eddow, Real Property Manager

Terri Ferro, Financial Services Director

Attachment:

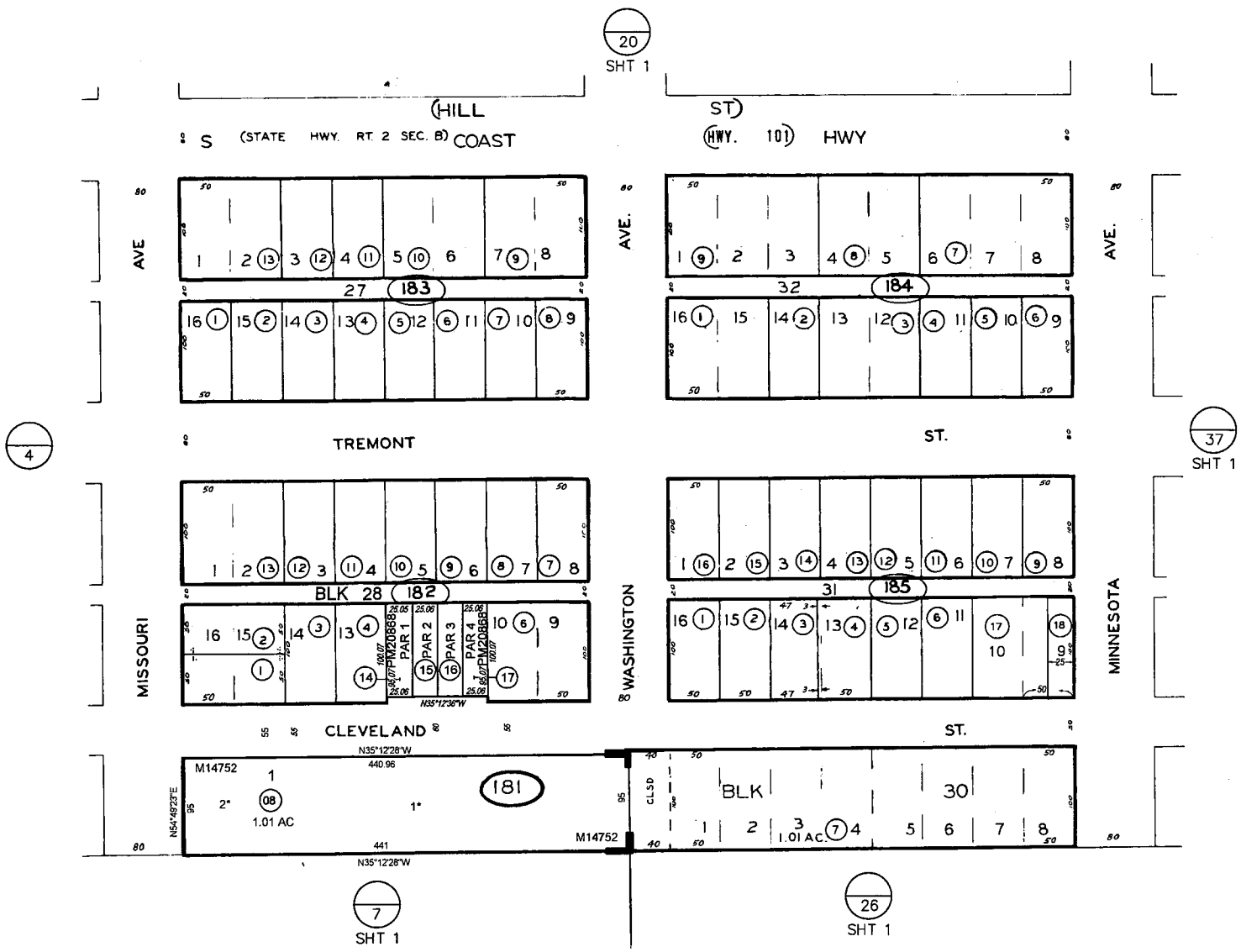
Map

07

150-18, 19

150 - 18
SHT 1 OF 2

1"=100'



9/26/11 RG

CHANGES

BLK	OLD	NEW	YR	CUT	
181	5 & 6	7	90	1375	
181	1 THRU 4	8	05	22	
181	8	CONDO	06	514	CC
185	7 & 8	17&18	08	1965	
182	5	14-17	12	1138	

1* CONDO
COASTAL TOWNLOFTS
PHASE 1
DOC2004-0257304
(SEE SHT 2)

2* CONDO
COASTAL TOWNLOFTS
PHASE 2
DOC2004-0257305
(SEE SHT 2)

ES
7-31-09

SAN DIEGO COUNTY
ASSESSOR'S MAP
BOOK 150 PG 18 SHT 1 OF 2

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR THE ACCURACY OF THE DATA SHOWN. ASSESSOR'S PARCELS MAY NOT COMPLY WITH LOCAL SUBDIVISION OR BUILDING ORDINANCES.

