

# STAFF REPORT



ITEM NO. 7

CITY OF OCEANSIDE

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DATE: December 19, 2012

TO: Honorable Mayor and City Councilmembers

FROM: Property Management

SUBJECT: **PROPERTY EXCHANGE FOR WATER QUALITY ENHANCEMENT EFFORTS IN THE LOMA ALTA CREEK WEST OF COAST HIGHWAY**

## **SYNOPSIS**

Staff recommends that the City Council approve a real property exchange agreement with Francesco and Teresita DeJesus Flora Dorigo for flood subvention and water quality enhancement efforts in the Loma Alta Creek west of Coast Highway concerning vacant City-owned real property designated as Assessor Parcel No. 153-030-15; and authorize the Mayor to execute the agreement, the Certificate of Compliance for Lot Line Adjustment and related deeds; the City Clerk to accept the Grant Deed for the newly created City parcel; and staff to open escrow and consummate the transaction.

## **BACKGROUND**

For the last several years the City has been acquiring land along the Loma Alta Creek west of Coast Highway for flood subvention and water quality enhancement efforts. These properties included the former Moorco building and Ace Welding shop in the 1500 Block of South Coast Highway.

Mr. Dorigo ("Dorigo"), owner of one of the remaining properties to be acquired, approached the City and has been discussing with staff the possibility of trading property for his parcel adjacent to the railroad tracks north of the Loma Alta Creek, APN 153-030-14. Due to his desire to develop a multifamily residential project, a number of potential sites throughout the City were presented for Dorigo's consideration. However, due to site constraints and other factors, they were deemed unsuitable for his intended uses.

In the latest round of negotiations, Dorigo agreed to exchange the southerly portion of his property for the northerly portion of the adjacent City-owned property. This transaction was cleaner than the other potential exchanges as it entails an equal value trade and eliminated the need for Dorigo to make up the deference in values of the other sites under consideration.

## **ANALYSIS**

A proposed real property exchange agreement was negotiated for City Council consideration and approval. The salient provisions of the agreement are as follows:

- Purchase Price:** None. A portion of each party's property of equal value will be traded to the other party.
- Lot Line Adjustment:** Dorigo shall be responsible for retaining a licensed land surveyor or registered civil engineer to prepare the Certificate of Compliance for Lot Line Adjustment and related documents. The costs associated with the preparation, approval application fees, and recording of said Certificate of Compliance and related documents shall be the responsibility of Dorigo at his sole cost and expense.
- Access:** Dorigo shall retain access from the reconfigured Dorigo parcel to South Coast Highway and the City will be granted a "temporary" access easement across a portion of the Dorigo parcel to the newly-created City parcel. The temporary easement shall be quitclaimed back to Dorigo upon the City's acquisition of the parcel lying to the east.
- Escrow:** Escrow shall be opened with Chicago Title Company within 7 days of City Council approval of the proposed agreement. Close of Escrow shall occur within 30 days of the deposit of the completed and approved Certificate of Compliance and related deeds into Escrow.
- Closing Costs:** City and Dorigo shall each pay one-half of the escrow agent's normal and customary fees and each party shall pay their respective title insurance premium and the cost of recording their respective grant deeds.

The approval of the proposed agreement with Dorigo will assist the City in its efforts to prevent flood damage by keeping flood prone lands free of development, protect and enhance the natural functions of floodplains, and improve the water quality of the Loma Alta Creek before it reaches the Pacific Ocean.

By entering into the proposed agreement, the City Council is not committing itself or any other body having discretionary authority for development of the reconfigured Dorigo parcel. The use of the site must meet current zoning and land use regulations at the time of development.

**FISCAL IMPACT**

The City's share of the closing costs for the proposed transaction is estimated to be approximately \$10,000 to cover escrow agent's fees and title insurance premiums. The FY 2012-13 budget for the Environmental Study project in the Loma Alta Creek Major Water Course District 2 Fund 520 has an approximate balance of \$19,000 (905126500520.5355.10600). Therefore, sufficient funds are available to cover the costs related to the proposed transaction.

**COMMISSION OR COMMITTEE REPORT**

Does not apply.

**CITY ATTORNEY'S ANALYSIS**

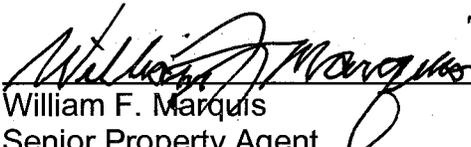
The referenced document has been reviewed by the City Attorney and approved as to form.

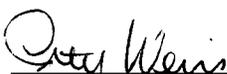
**RECOMMENDATION**

Staff recommends that the City Council approve a real property exchange agreement with Francesco and Teresita DeJesus Flora Dorigo for flood subvention and water quality enhancement efforts in the Loma Alta Creek west of Coast Highway concerning vacant City-owned real property designated as Assessor Parcel No. 153-030-15; and authorize the Mayor to execute the agreement, the Certificate of Compliance for Lot Line Adjustment and related deeds; the City Clerk to accept the Grant Deed for the newly created City parcel; and staff to open escrow and consummate the transaction.