MAP 14752 - OCEANSIDE TCT (T - 202 - 01)
MAP 219 - BRYAN'S ADD

PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of October 17, 2012 ("Effective Date",) by and between the City of Oceanside, a California chartered municipal corporation, hereinafter called ("Seller") and Hallmark Communities, Inc., hereinafter called ("Buyer"). The Effective Date shall be the date this Agreement is approved by the Oceanside City Council and signed by Seller.

WHEREAS, Seller as owner of that certain real property consisting of approximately .23 gross acres and more commonly referred to as the northeast corner of Cleveland Street and Washington Street, has determined that selling the property for purposes set forth herein would be a benefit to the public; and

WHEREAS, Buyer desires to purchase the above referenced property for the purpose of developing the property compatible with and in compliance with the standards set forth in the Oceanside City Code, Oceanside Zoning and Subdivision Ordinance, and all other applicable laws, rules and regulations.;

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 Property. Seller is the owner of a fee interest in that certain real property situated in the City of Oceanside, County of San Diego, State of California, which is more particularly described in Exhibit "A" and as illustrated and delineated on a sketch thereof marked Exhibit "B", respectively incorporated herein and made a part hereof. For the purposes of this Agreement said real property and the improvements thereon are collectively referred to as the ("Property").

102. Status and Powers of Seller. Seller is a California municipal corporation organized and existing pursuant to the Constitution and statutes of the State of California and is authorized to enter into this Agreement.

103. Status and Powers of Buyer. Buyer is a California corporation and is authorized by the laws of the State of California to purchase the Property from Seller and perform the actions and duties of the Buyer more particularly described in this Agreement.

104. Purpose of Agreement. Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer on the terms and conditions as set forth in this Agreement.

105. Public Benefit. This Agreement is for the benefit of the public and is in the furtherance of the public purposes of Seller.

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 "C" 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 "C", unless the context clearly requires some other meaning. In addition, the term "Agreement" as used herein means this Purchase and Sale 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, shall refer to this Agreement.

ARTICLE III

PURCHASE AND SALE OF PROPERTY

301. Sale of Property. Seller agrees to sell and Buyer agrees to purchase the Property on the terms and conditions in this Agreement.

302. Purchase Price. The purchase price of the Property is **FOUR HUNDRED FITY THOUSAND Dollars ($450,000.00)** the ("Purchase Price").

ARTICLE IV

CONDITIONS PRECEDENT

401. Conditions Precedent to Closing. Buyer's obligation to purchase the Property from Seller is subject to the following conditions precedent set forth in Sections 402 through 409 inclusive ("Conditions Precedent"). Subject to Buyer's rights under Article VII "ESCROW", if any of the Conditions Precedent have not been fulfilled within the applicable time periods or if Buyer disapproves, pursuant to this Article IV, any matter or matters for which Buyer's approval is required, Buyer may:

(a) Waive the condition or disapproval and close escrow with respect to the Property in accordance with this Agreement, without adjustment or rebate in the Purchase Price;

(b) Cure the failure of the condition or representation and reduce the Purchase Price by the amount equal to the cost to cure; or

(c) Terminate this Agreement by written notice to Seller.

402. Title. Unless otherwise specified in this Agreement, Seller shall convey title to the Property to Buyer by grant deed, free and clear of all liens and encumbrances, subject to the following: Seller will provide Buyer with access to all documents in its possession regarding the Property, Seller makes no representations or warranties, expressed or otherwise, regarding the condition of title to the Property or the condition of the Property. Buyer is obligated to investigate, inspect and analyze the condition of the Property and the condition of title to the Property to its own satisfaction and expressly agrees that in entering into the Agreement, it is relying on its own investigation as to the physical condition of the Property and condition of title to the Property, except as expressly provided herein.