PREPARED BY:

SUBMITTED BY:

  
\_\_\_\_\_  
William F. Marquis  
Senior Property Agent

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

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Douglas E. Eddow, Real Property Manager

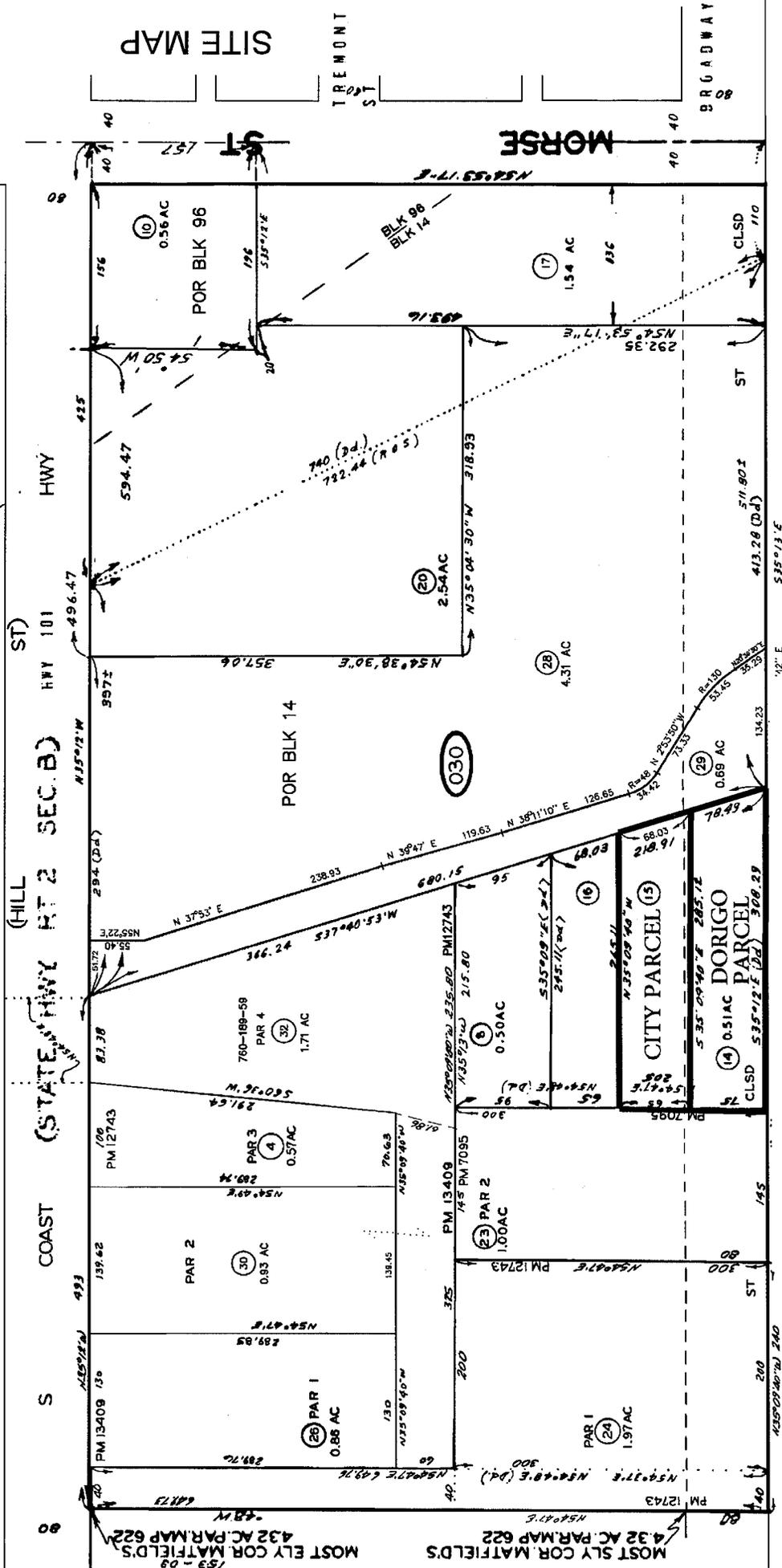
Teri Ferro, Financial Services Director

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

This REAL PROPERTY EXCHANGE AGREEMENT ("Agreement"), dated as of November 15, 2012, solely for identification purposes, is made and entered into by and between the **CITY OF OCEANSIDE**, a municipal corporation (hereinafter called "City"), and **FRANCESCO DORIGO AND TERESITA DEJESUS FLORES DORIGO**, husband and wife, as joint tenants (hereinafter called "Dorigo"). The effective date of this Agreement shall be the date this Agreement is approved by the Oceanside City Council ("Effective Date").