403. Preliminary Title Report. Upon ordering the Escrow, Seller shall request a preliminary title report for the Property ("Preliminary Report") issued by Lawyers Title Insurance Company or another title insurance company mutually approved by Seller and Buyer ("Title Company") containing such exceptions as the Title Company would specify in a California Land Title Association ("CLTA") standard policy of title insurance (or, provided Buyer so requests in writing, as the Title Company would specify in an American Land Title Association ("ALTA") extended owner's 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 (15) days after receipt of legible copies of the Preliminary Report and supporting documents, Buyer shall give written notice to Seller of its disapproval of the 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 Buyer gives written notice of disapproval as provided in this paragraph, Seller shall remove or otherwise cure, in a manner reasonably satisfactory to Buyer, the disapproved item or items at or before the close of escrow. The right of Buyer to disapprove the condition of title shall apply only to exceptions which materially and adversely limit or affect the use of the Property. Seller may elect not to remove or cure any disapproved item or items by delivering written notice thereof to Buyer within ten (10) days following the date of written notification of the disapproval. If Seller elects not to remove or cure any disapproved item or items, Buyer may terminate this Agreement by delivering a written notice of termination to Seller within ten (10) days after the date that Buyer actually receives notice of Seller's election not to remove or cure any disapproved item.

This Agreement provides that Buyer will receive title free and clear of liens and encumbrances, subject to the provisions of Section 402. Although it is recognized that Seller is a tax-exempt governmental agency, Seller shall be obligated to pay any property taxes and assessments to the date of the close of Escrow. The parties recognize that certain 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, Seller shall not alter the condition of title without the express written consent of Buyer.

404. Title Policies. On or before the close of Escrow, Buyer shall have received evidence that Title Company is ready, willing, and able to issue, upon payment of the Title Company's regularly scheduled premium a California Land Title Association (CLTA) standard policy of title insurance, or, if requested by Seller, an American Land Title Association (ALTA) extended owner's policy of title insurance in the face amount of the Purchase Price, showing title to the Property vested in the Buyer subject only to:

(a) Non-delinquent general, special, and supplemental property taxes or assessments constituting a lien at Close of Escrow, except as set forth pursuant to Section 502 herein; and

(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; and

(c) Covenants, conditions, reservations, restrictions, easements or other matters appearing as exceptions in the Preliminary Report as approved by Buyer pursuant to this Agreement; and

(d) Any lien voluntarily imposed by Buyer as of the Close of Escrow.

405. Physical Condition of the Property. Within forty-five (45) calendar days after the date of this Agreement, Buyer shall, pursuant to Section 802 herein, review and approve or disapprove of the physical condition of the Property. Seller shall not cause the physical condition of the Property to deteriorate or change after the date of the inspection, normal wear and tear excepted, without the prior written consent of Buyer. Buyer agrees that the Property is being sold in its "As-Is" and "Where-Is" condition, except as expressly provided for elsewhere herein.

406. Property Documents. Within ten (10) calendar days after the date of this Agreement, Seller shall deliver to Buyer current copies of all permits, soils tests, hazardous or toxic waste reports, geological studies, environmental impact studies, topographical maps, licenses, maintenance contracts, utility contracts, operating contracts, leases, maintenance contacts, service contracts, and other documents pertaining to the Property ("Property Documents"). Prior to the close of Feasibility Period pursuant to Section 802 herein, Buyer shall review and approve or disapprove each Property Document. On or before the close of Escrow, Seller shall assign to Buyer all of Seller's rights and remedies under the Property Documents, to the extent assignable, pursuant to an assignment of contracts, warranties, guarantees, and other intangible property in form and substance satisfactory to Buyer. At the request of Buyer, the assignment of contracts shall exclude Seller's rights under any Property Documents designated by Buyer. At the request of Buyer, Seller shall use its best good faith efforts to obtain the consent to assignment of any other parties to the Property Documents as specified by Buyer. At the request of Buyer, Seller shall terminate any Property Document designated by Buyer as authorized by the Property Document, by delivering notices to the other party under the Property Document in sufficient time to terminate the Property Document prior to the Close of Escrow.

407. Non-foreign Affidavit. If applicable, on or before the close of Escrow, Seller shall deliver to Buyer a non-foreign affidavit as required by the Foreign Investment In Real Property Tax Act (FIRPTA) [42 USC § 1445] executed by Seller.