WHEREAS, City has acquired parcels west of South Coast Highway along the Loma Alta Creek for flood subvention and other public purposes and Dorigo has approached the City with a request to either purchase or trade similar valued City owned real property in exchange for a portion of its property described herein, below;

WHEREAS, Dorigo desires to acquire fee interest in a portion of City's real property adjacent to the Dorigo parcel, designated as San Diego County Assessor Parcel No. 153-030-15, consisting of approximately 0.41 acres or 17,859 square feet, more or less, for uses consistent with the Local Coastal Plan, the controlling Zoning Ordinance and the General Plan;

WHEREAS, City agrees to acquire fee interest in a portion of Dorigo's real property, designated as San Diego County Assessor Parcel No. 153-030-14, adjacent to said City owned parcel for clean water efforts and other public purposes;

WHEREAS, the parties agree to exchange (trade) a portion of the respective party's parcel for a portion of the other party's parcel in accordance with the terms set forth in this Agreement; and

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

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

**ARTICLE I**  
**RECITALS**

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

**102. Description of Reciprocal Property.** Dorigo is the lawful and equitable owner of that certain real property located within the City of Oceanside, County of San Diego, State of California as more fully described in Exhibit "C" and shown on a sketch thereof marked Exhibit "D", respectively attached hereto and incorporated herein. For the purposes of this Agreement a portion of said real property and the improvements thereon, if any, are collectively referred to as the "Reciprocal Property". The Reciprocal Property is also a portion of the dominant tenement of an easement and right of way for road purposes ("Easement") to be used in common with others over a servient

tenement ("Servient Tenement") consisting of a strip of land 20.00 feet in width along the northerly side of such Exchange Property lying in Block 14 of South Oceanside, in the City of Oceanside, County of San Diego, State of California, according to Map thereof No. 622, filed in the Office of the County Recorder of San Diego County, February 7, 1890. That same 20-foot road easement continues easterly from the Exchange Property, and continues to South Coast Highway, first crossing the property immediately to the east currently owned by Charles R. Buel and Carol D. Buel, which is commonly known by Assessor's Parcel Number 153-030-16 (the "Buel Property"), and then crosses two other parcels, owned by the City, commonly known by Assessor's Parcel Number 153-030-8 as to the first such parcel, and Assessor's Parcel Number 153-030-32 (collectively "Easement Extension") as to the other.

**103. Status and Powers of Dorigo.** Dorigo is the legal and lawful owner of the Reciprocal Property, and the appurtenant Easement and Easement Extension pursuant to the laws of the State of California and is authorized by the laws of the State of California to enter into this Agreement to transfer the Reciprocal Property to the City and perform the actions and duties of Dorigo as more particularly described herein.

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

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

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

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

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

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

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

**ARTICLE III  
EXCHANGE OF PROPERTY**

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

**302. Purchase Price.** Dorigo and City are conveying their respective property to each other and acquiring each other's respective property through a trade of interest in title, and to this end, no monetary consideration for either the Exchange Property or the Reciprocal Property is contemplated by this Agreement.

**ARTICLE IV  
CONDITIONS PRECEDENT**

**401. Conditions Precedent to Closing.** Dorigo's obligation to trade the Reciprocal Property to City and City's obligation to trade the Exchange Property to Dorigo are subject to the following conditions precedent ("Conditions Precedent") as set forth in Sections 402 through 407, inclusive. Subject to each other's rights under Article VII "ESCROW", if any of the Conditions Precedent have not been fulfilled within the applicable time periods the party for whose benefit such condition exists may:

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

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

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

Within fifteen (15) days after receipt of legible copies of the Preliminary Reports and supporting documents, Dorigo and City each shall give written notice to the other party of its disapproval, if any, of the respective Preliminary Report, any part thereof, or of any exceptions, or of the condition of title reflected in the Preliminary Report or the supporting documents. If either party gives written notice of disapproval as provided in this paragraph, the other party shall remove or otherwise cure, in a manner reasonably satisfactory to the disapproving party, the disapproved item or items at or before the Close of Escrow. The condition of title to the respective property following the cure of any disapproved matters (or, if no matters are disapproved, following the fifteen-day

review period referenced in this Section 403) shall be referred to as the "Approved Condition of Title". The other party may elect not to remove or cure any disapproved item or items by delivering written notice thereof to the disapproving party within ten (10) days following the date of written notification of the disapproval. If either party elects not to remove or cure any disapproved item or items, the disapproving party may terminate this Agreement by delivering a written notice of termination to the other party within five days after the date that the disapproving party actually receives notice of the other party's election not to remove or cure any disapproved item.

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

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

**404. Title Policies.** On or before the Close of Escrow, Dorigo and City shall have received evidence that Title Company is ready, willing, and able to issue, upon payment of the Title Company's regularly scheduled premium separate California Land Title Association (CLTA) standard policies of title insurance, in the amount of Two Hundred Forty Thousand Dollars (\$240,000.00), showing title to the Exchange Property vested in the name of Dorigo and title to the Reciprocal Property vested in the City of Oceanside subject only to:

- (a) Non-delinquent general, special, and supplemental property taxes or assessments constituting a lien at Close of Escrow;
- (b) The matters described in the printed form portion of the Policy of Title Insurance to the extent that such matters do not conflict with the provisions of this Agreement;
- (c) Covenants, conditions, reservations, restrictions, easements or other matters appearing as exceptions in the Preliminary Report as approved by City or Dorigo pursuant to this Agreement ("Approved Condition of Title"); and
- (d) Any lien voluntarily imposed by City on the Reciprocal Property or by Dorigo on the Exchange Property as of the Close of Escrow.