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

409. Seller's Representations. The truth and accuracy of all Seller's representations and warranties as set forth in this Agreement or in documents provided by Seller under this Agreement, subject to the provisions of Section 402.

ARTICLE V

SELLER'S REPRESENTATIONS AND WARRANTIES

501. Time. The representations and warranties by Seller in this Article are made as of the date of this Agreement and as of the close of Escrow and will survive the close of Escrow and the recording of the Grant Deed.

502. Title. As of the date of this Agreement, Seller is or will be the legal and equitable owner of the Property, with full right to convey, subject to the provisions of Section 402. Unless this Agreement is terminated pursuant to Section 401, as of the Close of Escrow, Seller is the legal and equitable owner of a fee interest in the Property, with full right to convey said interest. Seller has not previously conveyed title to the Property to any other person. Seller 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 Property, subject to the provisions of Section 402. The 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. Seller has obtained (or will obtain as of Close of Escrow) all required consents, permissions or releases to convey good and marketable title to Buyer.

503. Intentionally Omitted.

504. Hazardous Substances. To the best of Seller's knowledge the Property is free and has always been free from Hazardous Substances and is not and has never been in violation of any Environmental Laws. Seller has received no notice, warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that the Property is or has been in violation of any Environmental Law, or informing Seller that the Property is subject to investigation or inquiry regarding Hazardous Substances on the Property or the potential violation of any Environmental Law.

505. Violation of Law. To the best of Seller's knowledge, no condition on the Property violates any health, safety, fire, environments, building, zoning or other federal, state, or local law, code, ordinance, or regulation.

506. Litigation. There is no pending or threatened litigation, administrative proceeding, or other legal or governmental action or condemnation with respect to the Property or which may adversely affect Seller's ability to fulfill the obligations of this Agreement.

507. 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 Seller.

508. No Defaults. Seller is not in default of Seller's obligations or liabilities pertaining to the Property. There are no facts, circumstances, conditions or events, which after notice or lapse of time would constitute default. Seller 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 Seller's obligations or liabilities pertaining to the Property.

509. Special Studies Zone. The Property is not 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).

510. Foreign Investment Real Property Tax Act. Seller is not a "foreign person" within the meaning of 42 USC § 1445(f)(3). Seller understands and agrees that the certification made in this section 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.

511. Disclosure. Any information that Seller has delivered to Buyer either directly or through Seller's agents or employees, is complete and accurate. Seller has disclosed to Buyer all material facts with respect to the Property to which Seller has access.

ARTICLE VI

COVENANTS

601. Power to Enter into Agreements.

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

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

602. No Violation of Other Agreements.

(a) Buyer 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 Buyer is a party or by which Buyer is bound, or constitutes a default under any of the foregoing.

(b) Seller 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 Seller is a party or by which Seller is bound, or constitutes a default under any of the foregoing.

603. Payment of Seller's Obligations. To the extent Seller is authorized by the Property Documents, Seller shall discharge all obligations and liabilities under the Property Documents before the close of escrow with respect to the Property.

604. Brokers. Seller and Buyer agree that Buyer shall pay any and all broker or real estate agent fees or commissions. Buyer shall hold Seller harmless from any claims for such fees or commissions claimed by another broker, real estate agent or other third party claiming through Buyer.

605. Litigation. Seller shall immediately notify Buyer of any lawsuits, condemnation proceedings, rezoning, or other governmental order or action, or any threat thereof, of which Seller has actual knowledge, which might affect the Property or any interest of Buyer with respect to the Property.

606. Indemnification. Seller shall indemnify, defend and hold Buyer harmless from all liability, loss, or claim for damages, and any costs and reasonable attorney's fees associated therewith, arising from breach of Seller's covenants under this Agreement and any other related documents, or from Seller's false representations under this Agreement or in any other related documents, except for any liability, loss, or claims for damages resulting from the sole or active negligence or willful misconduct of Buyer or Buyer's officers or employees.

Buyer shall indemnify, defend and hold Seller harmless from all liability, loss, or claim for damages, and any costs and reasonable attorney's fees associated therewith, arising from breach of Buyer's covenants under this Agreement and any other related documents, or from Buyer's false representations under this Agreement or in any other related documents, except for any liability, loss, or claims for damages resulting from the sole or active negligence or willful misconduct of Seller or Seller's officers or employees.

The provisions of this Section 606 shall survive the close of Escrow with respect to the Property.

ARTICLE VII

ESCROW

701. Establishment of Escrow. Within seven (7) calendar days after the date this Agreement is approved by the Oceanside City Council, Buyer and Seller shall establish an Escrow for the close of the sale of the Property with the escrow department of the Title Company ("Escrow Agent"). If the Escrow Agent is unwilling or unable to perform, Seller and Buyer shall mutually agree on the designation of 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 Seller and Buyer. Buyer and Seller shall each execute the general instructions, or propose changes thereto, within seven (7) 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. Opening Deposits. Concurrent with the execution of this Agreement, but no later than the establishment of Escrow pursuant to Section 701 herein Buyer shall deposit with the Escrow Agent the sum of TWENTY THOUSAND and No/100 Dollars ($20,000.00). Said sum shall represent Buyer's good faith deposit for the transaction contemplated under this Agreement. Said deposit shall be applied towards the Purchase Price for the Property. In the event that Buyer otherwise fails to consummate the transaction contemplated under this Agreement or defaults hereunder said deposit shall be considered as Liquidated Damages due Seller pursuant to Section 903 herein and in either event Escrow Agent is hereby instructed to release the total of Buyer's opening deposit to Seller.

703. Closing. Subject to the provisions of Section 402 herein and no later than sixty (60) days ("Closing Deadline") from the Effective Date, the grant deed shall be recorded and the Property transferred from Seller to Buyer ("Close of Escrow") after Buyer has either approved or waived each Condition Precedent.

Buyer shall have the right to purchase two (2) thirty (30)-day extensions ("Extension Periods") by releasing to Seller through the Escrow Agent the non-refundable amount of TEN THOUSAND and No/100 Dollars ($10,000.00) ("Extension Payment") for each Extension Period. The Extension Payment, if made, shall be applicable to the Purchase Price and non-refundable to Buyer and shall be considered as Liquidated Damages pursuant to Section 903 herein, except in the event of Seller's default. Unless the close of Escrow is extended by written agreement of the parties, Escrow shall close no later than the Closing Deadline, subject to the Extension Periods.

704. Closing Deposits. On or before the Close of Escrow, Seller and Buyer shall deposit with Escrow Agent the following documents and shall close Escrow as follows:

(a) Seller shall deposit with Escrow Agent the following:

(i) The original executed and acknowledged Grant Deed conveying the Property from Seller to Buyer;

(ii) The original Non-Foreign Affidavit executed by Seller;

(iii) The originals of all Property Documents, except for those documents that, by law, Seller must keep in its custody;

(iv) A certificate acknowledging that all conditions to the Close of Escrow that Buyer was to satisfy or perform have been satisfied and performed, and that Seller's representations, covenants, and warranties made in or pursuant to this Agreement are correct as of the close of Escrow;

(v) Any other documents or funds required of Seller to close Escrow in accordance with this Agreement;

(b) Buyer shall deposit with Escrow Agent the following:

(i) The balance of the Purchase Price for the Property in cash;

(ii) Additional cash in the amount necessary to pay Buyer's share of closing costs as set forth in this Agreement or the escrow instructions and that portion of the Title Policy in excess of the premium for the ALTA WRE Standard Policy of Title Insurance in an amount covering the Purchase Price

(iii) A certificate executed by Buyer providing that all conditions to close of Escrow that Seller was to satisfy or perform have been satisfied and performed and Buyer's representations, covenants, and warranties made in and pursuant to this Agreement are correct as of the close of Escrow;

(iv) Any other document or funds required of Buyer to close Escrow in accordance with this Agreement.

705. Closing Costs. Seller shall pay the premium for an ALTA WRE Standard Policy of Title Insurance in an amount covering the Purchase Price, all of the real property transfer taxes and documentary transfer taxes (if any) payable upon recordation of the Grant Deed for the Property, and any sales, use or ad valorem taxes connected with the Close of Escrow for the Property. If Buyer request additional title insurance coverage other than that paid for by Seller, Buyer shall pay that portion of the premium for the title policy in excess of the premium for an ALTA WRE Standard Policy of Title Insurance in an amount covering the Purchase Price. Buyer and Seller shall each pay one-half of the Escrow Agent charges.

706. Property Taxes and Prorations. Seller shall be solely responsible for bringing the Property's real property taxes current as of the Close of Escrow and Buyer shall have no liability for payment of taxes accrued prior to the Close of Escrow. It is recognized that Seller is a tax-exempt governmental agency.