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

(a) Within thirty (30) calendar days after the date of this Agreement, City shall inspect, review and approve or disapprove of the physical condition of the Reciprocal Property. Dorigo shall not cause the physical condition of the Reciprocal Property to deteriorate or adversely change after the date of the inspection, normal wear and tear excepted, without the prior written consent of City. In the event City disapproves of the physical condition after said inspection, City shall give Dorigo written notice of such disapproval and remedial actions necessary to place the Reciprocal Property in an acceptable condition. Dorigo shall, within ten (10) working days following receipt of such notice of disapproval, remove or cause the removal of any personal property and effects remaining on the Reciprocal Property or any other remedial action required to place the Reciprocal Property in an

acceptable condition as set forth in said notice from City. If Dorigo fails or refuses to clear the Reciprocal Property within said time periods, City may elect to terminate this Agreement upon written notice of such election to Dorigo.

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

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

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

#### **406. Property Documents.**

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

(b) Within ten (10) calendar days after the date of this Agreement, City shall deliver to Dorigo current copies of all permits, soils reports, licenses, maintenance contracts, utility contracts, operating contracts, leases, maintenance contracts, service contracts, and other contracts pertaining

to the Exchange Property ("Exchange Property Documents") in the City's possession or within its control. Within fifteen (15) calendar days after receipt of the Exchange Property Documents, Dorigo shall review and approve or disapprove each Exchange Property Document. On or before the Close of Escrow, if applicable, City shall assign to Dorigo all of City's rights and remedies under the Exchange Property Documents, to the extent assignable, pursuant to an assignment of contracts, warranties, guarantees, and other intangible property in form and substance mutually acceptable to the parties. At the request of Dorigo, the assignment of contracts shall exclude City's rights under any Exchange Property Documents designated by Dorigo. At request of Dorigo, City shall use good faith efforts to obtain the consent to assignment of any other parties to the Exchange Property Documents as specified by Dorigo. At the request of Dorigo, if permissible under such document, City shall terminate any Exchange Property Document designated by Dorigo by delivering notices to the other party under the Exchange Property Document in sufficient time to terminate the Exchange Property Document prior to the Close of Escrow.

**407. Certificate of Compliance.** City and Dorigo shall cooperate with each other in the preparation and execution of a Certificate of Compliance for Lot Line Adjustment ("Certificate of Compliance") and related documents for the merger of the Exchange Property with Dorigo's remainder parcel and the Reciprocal Property with the City's remainder parcel. Within ten (10) days after the Effective Date of this Agreement a licensed land surveyor or registered civil engineer shall be mutually selected by both City and Dorigo to prepare the Certificate of Compliance and related documents. The parties agree that the Exchange Property and Reciprocal Property shall be of equal value. The costs associated with the preparation, approval application fees and recording of said Certificate of Compliance and related documents shall be the responsibility of Dorigo at its sole cost and expense. The City further agrees that it shall reaffirm the Easement and Easement Extension described in Section 102, above, by executing such documents as are reasonably required by the Title Company to insure that the reconfigured Dorigo parcel has continuous access to South Coast Highway.

**407.1 City's Easement across Dorigo Property.** Because the City's reconfigured parcel resulting from the Certificate of Compliance will no longer have access to the City's existing easement across the Buel Property, the City shall be entitled to a 20-foot wide easement for road purposes for ingress and egress to its property across the Dorigo parcel so as to align and connect with the City's existing roadway easement across the northerly 20 feet of the Buel Property. The City shall cooperate with Dorigo to locate such easement in the portion of Dorigo's Property which least interferes with the use of such property. Such easement shall remain in effect until such time as the City acquires the Buel Property, at which time the City shall execute a quitclaim deed to Dorigo conveying any of its interest in the Dorigo Property. The covenant shall survive the Close of Escrow.

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

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

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

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

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

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

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

**502. Title.**

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

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

**503. Hazardous Substances.**

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

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

Hazardous Substances on the Exchange Property or the potential violation of any Environmental Law.

**504. Violation of Law.**

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

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

**505. Litigation.**

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

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

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

**507. No defaults.**

(a) To Dorigo's actual knowledge, Dorigo is not in default of Dorigo's obligations or liabilities pertaining to the Reciprocal Property. To Dorigo's actual knowledge, there are no facts, circumstances, conditions or events, which after notice or lapse of time would constitute default. Dorigo 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 Dorigo's obligations or liabilities pertaining to the Reciprocal Property.

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

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

**509. Foreign Investment Real Property Tax Act.** Dorigo is not a "foreign person" within the meaning of 42 USC § 1445(f)(3). Dorigo understands and agrees that the certification made in this Section 509 may be disclosed to the Internal Revenue Service by City and that any false

statement contained herein could be punished by fine, imprisonment or both. This certification is made under penalty of perjury under the laws of the State of California.

**510. Disclosure.**

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

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

**ARTICLE VI  
COVENANTS**

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

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

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

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

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

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

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

**604. Brokers.** If any claims for broker's or finders' fees for the consummation of this Agreement should arise, then the party against whom such claim is made shall indemnify, save harmless and defend the other party from and against such claims, including, without limitation, attorneys' fees and court costs incurred in connection therewith.