707. Possession. Right to possession of the Property, or the applicable parcel, shall transfer at Close of Escrow free of all tenancies.

ARTICLE VIII

MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

801. Intentionally Omitted.

802. Inspection and Feasibility Period. Seller hereby consents to entry upon the Property by Buyer or its officers, employees, contractors and agents for the purpose of conducting physical inspections and tests from the Effective Date of this Agreement to the Close of Escrow. Buyer shall have forty-five (45) calendar days from the Effective Date of this Agreement ("Feasibility Period") in which to complete its inspections, testing and feasibility studies of the Property, including but not limited to, inspection and examination of soils, environmental factor, Hazardous Substances, if any, and archeological information relating to the Property; and a review and investigation of the effect of any zoning, map, permits, reports, engineering data, regulations, ordinances, and laws effecting the Property. Within ten (10) calendar days following the full execution of this Agreement, Seller shall deliver to Buyer copies of all architectural plans, surveys, specifications, and other documents pertaining to the Property that are owned by or in the possession of Seller. If

Buyer disapproves of the results of the inspection and review, Buyer may elect, prior to the last day of the Feasibility Period; to terminate this Agreement by giving Seller written notification prior to the last day of the Feasibility Period and the Opening Deposit, together with all interest, if any, shall be returned to Buyer, less Escrow cancellation charges. If Buyer fails to properly notify Seller of the intent to terminate this Agreement, Buyer shall be deemed to be satisfied with the results of the inspection and shall be deemed to have waived the right to terminate this Agreement pursuant to this provision.

Buyer agrees to defend, indemnify and hold Seller harmless from all liabilities, costs and expenses resulting directly from Buyer's or its officers', employees', contractors' or agents' inspections and tests. Buyer agrees that its independent inspection of the Property is its sole basis to determine the suitability of the Property for its purposes and Buyer acknowledges that it is not relying on any representations by Seller regarding suitability of the Property and by executing this Agreement, Buyer acknowledges that it has made or will make its own independent inspection of the Property. If Buyer alters the physical conditions of the Property and Escrow does not close, Buyer shall restore the Property to the condition existing before Buyer's inspections or tests.

803. 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.

804. Assignment. Seller 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 Buyer. Buyer shall have no right, power, or authority to assign 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 Seller's prior written approval except to an entity owned or controlled by Buyer. Neither party shall unreasonably withhold approval to any assignment.

805. Preservation and Inspection of Documents. Documents received by Seller or Buyer 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.

806. 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 Seller and Buyer any rights, remedies or claims under or by reason of this Agreement or any covenant, condition or stipulation hereof; and all covenants, stipulations, promises and agreements in this Agreement made by or on behalf of Seller or Buyer shall be for the sole and exclusive benefit of Seller and Buyer.

807. 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.

808. 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 registered form with postage fully prepaid:

If to Seller:

CITY OF OCEANSIDE
Property Management Division
ATTN: Curtis M. Jackson
300 North Coast Highway
Oceanside, CA 92054

Copy to:

CITY OF OCEANSIDE
City Attorney's Office
ATTN: Barbara Hamilton
300 North Coast Highway
Oceanside, CA 92054

If to Buyer:

HALLMARK COMMUNITIES, INC.
ATTN: Chris Hall
740 Lomas Santa Fe Drive, Suite 204
Solana Beach, CA 92075

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

809. Binding Effect. Without waiver of section 804, this Agreement shall inure to the benefit of and shall be binding upon Seller, Buyer, and their respective successors and assigns.

810. Severability. If any one or more of the covenants, stipulations, promises, agreements or obligations provided in this Agreement on the part of Seller or Buyer 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.

811. 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.

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

813. Seller and Buyer Representatives. Whenever under the provisions of this Agreement the approval of Seller or Buyer is required, or Seller or Buyer is required to take some action at the request of the other, such approval of such request may be given for Seller by an Authorized Officer/Representative of Seller and for Buyer by an Authorized

Officer/Representative of Buyer, and any party hereto shall be authorized to rely upon any such approval or request.

814. 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, he 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.

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

816. Counterpart. This Agreement may be executed in counterpart.

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

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

819. 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.

820. 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, North County Branch. 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 Judicial Arbitration and Mediation Service in San Diego County. The cost of mediation shall be shared equally by the parties.

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

822. Survival. Seller's representations and warranties, Buyer'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 Deed.

823. Merger. All of the terms, provisions, representations, warrantees, and covenants of the parties under this Agreement shall survive the close of Escrow and shall not be merged in the Grant Deed or other documents.

ARTICLE IX

SPECIAL PROVISIONS

901. Intentionally Omitted

902. Intentionally Omitted.

903. Liquidated Damages. **IF BUYER FAILS TO COMPLETE THE PURCHASE PROVIDED FOR IN THIS AGREEMENT BY REASON OF ANY DEFAULT OF BUYER, SELLER SHALL BE RELEASED FROM SELLER'S OBLIGATION TO SELL THE PROPERTY TO BUYER AND MAY PROCEED AGAINST BUYER UPON ANY CLAIM OR REMEDY THAT SELLER MAY HAVE IN LAW OR EQUITY; PROVIDED, HOWEVER, THAT, BY INITIALING THIS SECTION 903 BUYER AND SELLER AGREE THAT IN THE EVENT OF DEFAULT BY BUYER, (A) IT WOULD BE IMPRACTICAL OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES; (B) AN AMOUNT EQUAL TO THE OPENING DEPOSIT MADE BY BUYER AND EXTENSION PERIOD PAYMENTS, IF ANY ARE MADE, SHALL CONSTITUTE LIQUIDATED DAMAGES PAYABLE TO SELLER; (C) THE PAYMENT OF THE LIQUIDATED DAMAGES TO SELLER SHALL CONSTITUTE THE EXCLUSIVE REMEDY OF SELLER; (D) SELLER MAY RETAIN THAT PAYMENT ON ACCOUNT OF PURCHASE PRICE FOR THE PROPERTY AS LIQUIDATED DAMAGES; AND (E) PAYMENT OF THOSE SUMS TO SELLER AS LIQUIDATED DAMAGES 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 SELLER PURSUANT TO SECTIONS 1671, 1676 AND 1677 OF THE CALIFORNIA CIVIL CODE.**

GH / _____ [Initials of Buyer and Seller]

Buyer and Seller acknowledge that, pursuant to the terms of this Agreement, Seller is obligated to perform, and in the event Escrow fails to close by reason of default by Seller, Buyer shall be entitled to specific performance of Seller. Notwithstanding Seller's obligation herein, in the event Seller is prevented from closing the Escrow pursuant to the happening of an event, requirement or other impediment beyond the control of Seller, Buyer shall be entitled to the return of the Opening Deposit and Extension Payments, if any are made, and all accrued interest, if any.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their respective names by their duly authorized officers as of the date first above written.

Seller
City of Oceanside
a California Charter City

By:_____
Mayor

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: _____
City Attorney

Buyer
Hallmark Communities, Inc.
a California corporation

By: _____

Name: Chris Hall

Title: President

Date: 10/9/12

By: _____

Name: Michael J. Hall

Title: Secretary

Date: 10/9/12

BUYER'S SIGNATURE(S) MUST BE NOTARIZED. NOTARY USE APPROPRIATE ACKNOWLEDGEMENT

CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT

State of California)
County of San Diego)SS.

On OCTOBER 9, 2012 before me, SEAN SANTA CRUZ NOTARY PUBLIC,
Date — Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared CHRISTOPHER R. HALL & MICHAEL J. HALL,
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.

SEAN SANTA CRUZ
COMM. #1820247
Notary Public - California
San Diego County
My Comm. Expires Oct. 28, 2012
NRO1 NRO1

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: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