**605. Litigation.**

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

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

**606. Indemnification.**

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

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

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

**ARTICLE VII  
ESCROW**

**701. Establishment of Escrow.** Within seven (7) days after the Effective Date of this Agreement, Dorigo and City shall establish an Escrow for the close of the trade of the Exchange Property and the Reciprocal Property with the escrow department of the Title Company ("Escrow Agent"). If the Escrow Agent is unwilling or unable to perform, City shall designate another escrow agent. Escrow Agent shall notify both parties in writing of the specific date on which the Escrow has opened ("Opening of Escrow"). 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 Dorigo and City. Dorigo and City shall each execute the general instructions, or propose changes thereto, within five (5) days after receipt of the instructions. If there is any conflict between the terms of the general instructions and this Agreement, the provisions of this Agreement shall prevail unless the conflicting provision is specifically identified as an amendment to this Agreement.

**702. Closing.** The Certificate of Compliance, related documents thereto and the Grant Deeds shall be recorded and the Exchange Property transferred from City to Dorigo and the Reciprocal Property transferred from Dorigo to City ("Close of Escrow") after City and Dorigo, as applicable, each has either approved or waived each Condition Precedent and Approved Condition of Title, and then on or before thirty (30) days after the Certificate of Compliance is deposited into Escrow the Close of Escrow shall occur ("Closing Deadline"). Unless the Close of Escrow is extended by written agreement of the parties, Escrow shall close no later than the Closing Deadline.

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

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

**704. Acceptance Certificate.** Prior to the Close of Escrow and the recording of the Grant Deeds, City shall affix a duly executed Certificate of Acceptance to the original Grant Deed acknowledging the acceptance of the Reciprocal Property. In the event Dorigo deposits said Grant deed into Escrow without said certificate, the Escrow Agent is hereby instructed to forward the original of the Grant Deed to City so that the certificate may be affixed thereto prior to the recording of the Grant Deed, within five (5) business days after receipt of the Grant Deed from the Escrow Agent, City shall return the original Grant Deed (with the certificate affixed).

**705. Closing Costs.**

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

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

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

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

**707. Possession.** Right to possession of the Exchange Property by Dorigo and to the Reciprocal Property by City shall transfer at Close of Escrow, free and clear of all tenancies.

**ARTICLE VIII  
MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS**

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

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

contemplated by this Agreement, and to do any other acts and to execute, acknowledge, and deliver any requested document to carry out the intent and purpose of this Agreement.

**803. Assignment.**

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

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

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

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

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

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

If to City:

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

Copy to:

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

If to Dorigo:

Francesco Dorigo  
1609 Sapphire Drive  
Carlsbad, CA 92011

Copy to:

Kevin E. McCann, Esq.  
McCANN & CARROLL  
2755 Jefferson St., Ste. 211  
Carlsbad, CA 92008

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

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

**809. Severability.** Other than with respect to the primary obligations described in section 301 and 407, above, the completion and satisfaction of which are material conditions of this Agreement, if any one or more of the covenants, stipulations, promises, agreements or obligations provided in this Agreement on the part of Dorigo or City to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant, stipulation, promise, agreement or obligation shall be deemed and construed to be severable from the remaining covenants, stipulations, promises, agreements and obligations herein contained and shall in no way affect the validity of the other provisions of this Agreement.

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

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

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

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

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

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

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

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

A certificate may be based, insofar as it relates to legal matters, upon a certificate or opinion of or representations by counsel, unless the persons providing the certificate know that the certificate

or representations with respect to the matters upon which the certificate may be based are erroneous, or in the exercise of reasonable care should have known that the same were erroneous.

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

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

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

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

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

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

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

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

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

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

**824. Drafting Ambiguities.** Each party to the Agreement and its counsel has reviewed and revised this Agreement. The rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or of any amendments or exhibits to this Agreement.

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

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

CITY  
City of Oceanside, a municipal corporation

DORIGO  
Francesco Dorigo and Teresita Dejesus Flores Dorigo, husband and wife, as joint tenants

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

By: Francesco Dorigo  
Francesco Dorigo

Date: 11-19-2012

APPROVED AS TO FORM:  
City ATTORNEY'S OFFICE

By: \_\_\_\_\_  
City Attorney

By: Teresita Flores-Dorigo  
Teresita Dejesus Flores Dorigo, who is also known as Teresita Flores De Dorigo

Date: 11/20/2012

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

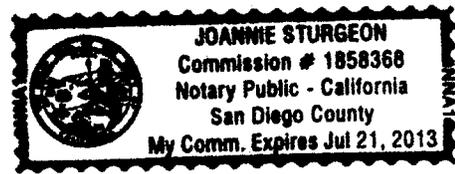
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

State of California )  
County of San Diego )ss.

On NOVEMBER 19, 2012 before me, JOANNE STURGEON, Notary Public  
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared FRANCESCO DORIGO  
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.

Joanne Sturgeon  
Signature of Notary Public

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: REAL PROPERTY EXCHANGE AGREEMENT

Document Date: NOVEMBER 19, 2012 Number of Pages: 27 + 1

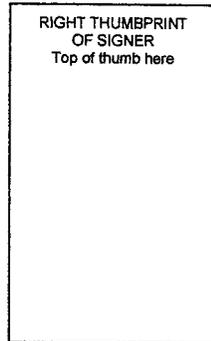
Signer(s) Other Than Named Above: TERESITA DORIGO

**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: \_\_\_\_\_



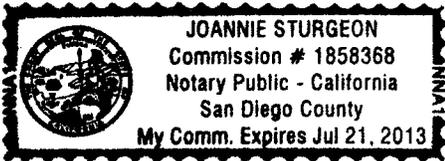
**CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT**

State of California )  
County of San Diego )ss.

On November 20, 2012 before me, JOANNIE STURGEON, Notary Public  
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared TERESITA FLORES DE DORIGO  
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.

Joannie Sturgeon  
Signature of Notary Public

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: REAL PROPERTY EXCHANGE AGREEMENT

Document Date: NOVEMBER 15, 2012 Number of Pages: 27-1

Signer(s) Other Than Named Above: FRANCESCO DORIGO

**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: \_\_\_\_\_



EXHIBIT "A"  
Description of City Larger Parcel  
(Exchange Property)

PARCEL A: (APN: 153-030-15)

THAT PORTION OF BLOCK 14 OF SOUTH OCEANSIDE, AND THAT PORTION OF BROADWAY STREET AS VACATED AND CLOSED, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 622, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, FEBRUARY 7, 1890, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF MATFIELDS 4.32 ACRE PARCEL OF LAND AS SHOWN ON SAID MAP NO. 622; THENCE ALONG THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF SAID PARCEL OF LAND, SOUTH 54°48'00" WEST, 80.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 100.00 FEET NORTHEASTERLY AT RIGHT ANGLES TO THE CENTER LINE OF THE MAIN LINE OF THE ATCHISON, TOPEKA AND SANTA FE RAILROAD; THENCE ALONG SAID PARALLEL LINE; SOUTH 35°12'00" EAST, 385.00 FEET TO THE MOST SOUTHERLY CORNER OF LAND DESCRIBED IN DEED TO STUART CHARLES LAW, RECORDED SEPTEMBER 4, 1956 IN BOOK 6243, PAGE 263 OF OFFICIAL RECORDS; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID LAW'S LAND, NORTH 54°47'00" EAST, 75.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTHEASTERLY LINE, NORTH 54°47'00" EAST, 65.00 FEET; THENCE SOUTH 35°09'40" EAST, 265.11 FEET TO THE NORTHWESTERLY LINE OF LAND DESCRIBED IN DEED TO CHRYSLER REALTY CORPORATION, RECORDED SEPTEMBER 29, 1967 AS FILE NO. 150373 OF OR; THENCE ALONG SAID NORTHWESTERLY LINE SOUTH 37°40'53" WEST, 68.03 FEET TO AN INTERSECTION WITH A LINE WHICH BEARS SOUTH 35°09'40" EAST FROM THE TRUE POINT OF BEGINNING; THENCE ALONG SAID LINE, NORTH 35°09'40" WEST, 285.12 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL B:

AN EASEMENT AND RIGHT OF WAY FOR ROAD PURPOSES TO BE USED IN COMMON WITH OTHERS OVER A STRIP OF LAND 40.00 FEET IN WIDTH LYING WITHIN BLOCK 14 OF SOUTH OCEANSIDE, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 622, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, FEBRUARY 7, 1890, THE CENTER LINE OF SAID 40.00 FOOT STRIP BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF MATFIELDS 4.32 ACRE PARCEL OF LAND AS SHOWN ON SAID MAP NO. 622; THENCE ALONG THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF SAID PARCEL OF LAND, SOUTH 54°48'00" WEST, 80.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 100.00 FEET NORTHEASTERLY AT RIGHT ANGLES TO THE CENTER LINE OF THE MAIN LINE OF THE ATCHISON, TOPEKA AND SANTA FE RAILROAD; THENCE ALONG SAID PARALLEL LINE, SOUTH 35°12'00" EAST, 385.00 FEET TO THE MOST SOUTHERLY CORNER OF LAND DESCRIBED IN DEED TO STUART CHARLES LAW, RECORDED SEPTEMBER 4, 1956 IN BOOK 6243, PAGE 263 OF OFFICIAL RECORDS; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID LAW'S LAND, NORTH 54°47'00" EAST, 300.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 72°59'30" EAST, 43.94 FEET; THENCE NORTH 60°36'00" EAST, 310.00 FEET TO THE SOUTHWESTERLY LINE OF HILL STREET.

**EXHIBIT "A"**  
**Description of City Larger Parcel**  
**(Exchange Property)**

THE SIDELINES OF SAID STRIP SHOULD BE PROLONGED OR SHORTENED SO AS TO TERMINATE ON THE NORTHEAST AT THE SOUTHWESTERLY LINE OF HILL STREET AND ON THE SOUTHWEST AT A LINE WHICH BEARS NORTH 35°09'40" WEST THROUGH THE TRUE POINT OF BEGINNING.