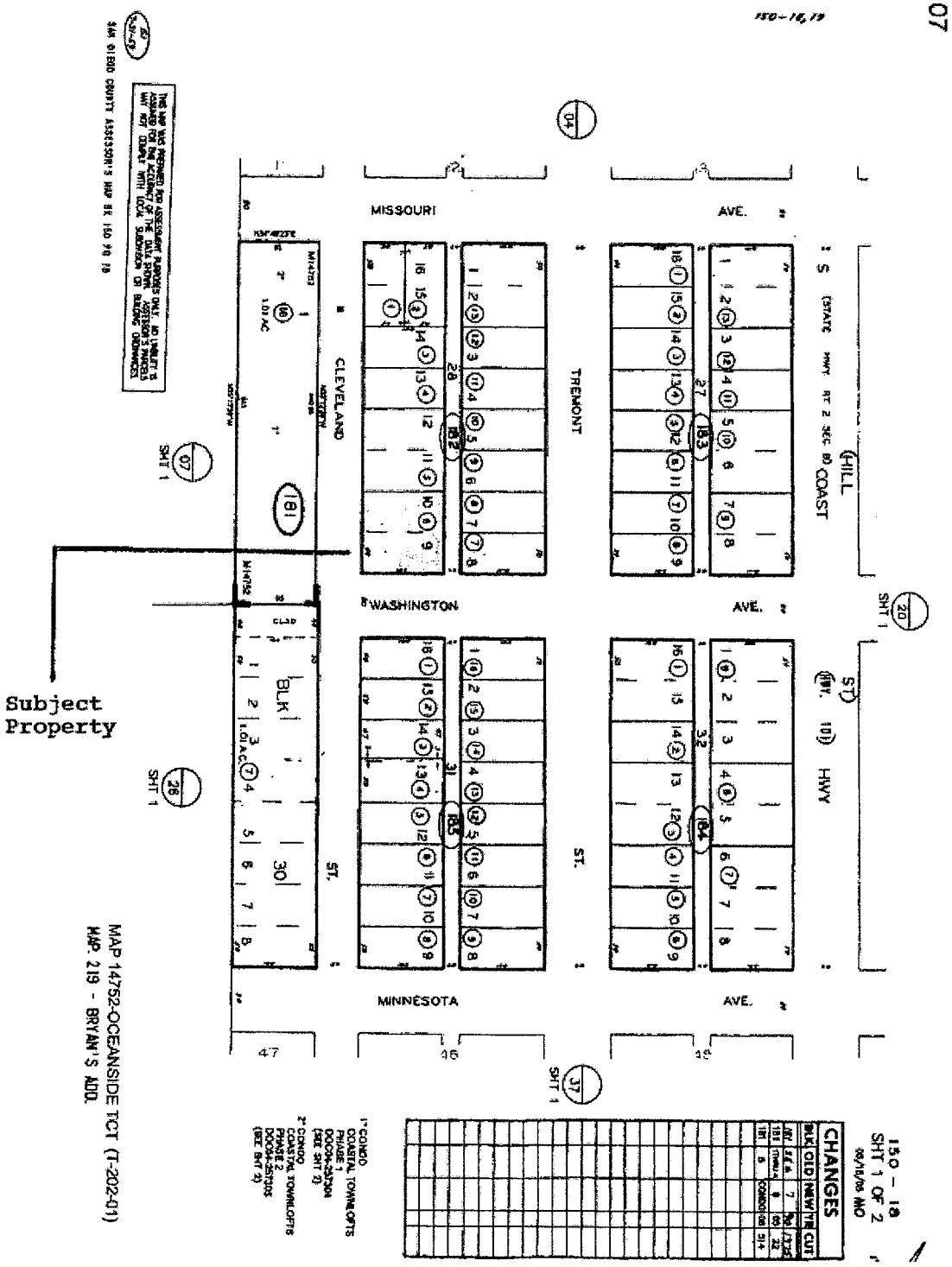
EXHIBIT "A"

DESCRIPTION OF PROPERTY:

Lot 9 and 10 on Block 28 of Bryan's Addition, according to Map No. 219, filed in the Office of the County Recorder of San Diego County on March 10, 1887, consisting of 0.23 acres of land

Assessor's Parcel Number 150-182-06-00

EXHIBIT "B"



07
MISSOURI
AVE.
TREMONT
CLEVELAND
WASHINGTON
AVE.
MINNESOTA
AVE.
ST.
ST.
HILL
COAST
HWY
Subject Property
MAP 14752-OCEANSIDE TCT (T-202-01)
MAP 219 - BRYAN'S ADD.
150 - 18
SHT 1 OF 2
CHANGES

EXHIBIT "C"

DEFINITIONS

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

Authorized Officer. The term "Authorized Officer", when used with respect to Seller, means the City Manager or any employee designated by the City Manager of Seller as an Authorized Officer. The term "Authorized Officer", when used with respect to Buyer, means the President of Seller or any other officer of Seller which is designated by its President 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 or may at any later time be 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 Qualify 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 or later enacted 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 or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and

(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 "Property" means that certain real property within the City of Oceanside, California (sometimes referred to herein as the "Land"), all as more fully described in Exhibit "A" attached hereto.

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