**PARCEL C:**

AN EASEMENT AND RIGHT OF WAY FOR ROAD PURPOSES TO BE USED IN COMMON WITH OTHERS OVER A STRIP OF LAND 20.00 FEET IN WIDTH, LYING WITHIN BLOCK 14 OF SOUTH OCEANSIDE, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 622, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, FEBRUARY 7, 1890, THE NORTHWESTERLY LINE OF SAID 20.00 FOOT STRIP BEING DESCRIBED AS FOLLOWS:

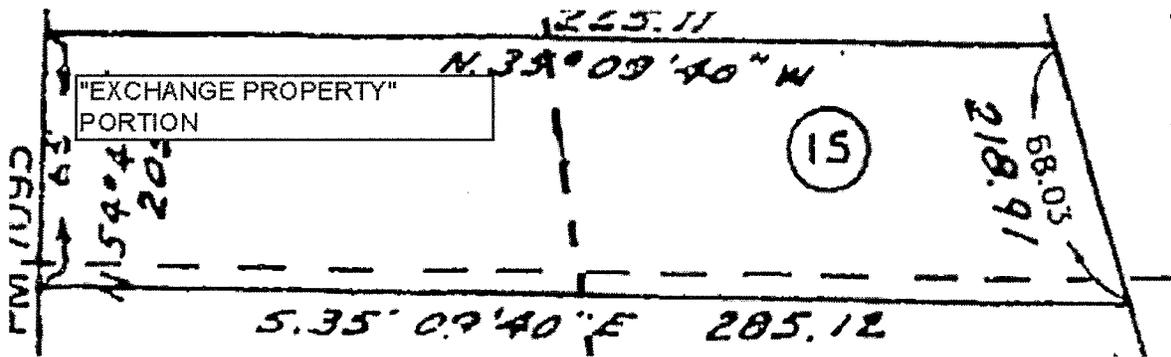
COMMENCING AT THE MOST SOUTHERLY CORNER OF MATFIELDS 4.32 ACRE PARCEL OF LAND AS SHOWN ON SAID MAP NO. 622; THENCE ALONG THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF SAID PARCEL OF LAND, SOUTH 54°48'00" WEST, 80.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 100.00 FEET NORTHEASTERLY AT RIGHT ANGLES TO THE CENTER LINE OF THE MAIN LINE OF THE ATCHISON, TOPEKA AND SANTA FE RAILROAD; THENCE ALONG SAID PARALLEL LINE; SOUTH 35°12'00" EAST, 385.00 FEET TO THE MOST SOUTHERLY CORNER OF LAND DESCRIBED IN DEED TO STUART CHARLES LAW, RECORDED SEPTEMBER 4, 1956 IN BOOK 6243, PAGE 263 OF OFFICIAL RECORDS; BEING THE TRUE POINT OF BEGINNING; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID LAND, NORTH 54°47'00" EAST, 300.00 FEET.

EXCEPTING THEREFROM THAT PORTION LYING SOUTHWESTERLY OF THE NORTHEASTERLY LINE OF PARCEL A ABOVE DESCRIBED.

END OF LEGAL DESCRIPTION



EXHIBIT "B-1"  
Sketch Showing the City Larger Parcel  
(Exchange Property)



NOT TO SCALE

EXHIBIT "C"  
Description of Dorigo Larger Parcel  
(Reciprocal Property)

PARCEL 1: APN 153-030-14

THAT PORTION OF BLOCK 14 OF SOUTH OCEANSIDE, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 622, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, FEBRUARY 7, 1890, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF MATFIELD'S 4.32 ACRES PARCEL OF LAND AS SHOWN ON SAID MAP NO. 622; THENCE ALONG THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF SAID PARCEL OF LAND, SOUTH 54°48'00" WEST, 80.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 100.00 FEET NORTHEASTERLY AT RIGHT ANGLES TO THE CENTER LINE OF THE MAIN LINE OF THE ATCHISON, TOPEKA AND SANTA FE RAILROAD; THENCE ALONG SAID PARALLEL LINE; SOUTH 35°12'00" EAST, 385.00 FEET TO THE MOST SOUTHERLY CORNER OF LAND DESCRIBED IN DEED TO STUART CHARLES LAW, RECORDED SEPTEMBER 4, 1956 IN BOOK 6243, PAGE 263 OF OFFICIAL RECORDS; BEING THE TRUE POINT OF BEGINNING; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID LAW'S LAND, NORTH 54°47'00" EAST, 75.00 FEET, THENCE SOUTH 35°09'40" EAST, 285.12 FEET TO THE NORTHWESTERLY LINE OF LAND DESCRIBED IN DEED TO CHRYSLER REALTY CORPORATION, RECORDED SEPTEMBER 29, 1967 AS FILE NO. 150373 OF OR; THENCE ALONG SAID NORTHWESTERLY LINE SOUTH 37°40'53" WEST, 78.49 FEET TO SAID LAND DRAWN PARALLEL WITH AND 100.00 FEET NORTHEASTERLY AT RIGHT ANGLES TO THE CENTER LINE OF THE MAIN LINE OF ATCHISON, TOPEKA AND SANTA FE RAILROAD; THENCE ALONG SAID PARALLEL LINE NORTH 35°09'40" WEST, 308.20 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 2:

AN EASEMENT AND RIGHT OF WAY FOR ROAD PURPOSES TO BE USED IN COMMON WITH THE OTHERS OVER A STRIP OF LAND 40.00 FEET IN WIDTH LYING WITHIN BLOCK 14 OF SOUTH OCEANSIDE, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 622, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, FEBRUARY 7, 1890, IN THE CENTER LINE OF SAID 40.00 FOOT STRIP BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF MATFIELD'S 4.32 ACRES PARCEL OF LAND AS SHOWN ON SAID MAP NO. 622; THENCE ALONG THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF SAID PARCEL OF LAND, SOUTH 54°48'00" WEST, 80.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 100.00 FEET NORTHEASTERLY AT RIGHT ANGLES TO THE CENTER LINE OF THE MAIN LINE OF THE ATCHISON, TOPEKA AND SANTA FE RAILROAD; THENCE ALONG SAID PARALLEL LINE, SOUTH 35°12'00" EAST, 385.00 FEET TO THE MOST SOUTHERLY CORNER OF LAND DESCRIBED IN DEED TO STUART CHARLES LAW, RECORDED SEPTEMBER 4, 1956 IN BOOK 6243, PAGE 263 OF OFFICIAL RECORDS; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID LAW'S LAND, NORTH 54°47'00" EAST, 300.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTH 72°59'30" EAST, 43.94 FEET; THENCE NORTH 60°36'00" EAST, 310.00 FEET TO THE SOUTHWESTERLY LINE OF HILL STREET.

EXHIBIT "C"  
Description of Dorigo Larger Parcel  
(Reciprocal Property)

THE SIDELINES OF SAID STRIP SHOULD BE PROLONGED OR SHORTENED SO AS TO TERMINATE ON THE NORTHEAST AT THE SOUTHWESTERLY LINE OF HILL STREET AND ON THE SOUTHWEST AT A LINE WHICH BEARS NORTH 35°09'40" WEST THROUGH THE TRUE POINT OF BEGINNING.

PARCEL 3:

AN EASEMENT AND RIGHT OF WAY FOR ROAD PURPOSES TO BE USED IN COMMON WITH THE OTHERS OVER A STRIP OF LAND 20.00 FEET IN WIDTH LYING WITHIN BLOCK 14 OF SOUTH OCEANSIDE, IN THE CITY OF OCEANSIDE, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP THEREOF NO. 622, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, FEBRUARY 7, 1890, THE NORTHWESTERLY LINE OF SAID 20.00 FOOT STRIP BEING DESCRIBED AS FOLLOWS:

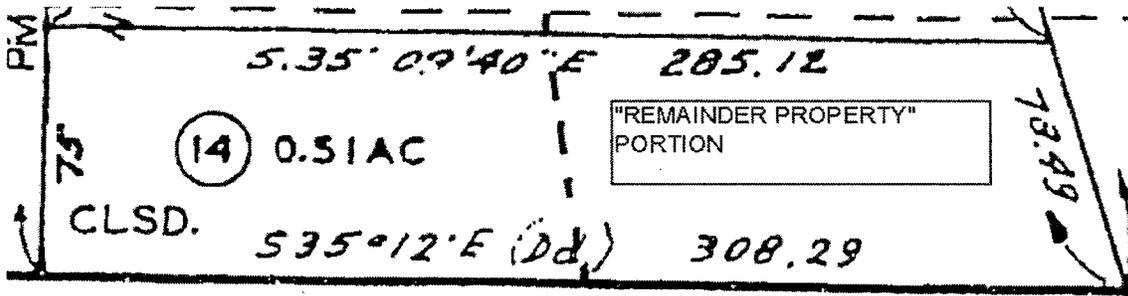
COMMENCING AT THE MOST SOUTHERLY CORNER OF MATFIELDS 4.32 ACRE PARCEL OF LAND AS SHOWN ON SAID MAP NO. 622; THENCE ALONG THE SOUTHWESTERLY PROLONGATION OF THE SOUTHEASTERLY LINE OF SAID PARCEL OF LAND, SOUTH 54°48'00" WEST, 80.00 FEET TO AN INTERSECTION WITH A LINE WHICH IS PARALLEL WITH AND 100.00 FEET NORTHEASTERLY AT RIGHT ANGLES TO THE CENTER LINE OF THE MAIN LINE OF THE ATCHISON, TOPEKA AND SANTA FE RAILROAD; THENCE ALONG SAID PARALLEL LINE; SOUTH 35°12'00" EAST, 385.00 FEET TO THE MOST SOUTHERLY CORNER OF LAND DESCRIBED IN DEED TO STUART CHARLES LAW, RECORDED SEPTEMBER 4, 1956 IN BOOK 6243, PAGE 263 OF OFFICIAL RECORDS; BEING THE TRUE POINT OF BEGINNING; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID LAND, NORTH 54°47'00" EAST, 300.00 FEET.

EXCEPTING THEREFROM THAT PORTION LYING WITHIN PARCEL 1 ABOVE DESCRIBED.

END OF LEGAL DESCRIPTION



EXHIBIT "D-1"  
Sketch Showing the Dorigo Larger Parcel  
(Reciprocal Property)



NOT TO SCALE

## EXHIBIT "E"

### DEFINITIONS

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

**Dorigo.** The term "Dorigo" means Francesco Dorigo and Teresita DeJesus Flores Dorigo, husband and wife, as joint tenants.

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

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

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

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

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

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

(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.

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